

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-042**

June 29, 2022

VIA ELECTRONIC MAIL

Ms. Roxana Mondragon

RE: FOIA Appeal 2022-042

Dear Ms. Mondragon:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Office of Advisory Neighborhood Commissions (“OANC”) failed to properly respond to your DC FOIA request for public records.

Background

On October 20, 2021, you sent a DC FOIA request to ANC 5B Commissioners seeking the following:

1. Quarterly reports for ANC 5B for 2021.
2. Supporting materials and documents underlying the 2021 ANC 5B budget and each quarterly report, including but not limited to:
  - A. All ANC 5B telephone (including mobile phone) transactions, including communications to/from the mobile phone carrier regarding any new mobile phone purchased or acquired in 2021
  - B. All ANC 5B telephone (including mobile phone) invoices or bills
  - C. All ANC 5B mobile phone statements reflecting calls made or received by each commissioner for calendar year 2021
  - D. Invoices related to the rental of ANC 5B's office space
  - E. Copies of all checks written in 2021, whether cashed or uncashed
  - F. Copies of all ANC 5B bank statements for 2021
  - G. Copies of all bank communications regarding bank fees imposed on the ANC 5B bank account in 2021
  - H. All invoices or itemized receipts related to any other expense incurred by ANC 5B in 2021
3. A copy of the lease agreement for the ANC 5B office space.
4. All correspondence involving the commissioners of ANC 5B01, 5B02, and 5B04, including, without limitation, emails, text messages, and voicemails, from 2021 concerning:
  - A. The ANC 5B website;

- B. the maintenance or purchase of telephones or other electronic devices for the commissioners, including, without limitation, mobile phones;
  - C. resolutions or other actions aimed at implementing additional traffic calming measures in ANC 5B including, without limitation, resolutions related to stop signs, speed humps, speed tables, the distribution of "slow down" signs in ANC 5B, etc.;
  - D. the ANC 5B office space and alternatives offered or considered to the current ANC 5B office space;
  - E. grants and ANC 5B;
  - F. the October 2021 and 5B COW meeting;
  - G. sanctions against ANC any 5B commissioner; and
  - H. efforts by the public to attend or participate in public ANC 5B meetings, including any references to "mob" or "mobs" and any discussion about hampering the public's effort to attend or participate in such meetings.
4. A copy of each newsletter, notice, pamphlet, flyer, or other communication (hereinafter, "ANC 5B Hard Copies") printed using the ANC 5B printer and provided to constituents related to ANC 5B or any of its SMDs in 2021.
  5. A copy of the distribution list/addresses that receive ANC 5B Hard Copies related to ANC 5B or any of its SMDs in 2021.
  6. A copy of the list of visitors to the ANC 5B office in 2021.

On November 10, 2021, OANC advised you that it found your request overly broad and pursuant to 1 DCMR § 402.5 was tolling it until you submitted clarifying information. On November 18, 2021, in a phone conversation with you, OANC stated it needed you to provide “searchable phrases.” On November 29, 2021, you narrowed your request by rescinding parts 1, 2D, 3, 4C and 4E. You also provided OANC suggested search terms and additional explanation of what you were seeking. On December 7, 2021, OANC denied your request on grounds that it still did not adequately describe the records sought. OANC specifically asserted that “you continue to request documents which make it unclear as from whom you are seeking the material.” However, OANC provided you a link to financial information pertaining to ANC 5B.

On December 17, 2021, you filed an appeal with this Office challenging OANC’s determination that your request was overly broad. You noted that some subparts such as “2(E), 2(F), 2(H), and 5-6, are not requests for emails at all, but rather requests for specific documents that could easily be gathered independent of any email search.” On January 4, 2022, this Office notified OANC of your appeal and requested a response. On January 11, 2022, OANC responded to your appeal.<sup>1</sup> In its response, OANC reiterated its position that you did not submit a proper DC FOIA request because you “discussed the FOIA request in general and all-purpose words and phrases, without citing any pertinent terms with which to search records.”

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

## Discussion

It is the public policy of the District of Columbia 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. 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). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

### *Adequacy of Request*

Your request asks for ANC 5B Commissioners’ documents for calendar year 2021 about specific topics, such as mobile phone purchases, ANC 5B bank statements, the ANC 5B website and access to ANC 5B public meetings. Your request subparts describe records that are identifiable and retrievable.

In its response to this Office, OANC asserted that you “discussed the FOIA request in general and all-purpose words and phrases, without citing any pertinent terms with which to search records.” We note that the burden of selecting search terms and locations is not born by the requester. DC FOIA does not require a requester to know the names of agency employees or the exact terms of art in order to request records. *See* FOIA Appeals 2017-47 and 2018-152. *See also Fraternal Order of Police v. District of Columbia*, 139 A.3d 853, 863 (D.C. 2016) (“there is nothing in the statute that allows a prospective determination of undue burden to void a FOIA request.”).

Moreover, it was OANC’s responsibility to make a determination as to where the requested documents were likely to be located - a responsibility that can be met by identifying agency employees in the relevant programs and making inquiries about the nature of document creation and retention in those programs. *See* 1 DCMR § 402.5<sup>2</sup>; *see also Truitt v. Dep’t of State*, 897 F.2d 540, 545 n. 36 (D.C. Cir. 1990) (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. at 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6271)). (finding a request to not be vague when “a professional employee of the agency who [is] familiar with the subject area of the request . . . [could] locate the record with a reasonable amount of effort.”). Absent your suggested search

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<sup>2</sup> 1 DCMR § 402.5 states (“Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.”) (emphasis added).

terms, OANC should have conducted an email search for messages the 5 ANC 5B Commissioners sent and received on the requested topics during the specified time period. Alternatively, OANC should have asked the 5 ANC 5B Commissioners to search their records. In other words, your request is not so vague as to have prevented OANC from conducting an initial search without additional input from you.

### Conclusion

Based on the foregoing, we remand this matter to OANC to promptly conduct an adequate search and disclose to you any non-exempt responsive records. This constitutes the final decision of this Office; however, you may challenge OANC's subsequent 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 government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Schannette Grant, Interim Executive Director  
OANC (via email)

Kathy Williams, Special Assistant to the Executive Director  
OANC (via email)