

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-099**

May 11, 2022

VIA ELECTRONIC MAIL

Mr. Mike Ewall

RE: FOIA Appeal 2022-099

Dear Mr. Ewall:

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”). In your appeal, you assert that the Department of Public Works (“DPW”) failed to timely respond to your request for records.

Background

On February 13, 2022, you submitted a four-part DC FOIA request seeking the following:

1. The Life Cycle Analysis on landfilling vs. incineration conducted by CDM Smith for DPW.
2. Email correspondence within DPW or between DPW and other parties about this Life Cycle Analysis.
3. A list of the “15 or so” people (academics and others) who Blake Adams said in the 1/27/2021 Quarterly Environmental Stakeholder Meeting were involved in developing the scope of work for this Life Cycle Analysis study, along with their affiliations.
4. A copy of the scope of work and task order for this Life Cycle Analysis study.

On March 9, 2022, you appealed claiming that DPW provided “[n]o response within the statutory time frame.” Additionally, you stated that “[o]ne piece of the first requested item was released (outside of this FOIA process), but the rest of that requested record...and the other requested records have not been supplied.” Accordingly, we construe your appeal as an assertion that DPW constructively denied your DC FOIA request since you have not received responsive documents to your request.

On March 24, 2022, this Office notified DPW of your appeal and requested a response. DPW responded on March 31, 2022.¹ In its response, DPW responded that it had not denied your request. Specifically, DPW noted that it emailed you through the FOIAXpress platform on

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

February 17, 2022, asking you to clarify the type of information you are seeking for the second part of your request and to “provide details identifying the records you seek so we can understand the scope of the search allowing for the estimation of any labor costs related to the search as well as the review and production of any responsive records [DPW] may have.” This communication was made pursuant to 1 DCMR § 402.5. In accordance with this regulation, DPW placed your requests on hold, pending clarification from you as to what you are seeking. It does not appear that you responded to DPW’s attempt to clarify your DC FOIA request.

Analysis

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. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

This Office’s jurisdiction is limited to reviewing a District agency’s denial of the right to inspect public records. *See* D.C. Official Code §2-537. DPW’s position is that your right to inspect records was neither expressly nor constructively denied.

DPW’s decision to place your request on hold to seek clarification is not an unlawful denial but rather in accordance with applicable statutes and regulations. DC FOIA mandates that agencies respond to “request[s] reasonably describing any public record.” D.C. Official Code § 2-532(c). The District of Columbia Municipal Regulations further clarify how an agency should respond to a request that does not reasonably describe a public record. The FOIA officer is supposed to contact the requester for additional information. 1 DCMR § 402.5. DPW’s February 17, 2022, communication was made pursuant to 1 DCMR § 402.5 in an attempt to clarify a confusing request. The deadline for responding to such a request is suspended until the FOIA officer receives additional information that reasonably describes the public records sought. 1 DCMR § 405.6. As a result, DPW was acting in accordance with 1 DCMR § 405.6 when it placed your requests on hold pending clarification on February 17, 2022.

Under D.C. Official Code § 2-532(e), a constructive denial occurs when an agency fails to respond within the timing requirements established in D.C. Official Code §§ 2-532(c) and (d). Because DPW suspended your request in accordance with 1 DCMR § 405.6 and you have yet to provide additional, clarifying information to the agency, the timing requirements described in D.C. Official Code §§ 2-532(c) and (d) have not begun to run again. Therefore, your request has not been constructively denied. Your request will resume being processed once you have provided information “sufficient to permit the identification and location of the record . . . without an unreasonable amount of effort.” 1 DCMR 402.5

Conclusion

In light of the foregoing, we hereby dismiss your appeal. We encourage you to provide DPW with specific information to help process your request. You may assert any challenge, by separate appeal, to DPW's subsequent response or failure to respond once you have clarified your request.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the D.C. Official Code § 2-537.

Sincerely,

Mayor's Office of Legal Counsel

cc: Errika M. Jefferson, Assistant General Counsel
DPW (via email)