

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-053**

May 13, 2022

VIA ELECTRONIC MAIL

Mr. Hunter Schloss

RE: FOIA Appeal 2022-053

Dear Mr. Schloss:

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

Background

You submitted a DC FOIA request to DCRA seeking “a record of all currently active licensees who practice the trades of Electrician, Plumber, and Refrigeration/Air Conditioner Mechanic.” You specified that you were seeking “contact details of all individuals, including name, phone number, email, and address” because that information is not currently available in the online public lookup. DCRA responded to your request by providing you with a link to the DCRA Contractor Rating System. DCRA informed you that “[y]ou may utilize website to search for a licensed professional and to contact them via their listed business email” and “you may submit an inquiry directly to the DCRA Occupational and Professional Licensing Administration” to address any questions about the data in the Contractor Rating System. You appealed, asserting that “[t]he proposed remedy (to visit the Contractor Rating System) does not have complete information when compared against public searches for active license holders, and therefore does not fulfill the request.” You provided a few examples of active license numbers that you did not find in the Contractor Rating System.

In response to your appeal, DCRA described the steps that it took to search for records and stated that it was not required to create records or answer questions to fulfill your request.¹ In detailing its search, the agency noted that it “sent a request for a records search to the DCRA Occupational and Professional Licensing Administration, the division that oversees occupational licensing, and the DCRA’s Office of Information Systems, the division that maintains agency’s websites and databases.” Those divisions indicated that responsive information “was publicly available online via the DCRA Contractor Rating System website.” DCRA also explained that in the Contractor Rating System “[e]ach professional receives a score of 1-5 stars that represents the performance

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

of their projects over the past three years during (1) building permit intake, (2) permit plan review, and (3) construction.”

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, DCRA identified two divisions likely to have responsive records. Specifically, the Occupational and Professional Licensing Administration, which oversees occupational licensing and the Office of Information Services, which maintains the agency's websites and databases. Those divisions stated that the DCRA Contractor Rating System website would have the information requested. And DCRA correctly stated that under FOIA, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). In short, there is nothing to suggest that the agency has failed to search for, or to produce, any relevant records in its possession related to your request.

Conclusion

Based on the foregoing, we conclude that DCRA conducted an adequate search in response to your request for records. Therefore, we deny this appeal.

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: Erin J. Roberts, FOIA Officer
DCRA (via email)