

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-086**

January 25, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Vic Edgerton

RE: FOIA Appeal 2022-086

Dear Mr. Edgerton:

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 Office of the State Superintendent of Education (“OSSE”) to your DC FOIA request.

Background

On October 6, 2021, you submitted a DC FOIA request to OSSE, identified as 2022-FOIA-00173, which sought the following:

I hereby request any agreement between an agency of the DC government and an entity that involves testing children in schools for COVID-19.

OSSE responded to your request on October 21, 2021 by referring you to “the Office of Contracts and Procurement (OCP) as the agency originating and holding all final contract agreement records for District agencies within its purview.”

In your February 15, 2022 appeal filed with this Office, you asserted the following:

[T]he current COVID testing in DC schools, which is done by Shield T3, is reportedly done through a contract between OSSE and Shield T3. But even if the contract with Shield T3 is with an agency other than OSSE, it is likely that someone within OSSE has a copy of it.

We notified OSSE of your appeal on March 8, 2022 and requested a response. On March 15, 2022, OSSE responded by reiterating its position that it properly referred you to OCP because it is the entity that provides contracting services for OSSE, including Letter Contracts.

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

To the extent you challenge OSSE’s assertion that it does not possess responsive records, we conclude that OSSE properly conducted a search and referred you to the agency most likely to have responsive records.

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, OSSE consulted with the OCP Contract Administrator for the agency and

determined that OCP is the originating agency of the requested records. OSSE identified OCP as the agency that maintains contracts and suggested that you file a request there seeking responsive documents.

DC FOIA is agency specific. *See* 1 DCMR § 402 (“A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency.”). This Office is not aware of any request that has been submitted to OCP or of a response it has offered, if any.

Conclusion

Based on the foregoing, we conclude that OSSE appropriately responded 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 accordance with D.C. Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Lee Hagy, OSSE FOIA Officer (via email only)