

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-208**

February 13, 2023

VIA ELECTRONIC MAIL ONLY

Dr. Daryao S. Khatri

RE: FOIA Appeal 2022-208

Dear Dr. Khatri:

This letter is in response to the administrative appeal that you have submitted to the Mayor pursuant to the District of Columbia Freedom of Information Act ("FOIA"), D.C. Code §§ 2-531, *et seq.* In your appeal, you have challenged the response of the University of the District of Columbia ("UDC") to your DC FOIA request.

On July 3, 2022, you submitted a DC FOIA request to UDC which sought the following:

1. I sent emails on 1/11/2022 (original request) and 1/24/2022 (Reminder) requesting access to my emails prior to May 15, 2015. I have not received any response as of yet from any one. This is to request through FOIA that I be allowed access to UDC emails prior to 5/15/2015.
2. Also, I am requesting copies of my own approved and signed Faculty Workload assignments since 1985 in my files that are kept in the departmental office.

UDC responded to your request on August 9, 2022 by stating that it was unable to locate the requested faculty teaching assignment records following a manual and automated search. UDC further advised that while direct access to your email account could not be provided, "[Information Technology] can respond and search for specific e-mails that an individual is requesting."

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, this Office accepts UDC's representation that it conducted a search for the requested workload forms—within the office, manually, and by automated means—and was unable to locate any responsive documents.

Adequacy of Request

The remaining issue in this appeal, in the context of your request for emails, is whether the request adequately describes the records sought. A request shall reasonably describe the desired records. *See* 1 DCMR § 402.4. Where possible, specific information regarding names,

places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied. *Id.* A request for “any and all documents” does not describe the records sought with “reasonably sufficient detail.” *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002) (“[T]he rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.” *Assassination Archives & Research Ctr. v. CIA*, 720 F.Supp. 217, 219 (D.D.C.1989)).

Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. 1 DCMR § 402.5. When the Freedom of Information Officer, pursuant to § 402.5, contacts the requester for additional information, the request is deemed received when the Freedom of Information Officer receives the additional information. 1 DCMR § 405.6.

In response to your request for emails, although UDC advised you that it was unable to provide you with blanket access to the account, it did advise you that it would be able to address a more specific request. This Office is unaware of your response, if any, to this offer.

Conclusion

Based on the foregoing, this appeal is denied. Additional information may be available by presenting a more detailed email search to UDC for processing. 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. Code § 2-537.

Sincerely,

The Mayor’s Office of Legal Counsel

cc: Thomas Redmond, UDC FOIA Officer (via email only)