

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-205**

February 1, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Andrew
Edelman

RE: FOIA Appeal 2022-205

Dear Mr. Edelman:

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 Metropolitan Police Department (“MPD”) to your DC FOIA request.

Background

On January 10, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-02461, which sought the following:

We request raw data—in a machine readable spreadsheet such as CSV or Excel—on uses of force by the Metropolitan Police Department (“MPD”). The time period of the data should cover January 1, 2000 through December 31, 2021, or whichever period from that date range for which data is available.

More specifically, we request the following data on each use of force:

Date and location (as specific as permissible, e.g., address, block, census tract);

Type and level of force used;

Fatal or non-fatal indicators; and

Whether or not an officer firearm was involved (e.g., drawn, pointed, and/or fired).

We are not requesting officer names or other identifiers.

We request any data dictionaries, code tables, or other types of manuals that define, in plain English, the meaning of the column headers in the data, and any codes, acronyms, abbreviations or other shorthand terms used for entries in the data. We also request any shape files or maps of police districts or areas, especially if these geographic boundaries shifted over the requested data period.

On August 15, 2022, MPD responded to your request by stating the following:

It has been determined, the information you are seeking can be obtained by accessing the following link: <https://mpdc.dc.gov/publication/use-force-dataset>. Please be advised, MPD understands that transparency around the use of force is critically important to maintain the public trust. To continue to promote these efforts, MPD will release use of force data on an annual basis beginning with calendar year 2020. The dataset includes serious use of force investigated by IAD as well as other use of force incidents. More detailed information regarding the use of force data can be found in the explanatory notes at the link provided.

In your appeal filed with this Office, you have asserted the data available on the link provided by MPD does not include “incident geolocation” and “whether or not the use of force resulted in a fatality.” You have also challenged MPD’s response asserting that it “is missing requested years of data”, and it only lists “data for 2020, despite the fact that the Metropolitan Police Department has data going back to at least 2013.”

On September 16, 2022, we notified MPD of your appeal and request a response. Because MPD has not responded, we are now issuing a decision based on the record before us.

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.*

Here, MPD has provided a link referencing a data set less than what you requested. Specially, the link provided by MPD reflects the use of force incidents occurring in 2020, where you have requested data from January 1, 2000 through December 31, 2021. In the absence of any explanation from MPD as to the availability of the remaining data, if any, a remand is appropriate.

Conclusion

Based on the foregoing, we remand to MPD to address the totality of your request and the issues presented in your 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: Brandy Reaves, MPD FOIA Officer (via email only)