

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-034**

January 12, 2023

**VIA ELECTRONIC MAIL ONLY**

Mr. David Drobnis

RE: FOIA Appeal 2022-034

Dear Mr. Drobnis:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”). In your appeal, you assert the Homeland Security and Emergency Management Agency (“HSEMA”) failed to properly respond to your DC FOIA request.

Background

On October 27, 2021, you submitted a DC FOIA request to HSEMA, identified as 2022-FOIA- 00742, which sought the following:

There is a traffic camera at 16th St NW and Columbia Rd NW maintained by DDOT as accessed from the website: <https://app.ddot.dc.gov/> (screenshot attached).

I was involved in a traffic accident that occurred within view of this traffic camera. I would like to receive the video recording from 22:30 to 23:00 on Monday October 25th 2021.

HSEMA responded to your request on December 1, 2021 by notifying you that “[a]lthough a camera may be present at the location 16th St NW and Columbia Rd NW intersection, HSEMA does not have access to footage from this camera.” HSEMA also provided a link to the “comprehensive list of DDOT CCTV traffic camera locations HSEMA has access to” and suggested you look at it to identify any additional camera(s) responsive to your request. HSEMA further advised you that “footage from these cameras is automatically cleared every 10 calendar days to the minute unless preserved within that timeframe.”

In your appeal, you assert the camera for which you requested video is on the list of cameras HSEMA has access to and your request was “ignored and not properly reviewed in time to secure video files.”

In response to your appeal, HSEMA reiterated that it does not have access to “the camera located specifically at 16th St NW and Columbia Rd NW.” HSEMA also explained that

although it has access to the “16th St – Harvard – Mt. Pleasant” camera, as depicted in the screenshot attached to your request, it did not search that location because that was not the “specific location” listed in the request. Additionally, HSEMA stated that because the video footage was not previously preserved, it was “unable to recover any footage for the location, date, and time of the original 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, the 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).

Here, HSEMA engaged with you in an effort to identify and produce the records sought.

Unfortunately, by the time the differences in understanding as to the specifics of what you were looking for were resolved, the requested video footage had been purged. In the context of FOIA, the response of HSEMA to your request—that it does not have any video footage that is responsive to your request—was appropriate and is affirmed. This Office otherwise regrets that you were unable to obtain the desired video within the short window that it was available.

Conclusion

This constitutes the final decision of 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: Whitney Bowen Abrams, HSEMA FOIA Officer (via email only)