

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-145**

January 25, 2023

**VIA ELECTRONIC MAIL ONLY**

Mr. Christopher Bangs

RE: FOIA Appeal 2022-145

Dear Mr. Bangs:

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 Office of the Deputy Mayor for Public Safety & Justice (“DMPSJ”) to your DC FOIA request.

Background

On January 22, 2022, you submitted a DC FOIA request to DMPSJ, identified as 2022-FOIA-02809, which sought the following:

I am writing to request records showing the amount that the employees of violence intervention service contractors are paid. The relevant contracts could include but may not be limited to CW61568 (FAR SOUTHEAST FAMILY) and CW61570 (Collaborative Solutions for Communities). Please also provide records showing what occupation code each employee/classification of violence interrupter contractors is classified as under applicable the Service Contract Act Wage Determination, including all employees / classification of employees on the above listed contracts. Please provide all information electronically if maintained electronically.... This request will be submitted simultaneously to the Office of Contracting and Procurement [(“OCP”)] and the Deputy Mayor for Public Safety and Justice. Only one response is needed.

On May 6, 2022, DMPSJ administratively closed your request, citing that you had already received a response from the Office of Contracting and Procurement on 2022-FOIA-02810.

In your May 13, 2022 appeal filed with this Office, you assert DMPSJ should have responsive records because “DMPSJ is listed as the contracting agency on OCP's contracting portal” and OCP referred you to DMPSJ when you informed OCP that its production was incomplete. You also stated that “[a]fter [you] brought this to DMPSJ's attention, DMPSJ declined to reverse their administrative dismissal of [your] FOIA request and conduct a search of their records, saying they cannot reopen a closed FOIA request and that [the Office of

Neighborhood Safety and Engagement (“ONSE”)] controls the records.”

Upon the receipt of your appeal, DMPSJ clarified its response to your FOIA request by stating “DMPSJ does not have any responsive records. The most likely locations for responsive records are OCP and ONSE.”

### 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*

To the extent you challenge DMPSJ’s assertion that it does not possess responsive records, we conclude that DMPSJ properly conducted a search and referred you to the agencies most likely to have responsive records.

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, DMPSJ determined the relevant contracts are maintained by the Office of Neighborhood Safety and Engagement (“ONSE”), for which DMPSJ no longer provides FOIA services. As such, “DMPSJ does not have any records regarding ONSE’s contracts.”

D.C. FOIA is agency specific. *See* 1 DCMR § 402 (“A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency.”). An agency is required to disclose materials only if they were “retained by a public body.” D.C. Code § 2-502(18).

### Conclusion

Based on the foregoing, we conclude that DMPSJ appropriately responded to your request for records and 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 of the District of Columbia in accordance with D.C. Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Michelle Vanneman, DMPSJ FOIA Officer (via email only)