

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-056**

June 3, 2022

VIA ELECTRONIC MAIL

Ms. Traci A. Williams

RE: FOIA Appeal 2022-056

Dear Ms. Williams:

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 Employment Services (“DOES”) to provide all documents responsive to your request.

Background

On November 10, 2021, you submitted a DC FOIA request to DOES for records related to a specified workers’ compensation claim. On December 15, 2021, you filed an appeal with Office challenging DOES failure to respond to your request within the statutory time period. On December 20, 2021, DOES provided you with responsive records. On December 30, 2021, you filed the instant appeal asserting that the documents provided are incomplete and not responsive to your request. For example, you believe DOES has a March 2019 DC FORM 11 but did not provide it to you. On January 24, 2022, we notified DOES of your appeal and requested a response. DOES responded on February 23, 2022.<sup>1</sup> In its response, DOES explained that it “conducted an extensive search of its electronic files and paper files,” provided over 100 pages of responsive records on December 20, 2021, and “has no further documents in its possession that are responsive to this request.” DOES also noted that on June 28, 2021, representatives from the workers’ compensation program met with you virtually and answered your questions.

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).

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

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, DOES has stated in generalized and conclusory fashion that it conducted an extensive search. The only detail provided about the search is that it included paper and electronic files. As a result, this Office does not have enough information to determine whether or not DOES conducted a reasonable and adequate search and remand to the agency is appropriate.

### Conclusion

Based on the foregoing, we remand to DOES to promptly provide to you and this Office a detailed explanation of its search of paper and electronic files.

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: Tonya A. Robinson, General Counsel/FOIA Officer  
DOES (via email)