

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-028**

May 11, 2022

VIA ELECTRONIC MAIL

Ms. Erica Andrews

RE: FOIA Appeal 2022-028

Dear Ms. Andrews:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”), challenging the alleged failure of the Office of Unified Communications (“OUC”) to provide all documents responsive to your request.

Background

On September 21, 2021, you submitted an eleven-part DC FOIA request to OUC seeking the following:

1. All Criteria Based Dispatch System (“CBD”) guidelines, policies, manuals, or other documents explaining the use of the CBD.
2. The actual script or questions asked or actual protocols followed when any emergency call is placed to any dispatcher and any and all scripts or protocols used to respond to any emergency call.
3. The document entitled “Mandatory Use of eCBD during all calls for service Standard Operating Procedure” dated April of 2021 states in paragraph III.c. that “TEO must answer the required initial dispatch questions for that discipline.” All copies of all “initial dispatch questions” for every discipline referenced in paragraph III.c. and all “questions and answers” referenced in paragraph III.h of this same document.
4. The document entitled “Mandatory Use of eCBD during all calls for service Standard Operating Procedure” dated April of 2021 states in paragraph III.h. that “emergency TEO should give all appropriate PRE-ARRIVAL INSTRUCTIONS.” All copies of all PRE-ARRIVAL INSTRUCTIONS.
5. The actual CBD script, questions, or protocols that are used in responding to any emergency call.
6. The document entitled “Nurse Triage Line Standard Operating Procedure” dated April 2021 states in paragraph IV.a. that the “911 Telecommunicator will ask the patient questions about their medical symptoms.” A copy of the questions asked or

protocols followed by the 911 Telecommunicator, including all questions or protocols used to rule out cardiac arrest and ALS. In addition, a copy of any treatment protocols or processes that the 911 Telecommunicator uses or follows to provide assistance to the caller.

7. The document entitled “Nurse Triage Line Standard Operating Procedure” dated April 2021 states in paragraph IV.c. that the “nurse asks the caller questions and assesses his or her symptoms to determine the most appropriate care for the patient.” A copy of the questions asked or protocols followed by the nurse to assess the caller’s symptoms. In addition, a copy of any treatment protocols or processes that the nurse uses or follows to provide medical assistance to the caller.

8. The document entitled “CBD-All Callers Interview Standard Operating Procedure (SOP)” dated April 2021 states in paragraph III.b. that the “Automatic greeting begins.” A copy of the automatic greeting.

9. The document entitled “CBD-All Callers Interview Standard Operating Procedure (SOP)” dated April 2021 states in paragraph III.f. that the “Calltaker will ask the appropriate all callers interview questions (PD, Medical or Fire).” A copy of all “all callers interview questions” for all disciplines (PD, Medical or Fire or Nurse Triage).

10. The document entitled “CBD-All Callers Interview Standard Operating Procedure (SOP)” dated April 2021 states in paragraph III.g. that the “calltaker will proceed to the appropriate chief complaint card.” A copy of all “chief complaint cards”.

11. All guidelines, protocols, or scripts for every “all callers interview” for all disciplines (PD, Medical, Fire, or Nurse triage).

OUC responded to your request on October 1, 2021, by providing you with seven records.

On November 19, 2021, you filed an appeal with this Office asserting that OUC’s response to your DC FOIA request was inadequate because the agency “provided no detail as to what measures it took to search for, [sic] and obtain documents that were responsive to [your] request.” Moreover, you argue that you “[had] no means of determining whether OUC provided a fulsome review for responsive records or whether any documents were withheld from disclosure and if so, on what grounds.” Lastly, you allege that although OUC provided you with seven records, these records were not responsive to your request. You explain that in response to a prior, similar DC FOIA request, OUC only provided a few documents. Because you deemed the response to your prior DC FOIA request insufficient, you submitted a new, more detailed request and only received seven documents, many of which were duplicative of ones the agency sent in response your prior request.

On November 23, 2021, this Office notified OUC of your appeal and requested a response. OUC responded on December 2, 2021.<sup>1</sup> In its response, OUC stated that it conducted “a diligent search of the places where responsive documents would likely be found, including the OUC intranet accessible only to OUC employees” and described how the CBD system works. In describing the system, the

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<sup>1</sup> A copy of OUC’s response to your appeal is attached to this decision.

agency noted that:

[w]hile portions of the scripts and questions are released orally to callers seeking emergency services depending on the nature of the emergency, the scripts and questions are not maintained in a paper format. The scripts and questions are maintained in an electronic system that displays the scripts and questions to the dispatcher on a computer screen. The computer screens displaying the scripts and questions change based on the information provided by the caller and entered into the system by the dispatcher. Thus, the script or questions vary depending on the circumstances of the emergency and the system will not advance without the entry of information regarding the nature of the emergency.

OUC also stated it was not obligated to create records to satisfy your request.

### Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . . .” D.C. Code § 2-532(a).

DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *See Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

### *Adequacy of the Search*

In determining whether an agency conducted an adequate search in response to a records request, the test is not whether documents might conceivably exist, but whether the agency’s search for responsive documents was adequate. *See Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search:

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ (*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)) . . . The court applies a ‘reasonableness’ test to determine the ‘adequacy’ of a search methodology, (*Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983)) . . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C.*

*Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. See *In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, OUC asserted in generalized fashion that it conducted a diligent search. However, the only detail OUC provided about that search is it included OUC's intranet. OUC's explanation that "the scripts and questions are not maintained in a paper format" suggests that the agency did not search for other types of public records such as audio or video files. DC FOIA defines the term "public record" to include: "all books, papers, maps, photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Public records include information stored in an electronic format." See D.C. Code §§ 2-539(a)(10) and 2-502(18). Therefore, we find that OUC did not conduct an adequate search.

### Conclusion

Based on the foregoing, we remand this matter to OUC. Within 10 business days from the date of this decision, OUC shall identify the relevant locations of records for each category of your request and describe the results of its search. If OUC's forthcoming searches result in retrieving additional records, OUC shall disclose to you any non-exempt portions of responsive records in accordance with DC FOIA. You are free to challenge OUC's forthcoming response by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia in the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Tonya Robinson, FOIA Officer  
OUC (via email)