

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-172**

January 26, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Andrew Bossi

RE: FOIA Appeal 2022-172

Dear Mr. Bossi:

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 Department of Motor Vehicles (“DMV”) to your DC FOIA request

Background

On June 6, 2022, you submitted a DC FOIA request to DMV, identified as 2022-FOIA-06909, which sought the following:

Emails relating to a dumpster located in front of the 1100 Half St SW property.

May include references to the following 311 requests:

- 20-00425891
- 20-00428650
- 21-00047187

DMV responded to your request on June 23, 2022 by notifying you that it does not have any documents that are responsive to your request.

On June 23, 2022, you filed an appeal with this Office asserting that DMV must have some responsive records because you contacted “DMV on multiple occasions over several years as both a private resident and in [your] capacity as an ANC Commissioner.” We notified DMV of your appeal on July 11, 2022 and requested a response. DMV responded on July 18, 2022 and described the agency’s responsibilities as well as its search. DMV explained that it is “not the agency responsible for the issuance of permits related to dumpsters or responsible for the enforcement of illegally placed dumpster in the public space.” In detailing its search, the agency noted that it submitted an email search request to the Office of the Chief Technology Officer for “all DMV emails [to] be searched for the following: Dumpster and 1100 Half St SW or [the specified 311 numbers] with a date range of December 11, 2020 to February 2,

2021.”

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. See *In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, DMV had all of its emails searched for the requested time period and using keywords likely to yield responsive records. No emails were found addressing a dumpster at 1100 Half St SW during that time period.

Finally, 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.”).

Conclusion

Based on the foregoing, we conclude that DMV 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: Pamela B. Washington, DMV FOIA Officer (via email only)