

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-090**

June 30, 2022

VIA ELECTRONIC MAIL

Mr. Frazer Walton

RE: FOIA Appeal 2022-090

Dear Mr. Walton:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the DC Commission on the Arts and Humanities (“CAH”) failed to properly respond to your DC FOIA request for public records.

On January 18, 2022, you submitted a DC FOIA request to CAH seeking the following:

Copies of all grant awards, documents and information contained in the D.C. Commission on the Arts and Humanities records related to a grant application filed by Curry Hackett, (Wayside Studio), Patrick McDonough and “Friends of Kingman Park Civic Association” and et al.

Kingman Park Triangle Proposed Project

1. All financial grant awards (Exact Amount).

Please provide the Friends/Wayside/McDonough/Hackett grant application for “Artwork” and architectural designs on the Kingman Park Triangle; all letters in support thereof; all drawings and designs; all qualifications, resumes, qualifications and personnel information of the applicants; all licenses of the applicants; and any and all records contained in or held by the DC Arts and Humanities Commission related to the Kingman Park Triangle grant application.

Kingman Island Project

1. All financial grant awards (Exact Amount).

Please provide the Friends/Wayside/McDonough/Hackett grant application for “Artwork” and architectural plans on the Kingman Island project; all letters in support thereof; all drawings and designs; all qualifications, resumes, qualifications and personnel information of the applicants; all licenses of the applicants; and any and all records contained in or held by the DC Arts and Humanities Commission related to the Kingman Island grant application.

On February 11, 2022, after invoking a 10-business day extension, CAH provided you with responsive records. On February 18, 2022, you followed up with CAH and asked where the Friends application was. CAH replied that it provided all documents responsive to your request, including the Friends application. You then asked to be directed to the application and stated that CAH's response "does not address Kingman Island documents and applications." On February 25, 2022, you filed an appeal with this Office alleging that CAH improperly withheld "the actual signed and original grant application of the applicants" and "all documents related to the Kingman Island Friends/Wayside Studio/McDonough/Hackett grant application(s)." On March 8, 2022, we notified CAH of your appeal and requested a response. Due to staff turnover, CAH was not aware of your appeal until the week of June 20, 2022. CAH responded to your appeal on June 27, 2022. In its response, CAH reiterated that it provided you with all responsive records and explained that:

1. CAH provided you with the original grant application; the original applications are completed electronically; names are typed into a field in the grant application platform and there is no wet signature on original applications.
2. CAH received no application from "Friends/Wayside/McDonough/Hackett" related to Kingman Island, and thus cannot provide records not in its possession and never received.

Under FOIA, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Env'tl. Prot. Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). See also *Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). Here, CAH has explained that the requested signed versions of the grant applications do not exist and no grant application related to Kingman Island exists.

Based on the foregoing, we conclude that the CAH 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. Official Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Robin Carr McClure, Attorney
CAH (via email)