

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-217**

February 23, 2023

**VIA ELECTRONIC MAIL ONLY**

Mr. Daniel Maharaj

RE: FOIA Appeal 2022-217

Dear Mr. Maharaj:

Please accept the following amended response to the administrative appeal that you submitted to the Mayor on September 14, 2022 under the District of Columbia Freedom of Information Act,

D.C. Code §§ 2-531, *et seq.* (“DC FOIA”). This decision is intended to update this Office’s decision of February 13, 2022 following the consideration of additional information regarding your appeal, as explained below.

Background

In your appeal, on behalf of your client Mr. Manoharan Govindaraj, you challenged the response of the Office of Inspector General (“OIG”) to your July 12, 2022 DC FOIA request which sought the following:

1. Provide a complete copy of the Project Plan Template for the Audit of DC Tax Abatements submitted to the innovation Lab for FY 2021, redacted of any Personally Identifiable Information (PII).
2. Please provide a copy of The Risk Assessment performed according to the Inspector General’s Risk assessment process, for the Audit of DC Tax Abatements submitted to the Mayor in the Annual Audit and Inspection Plan for FY 2021, redacted of any Personally Identifiable Information (PII).
3. Please provide a copy of the Project Plan Template for the Audit of Tort Liability and Subrogation submitted to the Innovation Lab for FY2021, redacted of any Personally Identifiable Information (PII). [and]
4. Please provide a copy of The Risk Assessment performed according to the Inspector General’s Risk Assessment process for the Audit of Tort Liability and Subrogation submitted to the Mayor in the Annual Audit and Inspection Plan for FY 2021, redacted of any Personally Identifiable Information (PII).

OIG responded on July 27, 2022 by providing you with a copy of the unredacted documents it

identified as being responsive to paragraph 2 of the request. OIG further advised you that it did not have any documents in response to paragraphs 1,3 and 4 of the request.

On September 14, 2022, you filed an appeal with this Office questioning OIG's determination that it did not have any responsive records for request numbers 1, 3, and 4. To support your position that OIG has responsive records, you noted the following:

As background, the Office of Inspector General submits an annual audit and inspection plan to the Mayor's office. The plan is prepared from suggestions that the audit and inspection staff submit in a specified "template" to the Deputy Inspector General for Risk Assessment and Forward Planning (RAFP) in a setting called "Innovation Lab." The RAFP analyzes these templates to derive the annual audit and inspection plan, from which "high risk" projects are selected for audit as staff becomes available. We requested the template submitted relating to "Tax Abatements" and Tort Liability and Subrogation" risk areas that were the subject of audit in FY2021.

The Inspector General has responded that it does not have the documents requested. This appears to be in conflict with the steps taken during FY 2021 to conduct the audits relating to items 1, 3, and 4. Without the Template, the RAFP could not have evaluated the risk in each audit project included in the annual audit plan submitted to the Mayor's office.

Although this Office initially remanded this matter back to OIG to update its final determination to address the search performed, or alternatively to produce any non-exempt records, this remand was premised on inaccurate information. Specifically, on October 3, 2022, OIG had advised this Office of the following:

...OIG's Risk Assessment and Future Planning and Audit Units were queried regarding Maharaj's request...

### 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.

Here, OIG made a determination as to where the requested records were likely to be located and performed a search at those locations, i.e. OIG's Risk Assessment and Future Planning and Audit Units. In consideration of these details, which were not originally considered, OIG's search was adequate.

### Conclusion

Based on the foregoing, this appeal is denied. 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: Daniel Lucas, Inspector General, OIG (via email)