

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2022-116 & 2022-132**

January 26, 2023

VIA ELECTRONIC MAIL ONLY

Dr. Daryao S. Khatri

RE: FOIA Appeal 2022-116 & 2022-132

Dear Dr. Khatri:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code §§ 2-531, *et seq.* (“DC FOIA”). In your appeal, you have challenged the response of the University of the District of Columbia (“UDC”) to your DC FOIA request.

Background

On October 13, 2021, you submitted a multi-part DC FOIA request to UDC which sought the following:

1. Resumes and undergraduate and graduate transcripts (personal information can be redacted) for Drs. Chatman, Huron, Ghannouchi, Pyakuryal, Mills, Darby, Lakeou, Bertaut, Hawkins, Phua, Viehe, Thomas Bullock, Barnett, Finley, Manning, Shie, and Bertaut.
2. All HR Forms 50 and 52 for Dr. Chatman from 2000-2018. (Exclude forms 50 and 52 for summer teaching)
3. All HR Forms 50 and 52 for Dr. Huron from 2010-2018. (Exclude forms 50 and 52 for summer teaching)
4. All HR Forms 50 and 52 for Dr. El-Khawas from his initial appointment to 2016. (Exclude summer teaching forms 50 and 52)
5. Board resolutions showing termination and reinstatement of academic programs from 1985- 2000.
6. List of classes taught by Chatman from 2000-2018 for fall and spring semesters.
7. List of classes taught by Huron from 2010-2018 for fall and spring semesters.

8. List of classes taught by El-khawas from 2006-2016.
9. University catalogs for 1985, 1990, 1995, 2000, 2005 - 2007.
10. All reports prepared by Noel and Lewitz.
11. Number of Degrees granted in IGED from 2010-2018.
12. Number of degrees granted in Anthropology from 2004-2018.
13. Signed Faculty Teaching Assignments for Dr. Chatman from 2003-2018.
14. Signed Faculty Teaching Assignments for Dr. Huron from 2010-2018.
15. Signed Faculty Teaching Assignments for Dr. Ufland from 2010-2018
16. Signed Faculty Teaching Assignments for Dr. Jowers from 2010-2018.
17. Signed Faculty Teaching Assignments for Dr. El-khawas from 2006-2018.

UDC sent you an initial response on November 22, 2021 stating, in relevant part:

[s]igned faculty teaching assignments records are maintained from 2014. Records prior to 2014 are not maintained by the Dean, College of Arts and Sciences. All physical workload forms have been packed for imaging and the Dean is unable to access these forms.

On December 15, 2021, UDC sent you “five Excel spreadsheets and four wordperfect documents” containing the requested Faculty Teaching Assignments data. In response, you explained via an email on January 13, 2022, that the that the data provided was not what you are seeking and attached a form depicting the information you sought for the faculty listed in your initial request.

UDC replied on February 23, 2022 stating that it searched again using your form as a reference and determined that the data previously provided to you on December 15th is “the format in which the University has retained that information.”

On March 21, 2022, you filed an appeal with this Office, which was docketed as 2022-116, stating in part:

The workload is defined in the Master Agreement between UDCFA and the University. This is public information because the workload for faculty is public information. The university can redact any personal information if it is included on the form. As far as I know, the chairpersons keep this information in their office files for a long-long time.

I am appealing the university's denial of releasing the requested information in terms of signed forms for "Faculty Teaching (workload) Assignments" for Faculty whose names were listed on my initial request.

We notified UDC of your appeal on April 4, 2022 and requested a response. On April 11, 2022, UDC responded reiterating that it provided the requested information—"...via nine attachments; five Excel spreadsheets and four Wordperfect documents..."—in the format in which the University currently maintains the data within the Office of the Registrar. UDC also advised that it conducted a search for the forms in the format and locations you suggested and provided the following search chronology:

December 15, 2021 – E-mailed data responsive to request from the Office of the Registrar.

February 18, 2022 – E-mail from Dr. Khatri – describing – "A typical signed form (*Faculty workload assignment*) is attached. "This is the form I am looking for the faculty on the list".

February 23, 2022 – E-mailed Wayne Sparks – the example of the form received from Dr. Khatri

February 23, 2022 – E-mail from Dr. Khatri- suggesting two offices that may have the forms-Department/Division Chairs or the office of the Dean, College of Arts and Sciences(CAS)

February 24, 2022 – E-mail to Dean Massey

February 25, 2022 – E-mail from Dean Massey-Forms beyond 7 years old archived, Final Record on Faculty teaching load is found in Banner, No forms after 2015 in CAS office.

March 7, 2022 – Mr. Sparks sent what he found -AY2004 – 2005 – 268 pages – Non-responsive to Request

On April 18, 2022, you emailed this Office stating, in part, "[t]he information I requested is usually kept in the offices of Department Chair and/or Division Head and the Dean..." and "[i]t is required by the Master Agreements between the University and UDCFA/NEA." This correspondence was docketed by this Office as Appeal 2022-132, which has been consolidated with FOIA Appeal 2022-116.

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

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, UDC identified the Office of the Registrar as the division most likely to have the responsive records you requested and produced the data that was retrieved following a search. Moreover, after you identified the Division/Department Chair’s office and the Dean’s office as a probable location of the data, UDC “queried the Office of the Chief Academic Officer; [the] Dean of the College of Arts and Sciences and the Office of Planning and Institutional Effectiveness on the existence of such forms.”

The Dean of the College of Arts and Sciences stated that the College of Arts and Sciences offices would not have forms after 2015 because “forms beyond 7 years were archived” and “the final record on faculty teaching load is found in BANNER.” After you sent an example form, UDC also searched for archived data but did not find any responsive records.

We also note that under FOIA, an agency “has no duty either to answer questions unrelated to document requests or to create documents.” *Zemansky v. United States Environmental Protection 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). In short, there is nothing to suggest that the agency has failed to search for, or to produce, any responsive records in its possession as related to your request.

Conclusion

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

Respectfully,

Mayor’s Office of Legal Counsel

cc: Thomas Redmond, UDC FOIA Officer (via email only)