

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-035**

June 29, 2022

VIA ELECTRONIC MAIL

Ms. Hdeel Abdelhady

RE: FOIA Appeal 2022-035

Dear Ms. Abdelhady:

This letter responds to the administrative appeals you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the Department of Employment Services (“DOES”) failed to properly respond to your DC FOIA request.

Background

You submitted a DC FOIA request seeking “records of all filings, notices, correspondence, and any other records pertaining to assessments by the DOES, or payments to the DOES, of, by, or for The George Washington University as a self-insured employer pursuant to D.C. Code 32-1540 and/or DC Code 32-1541.” You specified that you were seeking “records of or documenting the dollar amount(s) paid or assessed to The George Washington University and the bases for those payments, such as the total amounts of medical and compensation payments (e.g., DC Code 32-1541(d) and any penalties (e.g., DC Code 32-1540(d)(2) or paid losses (DC Code 32-1540(d)(3)).”

You filed your appeal with this Office claiming that by only providing four pages of documents for April through June 2021 when the date range of your request was January 1, 2012, to July 21, 2021, “DOES did not respond to this request, and did not respond in good faith.” You stated that “DOES is known to have many more records than it produced, including ‘Administration Fund’ and ‘Special Fund’ assessments, quarterly reports of workers' compensation paid, and annual reports provided on OWC Form 22.” DOES filed a response to your appeal.¹ In the response, DOES explained that it was having problems “transmitting the responsive documents electronically.” DOES suggested a meeting with you to provide hard copies of the responsive documents and to submit an OCTO email search 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

¹ A copy of the response to your appeal from DOES is attached to this decision.

represent them as public officials and employees.” D.C. Official 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. Official 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, DOES has not explained how it searched for responsive records. However, DOES has indicated it is working with you on additional searches. In this instance remand to the agency is proper.

Conclusion

Based on the forgoing, we remand to DOES to complete its search and provide to you all nonexempt responsive records. 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 government in the Superior Court of the District of Columbia in accordance with D.C. Official Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Tonya Robinson, General Counsel
DOES (via email)