

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-085**

April 20, 2022

VIA ELECTRONIC MAIL

Mr. Emanuel McCray

RE: FOIA Appeal 2022-085

Dear Mr. McCray:

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 response of the Executive Office of the Mayor (“EOM”) to your DC FOIA request.

Background

You submitted a request to EOM seeking “the identity of the individual and or the federal agency that issued the ‘permits’ to the demonstrators [referenced in Mayor’s Order 2021-002].” EOM sent you a response explaining it “does not issue permits for first amendment demonstrations. Your FOIA request asks for information outside the scope of [EOM’s] functions and your inquiry should be directed to one of the federal agencies.” You filed an appeal with this Office asserting, “it is within scope of the Mayor’s Office to identify the ‘federal government’ entity that issued the permits” because the claim that the federal government issued permits comes from Mayor’s Order 2021-002. In its response to this Office, EOM reiterated that it properly responded to your request by referring you to the federal government. EOM also stated that through an internet search one can discover that the National Park Service issues First Amendment Demonstration Permits and EOM was not required to produce this publicly accessible information.¹

Discussion

It is the public policy of the District of Columbia 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 right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. D.C. Code § 2-534. Under the DC FOIA, an agency is required to disclose materials if they are “retained by a public body.” D.C. Code § 2-502(18).

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

An agency is not required to seek out responsive records that are outside of its possession or control. *See United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).² In this instance, EOM has stated that it does not issue permits for first amendment demonstrations and has suggested that the request would be more appropriately directed to a federal government agency.

Also, it has been held that an agency was not obligated under FOIA to produce records when the information is publicly accessible via its website or the Federal Register. *Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). *See also Crews v. Commissioner*, 85 A.F.T.R.2d 2169, 2000 U.S. Dist. LEXIS 21077 (C.D. Cal. 2000) (production satisfied for documents that are publicly available either in the agency's reading room or on the Internet). Here, the identity of the federal government agency that issues demonstration permits is publicly available via a simple internet search.

Based on the foregoing, we conclude that EOM properly responded to your DC FOIA request, and we hereby deny your 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: Tenette Smith, Associate General Counsel
EOM (via email)

² The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *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. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).