

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency



Administrative Issuance: CFSA-12-4

TO: All CFSA Staff

FROM: Lionel C. Sims, Jr.
General Counsel

DATE: February 29, 2012

RE: Requirements of the Freedom of Information Act (FOIA)

The District of Columbia's Freedom of Information Act (FOIA) provides all individuals with the right to request access to District government records. Accordingly, it is the goal of the Child and Family Services Agency (CFSA, or Agency) to ensure that all Agency personnel comply with any required FOIA procedures whenever the Agency receives a FOIA request. FOIA requests should be in writing and may be mailed, faxed, or e-mailed per the "About CFSA" information posted at www.cfsa.dc.gov. Each request must reasonably describe the record(s) that are sought.

This administrative issuance outlines the specific requirements placed on CFSA personnel for cooperating with and assisting the Agency to respond to FOIA requests.¹ If you have any questions concerning this administrative issuance, please contact the Office of the General Counsel.

Legal Requirements

Pursuant to DC Official Code § 2-531, the "public policy of the District of Columbia is 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." This does not mean, however, that CFSA must disclose every record sought. Statutory exemptions (*see DC Official Code § 2-534*) authorize the withholding of certain records or portions of records, including but not limited to the following information:

1. Any information required by statutory law (federal or District) to be withheld
2. Documents subject to recognized legal privileges such as attorney-client and work-product privileges
3. Documents that reflect deliberative, internal processes of the government
4. Disclosure of documents that would result in a clearly unwarranted intrusion on personal privacy

When CFSA does withhold records or portions of records, the section of the District's FOIA that exempts such records must be identified.

¹ The content of this administrative issuance is intended only to provide an overview of the Freedom of Information Act, and is not intended to be a complete description of the FOIA as delineated by DC Official Code §§ 2-531 *et seq.* In addition, the content of this administrative issuance does not expand or create any legal right to any person to information or documents not provided in the FOIA.

CFSA is not required by FOIA to research or analyze data, respond to written questions, or create records in response to a FOIA request. Rather, CFSA is only required to search for and produce records that are already in existence, including “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials” and “information stored in an electronic format.”²

CFSA Procedures

CFSA has appointed a FOIA Officer to accept, manage, and respond to all CFSA FOIA requests within 15 business days from receipt. CFSA may extend the 15-day timeline by an additional 10 business days for unusual circumstances, as defined by DC Official Code § 2-532(d). The CFSA FOIA Officer functions under the authority of the Office of the General Counsel.

1. CFSA staff members who receive a direct FOIA request shall direct the requester to submit the request directly through the CFSA FOIA Officer, per the instructions on CFSA’s website.
2. Upon receipt of a FOIA request, the FOIA Officer shall contact the manager(s) from the relevant CFSA administration(s) and request any documents that pertain to the request. The FOIA Officer’s request of the manager(s) shall include the following information:
 - a. The exact language of the FOIA request
 - b. Any additional instructions or clarification
 - c. A timeline that instructs the manager(s) to respond at least 3 business days prior to CFSA’s 15-day due date
3. Managers shall follow all of the FOIA Officer’s instructions, including compliance with timelines, and ensure that an adequate search for records is conducted (see section on *Search Requirements* below).
4. It is imperative that managers complete all of the following steps upon receipt of a request from CFSA’s FOIA Officer:
 - a. Review and ask questions of the FOIA Officer if the request or instructions are unclear.
 - b. Partner with relevant staff to ensure that a thorough search is conducted for the requested records. *Reminder: records are not limited to hard copy documents but include electronically-stored documents and emails.*
 - c. Ensure that the requested records are complete (e.g., no missing pages or sections).
 - d. Communicate to the FOIA Officer any concerns about disclosing the records to the public, e.g., if a staff member believes that the records are exempt from disclosure. *The fact that the records may be exempt from disclosure is not grounds for ignoring the request or refusing to provide records to the FOIA Officer.*
 - e. Transmit the FOIA-requested records to the FOIA Officer by the set due date or if the due date cannot be met, immediately communicate a justification to the FOIA Officer.
 - f. Provide the details of the search performed (e.g., the employees who conducted the search and the files that were reviewed) to the FOIA Officer by email to be maintained in the FOIA file.
5. ***All CFSA personnel are required to cooperate with the FOIA Officer and adhere to the timeframes provided for responding to a request.***

² DC Official Code § 2-502(18)

6. The FOIA Officer shall review all documents for responsiveness, completeness, and exemptions, prior to issuing a response to the requester.
 - a. If necessary, the FOIA Officer shall consult with staff about the nature of the records.
 - b. If exemptions are noted, the FOIA Officer may consult with attorneys in the Office of the General Counsel about the applicability.
7. The FOIA Officer shall issue a written response to the requester.
 - a. When applicable, the FOIA Officer shall provide the requester with notice that an exemption has been applied and that the requested records or a portion thereof are being withheld. Failure to provide such notice may result in an administrative appeal or lawsuit.
 - b. The FOIA Officer shall maintain a file on each FOIA request.
8. Any FOIA requester who is dissatisfied with CFSA's response (or the timing of the response) may file an administrative appeal or a lawsuit.
 - a. Administrative appeals must be submitted to the Mayor.
 - CFSA is permitted to submit written documentation that supports the decision it made in regards to the FOIA response.
 - b. A requester may further elect to file a lawsuit at the District of Columbia Superior Court.
 - Should the requester be successful in his or her lawsuit, CFSA may be required to pay his or her attorneys' fees and costs.

Search Requirements

Upon receipt of a FOIA request that reasonably describes the records sought, CFSA must search all relevant Agency records that are "prepared, owned, used in the possession of, or retained by" CFSA, regardless of physical form. The search for records must be "reasonably calculated to uncover all relevant documents."³

The perimeter of a search is a fluid determination. Managers should be prepared to expand the search and to provide the FOIA Officer with information to ensure that the search is adequate.

Because FOIA requesters may challenge the adequacy of a search either through an administrative appeal to the Mayor or through a lawsuit at the DC Superior Court, it is important for managers to keep a record of the search that was performed, including the name of the employee who conducted the search, as well as what types of files or locations were searched. Such information must be provided in writing to the FOIA Officer.

³ *Weisburg v. Dep't of Justice*, 705 F.2d 1344, 1351 (DC Cir. 1983)
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