

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-170**

September 14, 2022

VIA ELECTRONIC MAIL

Mr. John T. McFarland

RE: FOIA Appeal 2022-170

Dear Mr. McFarland:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), challenging the alleged failure of the Department of Consumer and Regulatory Affairs (“DCRA”) to provide all documents responsive to your request.

Background

On March 30, 2022, you submitted a DC FOIA request to DCRA seeking communications “that occurred between Tyrone Lawson and the employees/parties he interviewed, specifically the emails that were sent to the employees to notify them that an investigatory interview/meeting was to take place with Tyrone Lawson.” You listed 7 dates identified from Outlook calendar invites you received in response to a different DC FOIA request. On May 5, 2022, DCRA responded to your request by providing you with 74 emails with redactions.

On June 21, 2022, you filed an appeal with this Office requesting that we compel DCRA to “send [you] all audio recordings and written documents of meetings between Special Investigator Tyrone Lawson and Shawn Gibbs that took place October 17, 2019 to November 14, 2019.” You asserted that “[b]ecause of the time period involved with the email documents [you] received via FOIA, it is reasonable to believe that a meeting took place between Tyrone Lawson and Shawn Gibbs and that Tyrone Lawson has written records and a recording of that meeting.” On July 11, 2022, we notified DCRA of your appeal and requested a response. DCRA responded on July 18, 2022. In its response, DCRA explained that no such additional records exist. The agency noted that you previously “submitted at least three similar FOIA requests seeking all audio recordings of meetings between Special Investigator Tyrone Lawson and Shawn Gibbs” and each time the FOIA Officer asked Mr. Lawson for responsive records, he “stated that he had no responsive records.” DCRA also stated that the emails produced in response to your March 30, 2022 request “make no mention of a meeting between Special Investigator Lawson and Mr. Shawn Gibbs.”

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*

To the extent you challenge DCRA’s assertion that it does not possess additional responsive records, we conclude that DCRA properly conducted a search under the DC FOIA.

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, DCRA identified the investigator whose records you sought as the individual likely to

have responsive records and had his emails searched, resulting in the production of 74 emails. We have reviewed *in camera* unredacted versions of the emails and confirm DCRA's contention that "these emails are not to or from Shawn Gibbs." Although you assert "it is reasonable to believe that a meeting took place between Tyrone Lawson and Shawn Gibbs," you have not provided factual evidence that such a meeting took place and records of it exist. In short, there is nothing to suggest that the agency has failed to search for or to produce records in its possession related to your request.

### Conclusion

Based on the foregoing, we conclude that DCRA 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 the Superior Court of the District of Columbia in accordance with D.C. Official Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin J. Roberts, FOIA Officer  
DCRA (via email)