

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-176**

September 14, 2022

VIA ELECTRONIC MAIL

Mr. Greg Stonebarger

RE: FOIA Appeal 2022-176

Dear Mr. Stonebarger:

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 Metropolitan Police Department (“MPD”) to provide all documents responsive to your request.

Background

You submitted a DC FOIA request to MPD seeking the following:

Incident # 22-031545

Any and all reports generated arising out of the investigation into the death of Alexa Stonebarger. This would include any documentation regarding police contact with Alexa Stonebarger, the police investigations regarding the death of Alexa Stonebarger, any internal investigations regarding Alexa Stonebarger and any additional documents referencing Alexa Stonebarger. (Date Range for Record Search: From 03/04/2022 To 06/11/2022)

MPD responded to your request by providing you with “a copy of the incident report relating to the incident number above” and notifying you “that additional records could be located in other agencies.” Specifically, MPD referred you to the Office of the Chief Medical Examiner (“OCME”) for a copy of the death report. On June 28, 2022, you filed an appeal with this Office asserting there is information missing in the incident report and “[t]here must be more documents.” You also asked for MPD to “provide ALL documentation referencing Alexa Stonebarger and the events surrounding her death.” On July 11, 2022, we notified MPD of your appeal and requested a response. MPD responded on August 8, 2022.<sup>1</sup> In its response, MPD explained that you assumed incorrectly that a 911 call and medical examiner’s report would be mentioned in an incident report. MPD also stated that “[t]he Office of Unified Communication would be the correct agency to request information regarding 911 calls” and reiterated that it advised you “where to submit a request for a medical examiner’s report.” Additionally, MPD noted that it “went back to the

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<sup>1</sup> A copy of the agency’s response to your appeal is attached to this decision.

searching unit to verify if any additional records exist and they confirmed no more records existed.”

### 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*

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, MPD's description of its search is not detailed enough for us to determine whether it was an adequate search. The agency stated in a conclusory fashion that it "conducted a thorough search of the records that could be responsive to the request" and referred to an unspecified "searching unit." However, MPD provided no explanation of how the particular searching unit was selected or why only a single unit was directed to search for records. A remand for a more detailed explanation from the agency is appropriate under these circumstances.

### Conclusion

Based on the foregoing, we remand this matter to MPD to explain in greater detail the steps it took to search for the documents you requested.

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: Brandy Reaves, FOIA Officer  
MPD (via email)