

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-076**

February 1, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Braeden Waddell

RE: FOIA Appeal 2022-076

Dear Mr. Waddell:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code §§ 2-531, *et seq.* (“DC FOIA”). In your appeal, you have challenged the response of the Department of Corrections (“DOC”) to your DC FOIA request.

Background

On January 25, 2022, you submitted a DC FOIA request to DOC, identified as 2022-FOIA-02887, which sought the following:

1. The number of prisoners/inmates under the jurisdiction of the D.C. Department of Corrections who have been identified by the D.C. Department of Corrections as (1) blind or as having a visual impairment; (2) deaf or as being hard of hearing; (3) blind and deaf, and/or (4) having a mobility impairment.
2. The number of prisoners under the jurisdiction of D.C. Department of Corrections currently, or at any point during their time or times under the jurisdiction of D.C. Department of Corrections, placed in administrative segregation, protective custody, or similar status, and who have been identified by the D.C. Department of Corrections as (1) blind or as having a visual impairment; (2) deaf or as being hard of hearing; (3) blind and deaf, and/or (4) having a mobility impairment.
3. The number of prisoners under the jurisdiction of the D.C. Department of Corrections and having been identified by the D.C. Department of Corrections as having a diagnosis of (1) schizophrenia; (2) bipolar disorder; (3) post-traumatic stress disorder; (4) major depressive disorder; (5) autism; AND/OR (6) substance use disorder/alcoholism/drug addiction.
4. The number of prisoners under the jurisdiction of the D.C. Department of Corrections currently, or at any point during their time or times under the jurisdiction of the D.C. Department of Corrections, placed in administrative

segregation, protective custody, or similar status, and who have been identified by the D.C. Department of Corrections as having a diagnosis of (1) schizophrenia; (2) bipolar disorder; (3) post-traumatic stress disorder; (4) major depressive disorder; (5) autism; AND/OR (6) substance use disorder/alcoholism/drug addiction.

DOC responded to your request on January 28, 2022 by advising you that it did not have any responsive records. Notwithstanding, DOC directed you to <https://doc.dc.gov/page/inmate-demographics-and-statistics> for the “disclosable inmate data created and maintained by the DOC.”

On January 30, 2022, you filed an appeal with this Office questioning DOC’s determination that it has no responsive records. You asserted,

[T]here must be some form of data or records kept by the DC DOC on the number of prisoners/inmates that are or were at one point under the jurisdiction of the District of Columbia Department of Corrections and were identified to have one of the physical disabilities and/or diagnoses defined in the original request. As an example, looking at the reports on the DOC website, the CCB and CTF PREA audits from 2019 show that both facilities are aware of inmates who are blind/low vision, deaf/hearing impaired, and or have mobility issues (and other physical disabilities) and that special materials are provided to those inmates to make sure they are aware of D.C. sexual prevention efforts in prisons. Both CCB and CTF audits provide this information in section Standard 115.116 (Detainees with disabilities and detainees who are limited English proficient) relating specifically to disabled inmates (pages 14 and 18 in reports, respectively).

Furthermore, the CTF PREA Audit from 2019 specifically states there is documentation that disabled individuals participate in PREA education hearings, implying that people with the originally defined disabilities are present at DOC facilities and are under the jurisdiction of the DC DOC (page 33). Screening processes outlined in both reports further indicate that inmates are screened and information is recorded on physical, mental and developmental disabilities: "The intake screening considers, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental disability;" (CTF 2019 PREA Audit, section Standard 115.41).

On March 1, 2022, we notified DOC of your appeal and requested a response. DOC responded on March 13, 2022 by stating it initially overlooked items 1 and 3 of your request and would perform a search and provide you with any responsive records that were found. As for items 2 and 4, DOC reiterated its position that it does not have any responsive records because the agency “has not created and does not maintain segregation units data which categorize inmates by disabilities.” On March 21, 2022, it is reported that DOC provided you with “the numbers of inmates in DOC’s custody in the period of January 2021 – January 2022, with physical disabilities and/or diagnoses that you specified in your FOIA request.”

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).

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

FOIA only requires that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *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. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

Here, in response to your appeal that DOC did not have any responsive records, it revisited your request and provided you with information that had been initially overlooked. While this Office would be inclined to accept that response as sufficient to your request, the provided information only addressed the time period of “January 2021 – January 2022” while the request was for the time period of “January 1, 2000 through the date this request is processed.” In the absence of an explanation, a remand is appropriate.

Conclusion

Based on the foregoing, we remand this matter to DOC to promptly conduct an adequate search for documents covering the time period of January 1, 2000 through the start date of the search, and to provide you with any responsive records identified.

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 government in Superior Court in accordance with D.C. Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Oluwasegan Obebe, DOC FOIA Officer (via email only)