

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-156**

January 26, 2023

**VIA ELECTRONIC MAIL ONLY**

Ms. Anne Carpenter

RE: FOIA Appeal 2022-156

Dear Ms. Carpenter:

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 District Department of Transportation (“DDOT”) to your DC FOIA request.

Background

On April 8, 2022, you submitted a DC FOIA request to DDOT, identified as 2022-FOIA-05278, which sought the following:

The Hydrology and Hydraulic Analysis, or any similar information or assessment regarding hydrology, hydraulic, or drainage considerations for the design of the cofferdams and pump-around system for Erosion and Sediment Control Plan (Pinehurst Branch), Sheet ES-19, and related site plan records, prepared by Volkert Engineering, P.C. for Contract DCKA-2019-C-0002: “Reconstruction of Oregon Avenue.”

DDOT provided you with a copy of a document that was identified as being responsive to your request—the “Erosion and Sediment Control Plan”—on May 12, 2022.

On May 24, 2022, you filed an appeal with this Office asserting that DDOT failed to produce all documents responsive to your request. In support of your assertion, you noted the following:

Volkert Engineering, P.C. (“Volkert”) was contracted by DDOT to design the Reconstruction of Oregon Avenue, NW, which included, among other work, the “demolition of box culvert at Pinehurst Branch and replacement with a bridge structure and retaining walls.” See Invitation for Bids, Reconstruction of Oregon Avenue, NW from Military Road to Western Avenue from Oregon Avenue to 31st Street (2019). Under the DDOT Design and Engineering Manual, the preliminary engineering work for any DDOT project is generally

defined to include hydrologic and hydraulic analyses. See DDOT, DESIGN AND ENGINEERING MANUAL (January 2019), § 2.4.2, available at <https://ddot.dc.gov/page/design-and-engineering-manual>. In accordance with the DDOT Design and Engineering Manual, a design engineer would be expected to prepare and provide a “hydrology and hydraulics (H&H)/drainage report” in connection with bridge-related work. Id. at §§ 12.2.3, 12.3.2.23, 28.1.4.

On June 13, 2022, we notified DDOT of your appeal and requested a response. To date, DDOT has not responded and we are now issuing this decision based on the record before this Office.

### 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*

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.

Here, we do not have enough information to determine whether or not DDOT conducted an adequate search. In consideration of your citation to the DDOT Design and Engineering Manual, which indicates the requested records conceivably exist, a remand is appropriate.

### Conclusion

Based on the foregoing, we remand this matter back to DDOT for an explanation of the search performed and/or the production of any additional documents that are identified.

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: Karen R. Calmeise, DDOT FOIA Officer (via email only)