

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-098**

January 10, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Kathleen M
Coughlin

RE: FOIA Appeal 2022-098

Dear Ms. Coughlin:

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"). In your appeal, you have challenged the response of the Department of General Services ("DGS") to your DC FOIA request.

Background

On January 24, 2022, you submitted a DC FOIA request to DGS, identified as 2022-FOIA-02813, which sought the following:

I am seeking public records that fulfill the data reporting requirements pursuant to Sec.105(b) of the Protecting Our Children Emergency Amendment Act B24-0403 which was enacted on October 26, 2021. It can be read in full at <https://lims.dccouncil.us/Legislation/B24-0403>. The section reads as follows:

Sec. 105. COVID-19 infection and mitigation reporting requirements
(b) On or before November 1, 2021, the Department of General Services ("DGS") shall transmit to the Council and post on the DGS website:
(1) A list of open work orders for HVAC units serving school facilities, including the status of any repairs and the anticipated repair date; and
(b) The date of the most recent inspection of HVAC units, by school.

Therefore, under the District of Columbia Freedom of Information Act § 2-531 et seq., I hereby request the opportunity to inspect all public records from the date the legislation was enacted (October 26, 2021) to the present regarding work orders, repairs, and inspections of HVAC units in schools, broken down by school and by date as specified under the above legislation.

On February 14, 2022, DGS provided you with a record responsive to your request for a list of open work orders for HVAC units serving school facilities, including the status of any repairs and

the anticipated repair date, with an explanation that the spreadsheet generated from Salesforce does not capture the full description and to receive the full description the work order can be provided per request. DGS further advised that it continued to search for responsive documents.

On March 1, 2022, DGS resent the report explaining “the attached report generated from Salesforce has highlighted DCPS location assignment descriptions that were not captured. To receive the full assignment description from the DCPS location highlighted the work order can be provided per your request.” DGS also notified you it was still searching its records for “[t]he date of the most recent inspection of HVAC units, by school” and “[y]ou will receive a response once received from the applicable division if any such record exists.”

On March 6, 2022, you filed an appeal with this Office stating, in part,

I believe that the Department of General Services (DGS) is not fulfilling its obligations under the Freedom of Information Act and may be failing to make reasonable efforts to search for records, unlawfully withholding requested documents, and/or delaying their responses.

You also questioned DGS’s March 1 representation that it had not located records responsive to your request for “[t]he date of the most recent inspection of HVAC units, by school” because at its March 2nd Council oversight hearing, “DGS debuted a new dashboard tracking the exact two pieces of information that [you] had requested.”

On March 8, 2022, we notified DGS of your appeal and requested a response. DGS responded on March 22, 2022, describing its search efforts. Specifically, DGS noted that “[o]n January 24, 2022, DGS’s FOIA Specialist assigned the request to the FOIA Liaison in the Facilities Management Division (FMD) who acknowledged receipt of the FOIA request,” the FOIA Specialist regularly followed-up with the FMD FOIA Liaison to determine the status of the requested records, and “[o]n March 3, 2022, FMD Supervisory Management Analyst responded with the records to satisfy (b) the date of the most recent inspection of HVAC units, by school and link to DGS’ website for public use.”

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

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, DGS identified FMD as the unit likely to have the requested records and promptly directed it to conduct a search. The DGS FOIA Specialist routinely monitored the efforts of FMD and provided you with the responsive records as they became available. The record does not reflect any failure to search for, or to produce any available records identified as responsive to your request.

Conclusion

Based on the foregoing, we conclude that DGS 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 in accordance with D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Black Johnson, DGS FOIA Officer (via email only)
Vaughn Adams, DGS FOIA Officer (via email only)