

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-222**

November 30, 2022

VIA ELECTRONIC MAIL ONLY

Mr. William Matzelevich

RE: FOIA Appeal 2022-222

Dear Mr. Matzelevich:

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"). In your appeal, you have asserted the Executive Office of the Mayor ("EOM") failed to properly respond to your DC FOIA request.

On August 22, 2022, you submitted a DC FOIA request to EOM, identified as 2022-FOIA-09145, which sought the following:

[A] copy of the Mayor's response and any additional responses related to Councilmember Cheh's August 10 inquiry [about the Hearst Park and Pool Project].

On September 15, 2022, EOM granted your request and provided you with a copy of the responsive records it identified.

In your September 22, 2022 appeal filed with this Office, you assert the letter provided by EOM was not responsive to your request because it "is not addressed to [Councilmember] Cheh and is dated six months after [Councilmember] Cheh's letter to [the Mayor]." You also requested a statement as to the response EOM provided, i.e. if the letter was the "sole response...then please say so."

On September 26, 2022, we notified EOM of your appeal and requested a response. EOM responded on October 3, 2022 asserting the document provided was the only one located after:

[A] mutli-part search for records which included a request to search for records to the Mayor's Correspondence Unit, a request to search for records to the Office of Policy and Legislative Affairs, a request to search for records within the Office of the Deputy Mayor for Education, and an email search request ("ESR") conducted by OCTO.

EOM also noted that your request for an additional statement "extends beyond the purpose of FOIA as well as the scope, responsibilities, and possibly authority of a FOIA officer."

FOIA only requires that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *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. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In assessing whether a District entity subject to FOIA has undertaken an adequate search to fulfill a FOIA request, courts look not to “the fruits of the search,” but instead to the “appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C.Cir.2003). “An agency's search conducted in response to a FOIA request ‘need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.’” *Fraternal Order of Police, Metro. Police Labor Comm. v. District of Columbia (FOP Peaceoholics)*, 79 A.3d 347, 360 (D.C.2013) (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C.Cir.1986)).

Here, by way of a Declaration of the EOM FOIA Officer, EOM has documented the search performed. In consideration of the request, this search was adequate.

Finally, under DC FOIA, an agency “has no duty either to answer questions unrelated to document requests or to create documents.” *Zemansky v. United States Envtl. Prot. Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). See also *Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Based on the foregoing, we conclude that EOM properly responded to your DC FOIA request and we hereby deny 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: Tenette Smith, EOM FOIA Officer (via email only)