

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-071**

June 3, 2022

VIA ELECTRONIC MAIL

Dr. Karthik Balasubramanian

RE: FOIA Appeal 2022-071

Dear Dr. Balasubramanian:

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 Health (“DC Health”) to search for documents responsive to your request.

Background

On October 1, 2021, you submitted a DC FOIA request to DC Health seeking “emails, phone call transcripts, or meeting transcripts or other written materials from Dr. LaQuandra S. Nesbitt, Mr. Brian W. Amy, [or] any of their predecessors and subordinates... discussing the timely production, delayed production, or non-production of the District of Columbia Trauma Registry in 2016, 2017, 2018, 2019, 2020, and 2021.” On November 2, 2021, DC Health responded to your request by informing you that “it does not have any information that would be responsive to your request, as there is no statutory or regulatory requirement for the production of an annual trauma registry or a specifically required timeframe for production of such registry.”

On January 21, 2022, you filed an appeal with this Office, stating DC Health “rejected a record search because a trauma report is not required by the statute. But this is completely irrelevant with respect to the FOIA request.” On February 24, 2022, we notified DC Health of your appeal and requested a response, which DC Health provided on February 25, 2022.<sup>1</sup> In response to your appeal, DC Health described the steps that it took to search for records. In detailing its search, the agency noted that:

The Office of the General Counsel requested and received responsive information from Dr. LaQuandra Nesbitt, who has at all times been the Director of DC Health during the date range for the request and Dr. Brian Amy, who has at all times been an employee in the Health Emergency Preparedness and Response Administration (“HEPRA”) of DC Health during the date range for the request and responsible for coordinating the review of trauma data submitted on a quarterly basis to DC Health

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

by trauma facilities located in the District of Columbia that are extensively analyzed by DC Health and form the basis for trauma registry reports produced by HEPRA. After review of all correspondence provided to the Office of General Counsel, our office determined that there was no correspondence or other information that was responsive to Dr. Balasubramanian's specific request concerning the timely, delayed or non-production of trauma registry reports. Furthermore, the Office of the General Counsel reviewed the D.C. Code and the DC Municipal Regulations for any statutory or regulatory requirements for the production of trauma registry reports and confirmed that there are no statutory or regulatory requirements for such reports.

### 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*

To the extent you challenge DC Health assertion that it does not possess responsive records, we conclude that DC Health properly conducted a search under the DC FOIA.

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).

In this instance, DC Health identified the individuals likely to have responsive records—in particular, the individuals whose records you were seeking. DC Health reviewed correspondence from those individuals and determined that there was no correspondence or other information responsive to your particular request regarding timely production, delayed production, or non-production of trauma reports. DC Health also verified via reviewing the DC Code and DC Municipal Regulations that it is not mandated to produce trauma registry reports. If DC Health is not required to produce trauma registry reports, it will not have any records discussing timely, delayed, or non-production of the reports. 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 DC Health 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: Edward Rich, Senior Assistant General Counsel  
DC Health (via email)