

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-189**

January 27, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Ricky Friendly

RE: FOIA Appeal 2022-189

Dear Mr. Friendly:

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 Health (“DOH”) to your DC FOIA request.

Background

On March 28, 2022, you submitted a DC FOIA request to DOH, identified as 2022-FOIA-04830, which sought the following:

[A]ll emails to and from emilia.moran@dc.gov and emails with United Health Group, LLC from April 1, 2019 to Sept. 30, 2019.

DOH responded to your request on March 30, 2022 by providing you with a copy of the requested emails that had been redacted to protect personal privacy. That same day, you filed an appeal with this Office stating the attachments to the emails were withheld without justification.

On August 1, 2022, we notified DOH of your appeal and requested a response. DOH responded on August 8, 2022 describing the steps taken to search for records that were responsive to your request and further advising that it “fully responded to the FOIA request as...presented to DC Health.” In detailing its search, the agency noted that its Office of the General Counsel “requested and received responsive information from Emilia Moran,... who has at all times been an investigator with the Investigations Branch of the Office of the Health Profession Licensing Boards of the Health Regulation and Licensing Administration of DC Health.” The agency also noted that you “did not ask for e-mail attachments and, accordingly, did not receive them.”

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, DOH identified the investigator whose records you were seeking as the individual likely to have responsive records. The agency’s Office of the General Counsel then requested and received responsive emails from the investigator and provided them to you subject to certain redactions not currently at issue. Your original request did not specifically ask for email attachments and as such, there is nothing to suggest that DOH has failed to search for or produce any relevant records in its possession.

Conclusion

Based on the foregoing, we conclude that DOH conducted an adequate search and responded appropriately 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: Phillip Husband, DOH FOIA Officer (via email only)