

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-231**

February 13, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Steve Thompson

RE: FOIA Appeal 2022-231

Dear Mr. Thompson:

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 District of Columbia Housing Authority (“DCHA”) to your DC FOIA request.

Background

On July 29, 2022, you submitted a DC FOIA request to DCHA for the following:

[A]n electronic copy of the data maintained regarding DCHA’s 6,156 public housing units. This data may be stored in a database maintained by Yardi Systems ERP on behalf of the agency.

I am seeking unit-by-unit data that would include fields such as:
Status of unit (occupied, demo, MOD, move-in ready, awaiting turnover, etc.)
Previous status of unit
Date of change in status
Other relevant dates
Date unit built/acquired
Type of unit
Location of unit
Size of unit

...please do not limit data provided to only the fields above if more fields are available.

On September 1, 2022, DCHA responded to your request by informing you that it “thoroughly searched the applicable agency records and found information responsive to your request, and that information is included in the document, DCHA PH Unit Data.pdf that is attached to this communication.”

You filed an appeal with this Office on September 29, 2022 challenging DCHA's partial denial. Specifically, you asserted the following:

I believe this to be a partial denial of my request, because the data provided does not include all of the data maintained by the agency and responsive to the request. I specifically asked for the data field "Date of change in status," and I requested the agency to please "not limit data provided to only the fields above if more fields are available." Despite this, the agency failed to provide the field "Unit Status Effective Date," as well as other available fields, such as unit and building numbers for each unit.

I now know the agency has this data, because its spokeswoman, Sheila Lewis, informed me during a video the agency has the data but chose not to give it to me. I have also received a copy, through another records request, of similar data maintained by the agency in 2020. Please see attached "2020-11-17 DCHA HUD Vacant Unit Consolidation 11.17.2020 WHY REDACTED," and please note that it contains fields that include "Unit Number" and "Unit Status Effective Date" (see page 107 of the attachment).

On October 11, 2022, we notified DCHA of your appeal and requested a response. DCHA responded on October 17, 2022 asserting, in relevant part, that your request did not adequately describe the records sought. In support of this contention, DCHA stated, "Mr. Thompson's requests refer[s] to the webbased platform, Yardi Voyager but he also requests data categories that infer that he is referring to the U.S. Department of Housing and Urban Development's (HUD) Inventory Management System/PIH Information Center (IMS/PIC) database which DCHA does not maintain." DCHA also asserted, "[t]he portion of the information that [you are] requesting that would be considered PII, i.e., the individual address and unit number of a dwelling does not capture any information about the nature of the vacancy or the occupancy status of DCHA's Public Housing development sites."

Discussion

It is the public policy of the District of Columbia 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, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body." D.C. Code § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. D.C. Code § 2-534.

DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Request

Here, your request is essentially asking for any and all stored data about 6156 public housing units. While the data fields presented do offer context as to what you are seeking, they do not offer viable parameters in such a way that can mitigate any potential disconnect between what is sought and what is available. This is a preliminary issue which should be resolved prior to an assessment of the search performed by DCHA and any exemptions it may seek to apply.

A request shall reasonably describe the desired records. *See* 1 DCMR § 402.4 (“A request shall reasonably describe the desired records. Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied”); *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002) (a request for “any and all” records does not describe the records sought with reasonably sufficient detail). “[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). “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).

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.

Although DCHA has expressed an issue with the scope of the request, which does have merit, the record does not contain any evidence that it has attempted to reconcile its uncertainties.

While FOIA does not require a requester and an agency to consult in good faith, doing so is extremely encouraged. “A FOIA requester and the District entity receiving a request are not—or should not be—in an inherently adversarial relationship.” *Fraternal Order of Police v. District of Columbia*, 139 A.3d 853 (2016).

In the absence of any clarification, what is otherwise unclear to this Office is whether the request accurately describes the records sought in the context of DCHA’s ability to identify and locate them without an unreasonable amount of effort. As such, a remand is appropriate.

Conclusion

Based on the foregoing, we remand this matter to DCHA engage with you on the issue of clarifying your request within the parameters of a search for which DCHA believes it can reasonably perform. If DCHA is able to identify any responsive records following its request for clarification, it should subsequently present a final determination with respect to disclosure of the documents and/or the exercise of any applicable exemption.

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 government in Superior Court in

accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Kimberly J. August, DCHA FOIA Officer (via email only)