

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-112**

April 25, 2022

VIA ELECTRONIC MAIL

Ms. Amy Elizabeth Konigsburg

RE: FOIA Appeal 2022-112

Dear Ms. Konigsburg:

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 response of the Office of the Chief Technology Officer (“OCTO”) to your DC FOIA request.

Background

On September 21, 2021, you submitted a DC FOIA request to OCTO seeking “all of [a named District of Columbia Metropolitan Police Department (“MPD”) employee’s] emails to better understand his role within the Ivy City community (1800 Capitol Ave NE and 1800 West Virginia Ave NE).”

OCTO responded to your request and explained that it was unable to process your request “because other District government agencies may have custody of potentially responsive records.” OCTO specifically named MPD as an agency that might have responsive records and informed you that you “may resubmit your request to other agencies through FOIAXpress.”

On March 20, 2022, you filed an appeal with this Office asserting, “[t]his is public information that needs to be provided ASAP to the community.” As a result, on March 24, 2022, this Office notified OCTO of your appeal and requested a response. OCTO responded on March 29, 2022.¹ In its response to your appeal, OCTO reiterated that its initial answer to your request was proper pursuant to Mayor’s Order 2008-88 because you requested emails of a named MPD employee, “which does not fall under the purview of OCTO’s authority to provide.” Therefore, the agency again referred you to MPD for the records sought.

Discussion

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. Code § 2-531. In aid of that policy, the DC FOIA

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

creates the right “to inspect . . . and . . . copy any public record of a public body” D.C. Code § 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. *See* D.C. Code § 2-534. Under DC FOIA, an agency is required to disclose materials if they are “retained by a public body.” D.C. Code § 2-502(18).

Pursuant to 1 DCMR § 402.1, “[a] request for a record of an agency may be made orally or in writing and shall be directed to the particular agency.” However, Mayor’s Order 2008-88 clarifies that DC FOIA requests for emails be handled by the agency that is the subject of the request, rather than OCTO, which maintains email records merely as a custodian. Further this Mayor’s Order explains that OCTO should neither receive nor respond to an outside-of-government DC FOIA email request, instead requesters should submit DC FOIA requests for emails to the subject email not to the custodian, OCTO. As OCTO serves as the custodian for the records you have requested, the agency’s response is adequate. Because you are seeking the emails of an MPD employee, your request would be properly directed to MPD.

Based on the foregoing, we affirm OCTO’s decision and hereby dismiss 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. Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Folashade Bamikole, Attorney Advisor
OCTO (via email)