

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-150**

January 18, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Hdeel Abdelhady

RE: FOIA Appeal 2022-150

Dear Ms. Abdelhady:

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 Chief Technology Officer ("OCTO") to your DC FOIA request.

Background

On August 16, 2021, you submitted a DC FOIA request to OCTO, identified as 2021-FOIA-07348, which sought the following:

Please provide records, in any format, that concern or relate to any request to OCTO from the Department of Employment Services (DOES), including the DOES' General Counsel, Tonya Robinson, for email or other electronic communication or records that contain any one or more of the following terms or names, including or any part of one or more of the below terms or names, or one or more of the following email addresses or domains:

"Administrative Hearings Division" or "AHD"

Gwenlynn D'Souza

Hdeel Abdelhady

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"19-556"

The George Washington University

PMA Management Corp. or Corporation (Date Range for Record Search: From 03/01/2021 To 08/31/2021)

On April 29, 2022, OCTO advised you that it did not have any records that were responsive to your request. You filed an appeal with this Office on May 18, 2022 which asserted the following:

2021-FOIA-04574 was submitted to OCTO after the DOES' FOIA Officer and General Counsel instructed the requestor to submit the request directly to OCTO. OCTO denied the request and closed it, on the grounds that the request should have been submitted to OCTO by the DOES, and not the requestor. The DOES did not submit the request to OCTO, but notified the requestor that it had done so. The requestor then requested from OCTO request no. 2021-FOIA-07348, requesting records of any DOES requests to OCTO. OCTO confirmed in its response that the DOES never submitted a request to OCTO for emails. The bottom line is that the DOES has not followed the law and submitted a request to OCTO. Therefore, this appeal is made, and requests that OCTO be directed to respond directly to request no. 2021-FOIA-04574, because the DOES declines to comply with applicable process and make the request to OCTO directly.

Discussion

Mayor's Order 2008-88 clarifies that DC FOIA requests for emails should be submitted to the agency that is the subject of the request and not OCTO, which maintains email records merely as a custodian. Here, OCTO appropriately responded to 2021-FOIA-04574 by referring you to agency from which you sought emails. With respect to 2021-FOIA-07348, OCTO has advised you that it does not have any documents that are responsive to your request and the record before this Office does not contradict this assertion.

DC FOIA only requires that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *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. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

Further, DC 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.").

This Office's jurisdiction is limited to "review[ing] the public record to determine whether [a record] may be withheld from public inspection." D.C. Code § 2-537(a). In the context of this undertaking, OCTO has appropriately responded to the subject request by-way-of advising you

that it did not have any responsive records.

Conclusion

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 Superior Court in accordance with D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: OCTO FOIA Officer (via email only)