

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-088**

June 29, 2022

VIA ELECTRONIC MAIL

Mr. David Conforti

RE: FOIA Appeal 2022-088

Dear Mr. Conforti:

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 Consumer and Regulatory Affairs (“DCRA”) to provide all documents responsive to your request.

Background

You submitted a DC FOIA request to DCRA seeking “all **building permits** to construct a fence or any other structure on the property located at 2899 Audubon Terrace, NW.”(emphasis added) DCRA responded to your request by providing you with 2 permits, a link to the DCRA E- Records Management System, and a link to “Scout, an online information resource that allows users to find and track permits, licenses, inspections, enforcement actions, and regulatory information across the District all in one place.” You appealed, asserting that you requested “any and all permits associated with the property located at 2899 Audubon Terrace, NW” and only received 2 permits, but you are aware of at least 3 additional permits issued for the property. You also contended that “a permit was issued for the initial construction of the home in 1927 (we found a reference to permit #2119 in the DC Historic Preservation Office database) and for a renovation to the home prior to 2007.” You requested that DCRA “conduct anew a thorough and comprehensive search of all available sources, including the DCRA archives, and provide an explanation for the absence of the permits referenced above and not produced.”

In response to your appeal, DCRA described the steps that it took to search for records and explained that no such additional building permits existed.¹ In detailing its search, the agency FOIA Officer noted that:

After receiving and reviewing his request, I began a search for all responsive records. I conducted a search on SCOUT, an informational DCRA database open to the public containing permit and licensing information, and found there were two building permits responsive to Mr. Conforti’s request (Exhibit B). After

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

confirming my findings with the DCRA Records Management Division, which maintains custody of building permits, I searched for and pulled one of the building permits associated with 2899 Audubon Terrace, NW from DCRA's internal enterprise database, Accela, which holds a vast number of agency records, including building permits.

I pulled a second, older building permit associated with 2899 Audubon Terrace, NW from FileNet, another agency internal database which stores such records as permits and plans.

The DCRA FOIA Officer also explained that "DCRA issues several different types of permits, including, for example, trade permits (e.g., electrical, plumbing), public space permits, and fence permits. Therefore, when Mr. Conforti submitted his request seeking building permits, the search for permits was narrowed to that type of permit."

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 DCRA's assertion that it does not possess additional responsive records, we conclude that DCRA 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).

Here, DCRA identified Scout as the database likely to have information regarding building permits for the address requested. The database findings were confirmed by the DCRA Records Management Division, which has custody over building permits and then the 2 identified building permits were pulled from the agency’s databases that store building permits. In short, there is nothing to suggest that the agency has failed to search for, or to produce, any building permits in its possession related to your request.

Conclusion

Based on the foregoing, we conclude that DCRA 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: Erin J. Roberts, FOIA Officer
DCRA (via email)