

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-169**

September 2, 2020

VIA ELECTRONIC MAIL

Mr. Michael Ayele

RE: FOIA Appeal 2020-169

Dear Mr. Ayele:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”), challenging the response of the Office of Police Complaints (“OPC”) to your FOIA request.

You submitted a FOIA request to OPC that sought arrest records for Jane Fonda from a climate change protest and asked questions about the District’s position on Ms. Fonda’ arrest and on climate change. OPC did not provide records responsive to your request, and you appealed. In its response to your appeal, OPC explained, that based on publicly available information, the arrests in question took place on U.S. Capitol property and were effectuated by U.S. Capitol Police.¹ OPC observes that it does not have jurisdiction over U.S. Capitol Police and as such would have no records that are responsive to your request. Further, OPC explained that your questions about climate change did not seek any particular records and that, in any event, OPC is not the appropriate District agency from which to seek records related to climate change policy.

FOIA requires that requests describe the records sought with sufficient detail to allow an agency employee familiar with the subject area of the request to locate the records within a reasonable amount of time. More specifically, 1 DCMR § 402.4 states that:

A request shall reasonably describe the desired record(s). Where possible, the specific information regarding names, places, events, subjects, dates, files, titles, file designation or other identifying information shall be supplied.

In addition, under FOIA, an agency “has no duty either to answer questions unrelated to document requests or to create documents.” *Zemansky v. United States Env’tl 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

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

122, 129-130 (D.D.C. 2009).

To the extent that your FOIA request sought specific regards regarding Ms. Fonda's arrest, we agree with OPC that it would not have such records because OPC does not maintain records pertaining to arrests by the U.S. Capitol Police. Based on the foregoing, we conclude that OPC properly responded to your 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 the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: Alicia J. Yass, Legal Counsel
OPC (via email)