

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-044**

June 3, 2022

VIA ELECTRONIC MAIL

Ms. Pat Nelson

RE: FOIA Appeal 2022-044

Dear Ms. Nelson:

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 determination by the Department of Health (“DC Health”) that it has no records responsive to your DC FOIA request.

Background

You submitted a DC FOIA request to DC Health asking whether Capital Women’s Services located at 6323 Georgia Ave. NW Suite 210, Washington, DC 20011 is a licensed clinic and requesting all complaints and enforcement actions against it if so. DC Health responded to your request by informing you “the Department has searched its records and does not have any information that would be responsive to your request. Furthermore, the Department responds that the facility is not licensed by the Department.” You appealed, questioning the adequacy of the agency’s search, providing what “seems to be a previous complaint,” and requesting “all the documents for [the provided complaint] and all complaints and enforcement actions including subpoenas results.”

In response to your appeal, DC Health elaborated on its position that it has no responsive records.¹ The agency noted that it consulted with its Health Regulation and Licensing Administration and determined Capital Women’s Services is not a facility that is licensed by DC Health. Therefore, the predicate to providing complaints and enforcement actions was not met. DC Health also explained that the complaint you provided was “not a complaint against the facility but, rather, a complaint against the physician owner and certain health professionals who were employed at the facility....” Additionally, DC Health stated that your appeal appeared to be “a new request for information on complaints and enforcement actions against certain health professionals employed at Capital Women’s Services” and the agency would docket it as such.

¹ A copy of the DC Health’s response to your appeal is attached to this decision.

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).

The 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, DC Health identified its Health Regulation and Licensing Administration as the office that maintains licensing information. After consulting with the Health Regulation and Licensing Administration, DC Health determined that Capital Women’s Services is not a clinic

licensed by DC Health. Because you asked for complaints and enforcement actions against Capital Women's Services if it is a licensed facility, DC Health appropriately ended its inquiry when it determined the facility was not licensed by the agency. In short, there is nothing to suggest that the agency has failed to search for, or to produce records in its possession related to your request.

Conclusion

Based on the foregoing, we conclude that DC Health conducted an adequate search in response to your request for records. Therefore, we deny this appeal. However, if you are dissatisfied with DC Health's response to your newly docketed request, you may submit a new appeal to this Office.

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: Edward Rich, Senior Assistant General Counsel
DC Health (via email)