

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-046**

June 23, 2022

VIA ELECTRONIC MAIL

Ms. Jennifer Lynn Errichetti

RE: FOIA Appeal 2022-046

Dear Ms. Errichetti:

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”), challenging the alleged failure of the Department of Consumer and Regulatory Affairs (“DCRA”) to provide all documents responsive to your request.

Background

On November 12, 2021, you submitted a DC FOIA request to DCRA seeking “a complete set of the building plans associated with B0908664” to assist in fixing plumbing issues with the original house. On December 7, 2021, DCRA invoked a 10-business day extension pursuant to D.C. Official Code § 2-532(d). On December 21, 2021, DCRA provided you with a site plan. DCRA also invited you to contact its Records Management Division if you have questions about the site plan or need additional information about the site plan. Additionally, DCRA informed you that “plans, Certificates of Occupancy and permits are available on the agency’s online database, Electronic Records Management, and can be retrieved by visiting <https://scout.dcradc.gov/login>.”

That same day, you appealed asserting that you received documentation irrelevant to your request and “directions on how to use a system [you are] familiar with that [you] had already searched which did not give [you] the plans associated with the following permits B0908664, B1104929, P1101228.” You questioned why DCRA would direct you to “the system where [they] know those plans are not stored.”

On December 29, 2021, we notified DCRA of your appeal and requested a response. On January 11, 2022, DCRA provided a response.¹ In its response, DCRA asserted that by searching the agency’s online databases it conducted an adequate search. The agency also explained the availability of records for the permit numbers listed in your appeal noting that:

The agency has no plans for permit #B1104929 in the agency’s system or otherwise. Furthermore, permit P1101228 is a plumbing permit that goes with

¹ A copy of DCRA’s response to your appeal is attached to this decision.

Building Permit No. B0908664, which means it would not have a separate set of plans. Older plans, such as the one requested for Building Permit No. B0908664 are maintained in the agency's Suitland, MD building. Plans maintained in the Suitland, MD have to be physically ordered by the Records Management unit, thus Ms. Errichetti has to contact the Records Management unit directly and place an order for the plans.

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. Official 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. Official 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, DCRA did not search all locations likely to have responsive records. The agency identified the requested building plans as “older ones” and stated that such plans are “maintained in the agency’s Suitland, MD building.” However, DCRA did not order the requested plans from its Suitland, MD building. Therefore, we conclude that DCRA’s search was inadequate.

Conclusion

Based on the foregoing, we remand to DCRA to promptly conduct an adequate search of the files stored in its Suitland, MD building and disclose to you any non-exempt 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 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: Genet Amare, FOIA Officer
DCRA (via email)