

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-042**

January 22, 2020

VIA ELECTRONIC MAIL

Ms. Amy Phillips

RE: FOIA Appeal 2020-042

Dear Ms. Phillips:

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”), challenging the Metropolitan Police Department’s (“MPD”) response to your FOIA request to review all files of all letters of denial of requests for public records since 1976.

On October 4, 2019, MPD responded to your public records request. On December 1, 2019, you filed this appeal stating that MPD did not provide responsive records and provided only an incomplete summary of a subset of the documents without explanation. On January 16, 2020, MPD responded to your appeal.¹ In its response, MPD indicated that the agency produced a 123-page report generated by FOIAXpress listing 734 FOIA requests that had been denied in full from July 25, 2014 to July 27, 2019. The report sets forth the (1) the assigned FOIA request number, (2) the date the FOIA request was received, and (3) the requested documents as entered into FOIAXpress by the requestor or agency staff.

According to MPD, it does not keep paper copies of FOIA request denials. Because MPD moved to FOIAXpress in 2014, recovery of FOIA denial letters since that time requires the manual extraction of the FOIA denial letters from each FOIA electronic file. For FOIA requests before 2014, a manual search of the paper and electronic files for each FOIA request would have to be conducted in order to retrieve each denial letter. However, the retention record for MPD’s FOIA records is seven (7) years. According to MPD, FOIA records are available only back to 2012.

MPD’s response further notes that production of the 123-page report allowed you to get detailed FOIA information without the costs that would have been incurred in manually, searching and redacting the denial letters. However, MPD’s justification for the 123-page summary misses the point that the report does not contain the information required to be included in each denial letter under D.C. Official Code § 2-533. That provision requires that the denial, letters made available to the public must contain information on the specific reason(s) for the denial including citations to the specific exemption(s) relied upon, the name of the public official responsible for the denial decision and notice of appeal rights. Instead, MPD’s 123-page summary only provided you with the FOIA number, the date the FOIA

¹ A copy of MPD’s response to your appeal is attached to this decision.

request was received and the documents that may be loaded in FOIAXpress. Therefore, we conclude that the report does not satisfy MPD's obligation, under section 2-533(b), to make available to the public a "file of all letters of denial of requests for public records" or properly respond to your FOIA request which asked for the actual denial letters.

We acknowledge MPD's belated willingness to start the process of searching for, gathering and redacting the denial letters on a rolling basis if you are willing to pay the search costs which DC FOIA permits the agency to recover. MPD indicates that on May 30, 2019, MPD provided you with an invoice of \$4,994.00, based on the statutory charge of \$28.00 per hour for searching 715 denial letters and the cost of one CD for the prior duplicative request that you withdrew in favor of the current request. However, according to MPD, that invoice did not include the cost of searching for denial letters prior to July 2014 that are maintained outside of FOIAXpress. The search for the pre-July 2014 records will incur additional costs as staff will have to search both the electronic files and boxes currently in storage. In addition, MPD notes that the FOIAXpress file and any denial letters will require redaction. The personal names and information on the requestor must be redacted for privacy under D.C. Official Code § 2-534(a)(2) and potentially (a)(3)(C).

As to the advance payment requirement, D.C. Official Code § 2-532 (b-3) provides that "[n]o agency or public body may require advance payment of any fee unless the requestor has previously failed to pay fees in a timely manner, or the agency or public body has determined that the fee will exceed \$250.00. Therefore, we conclude that MPD's request that you agree to pay in advance of each rolling production is reasonable under the circumstances.

Based on MPD's offer to provide you with additional records in exchange for prepayment on a rolling basis, we remand this matter to MPD and dismiss your appeal. You may file a separate appeal if you are dissatisfied with MPD's subsequent production of responsive records or the prepayment sought in connection therewith. This production shall include the denials, in part, and in whole, for the records retention period going back to 2012.²

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. Official Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Teresa Quon Hyden, Assistant General
Counsel MPD (via email)

² In your appeal, you noted that according to the annual FOIA information provided by MPD to the Council, the number of denials going back to 2012 --the record retention period-- is 1106 in full and 1104 in part. Obviously, including partial denials will significantly increase the costs associated with responding to the records request.