

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2020-139 & 2020-140**

September 2, 2020

VIA ELECTRONIC MAIL

Mr. Jared Fishman

RE: FOIA Appeal 2020-139 and 2020-140

Dear Mr. Fishman:

This letter responds to the two identical administrative appeals you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”), challenging the Metropolitan Police Department’s (“MPD”) response to your FOIA request, in which you sought reports and body-worn camera footage related to Incident Number 20-029-162. MPD initially denied that request under D.C. Code § 2-534(a)(3)(A)(i) because of an ongoing investigation.¹

Upon further review of your request, MPD has determined that the investigation into the officers’ conduct during the incident in question is near completion. MPD has agreed that, when the investigation is completed and a final decision is rendered, MPD will submit a redacted copy of the report to you. In addition, the body-worn camera footage you requested has now been submitted to the vendor for redactions. After the redacted footage is returned to and reviewed by the MPD FOIA Office, MPD will share a copy with you.

Furthermore, we find no error in MPD’s decision to wait until its investigation is complete before producing a redacted version of the report to you. Exemption 3(A)(i), which the MPD originally invoked, protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). MPD has explained that its investigation into the officers’ conduct is ongoing, and we believe that prematurely disclosing the requested records could reveal the direction of that ongoing investigation. MPD thus may wait until the conclusion of its pending investigation before disclosing a final, redacted copy of its report to you.

Because MPD has agreed to produce redacted versions of the records sought in your appeal, we dismiss this appeal as moot.

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

If you are unsatisfied with the MPD's response after it produces the redacted report and body-worn camera footage, you may file a new appeal once you have had an opportunity to review the records provided by the MPD.

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. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

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