

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-069**

September 28, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Jason Lange

RE: FOIA Appeal 2021-069

Dear Mr. Lange:

This letter is in response to the administrative appeals that you have submitted to the Mayor pursuant to the District of Columbia Freedom of Information Act ("FOIA"), D.C. Code §§ 2-531, *et seq.* In your appeals, you have challenged the response of the Metropolitan Police Department ("MPD") to your January 8, 2021 FOIA request, identified as 2021-FOIA-02116, which sought the following:

[C]opies of tapes of all radio transmissions generated and received by the Metropolitan Police Department (MPD) related to the Jan. 6 disturbance at the U.S. Capitol building, as well as any MPD call logs and arrest reports associated with the disturbance.

On January 13, 2021, MPD denied your request because the release of such records could interfere with a future proceeding by revealing the direction and pace of the investigation, and are therefore exempt from disclosure under D.C. Code § 2-534(a)(3)(A)(i).

Under D.C. Code § 2-534(a)(3)(A)(i), records compiled for law enforcement purposes that pertain to investigations are exempt from disclosure to the extent the production of the records would interfere with an enforcement proceeding. *See Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974)(records compiled for law enforcement purposes that pertain to an investigation are exempt from disclosure if the focus of the investigation is on acts that could, if proven, result in civil or criminal sanctions). To satisfy D.C. Code § 2-534(a)(3)(A)(i), the records: 1) must have been compiled for law enforcement purposes; and 2) disclosure of those records would "interfere with enforcement proceedings." *Bevis v. Department of State*, 801 F.2d 1386, 1388 (D.C.Cir.1986)

The term "compiled for law enforcement purposes" does not limit the exemption to records that were "originally compiled" or created for that reason. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 154, 110 S.Ct. 471, 107 L.Ed.2d 462 (1989). An agency can also establish that such records were later gathered or used for law enforcement purposes at some time before the agency invokes the exemption, even if the information was "generated on an earlier occasion and for a different purpose." *John Doe*, 493 U.S. at 154, 110 S.Ct. 471

Interference with enforcement proceedings is “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. 214, 232, 98 S.Ct. 2311, 57 L.Ed.2d 159 (1978). “[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory records exemption] applies.” *Juarez v. Department of Justice*, 518 F.3d 54, 59 (D.C.Cir.2008). While “blanket” or “generic” determinations are generally disfavored, assertions that the disclosure of a particular kind of investigatory record would generally interfere with an enforcement proceeding, within the meaning of the FOIA exemption, is not precluded.. *Robbins Tire & Rubber Co.*, supra, 437 U.S. at 236.

Based on MPD’s representation that the footage is part of an ongoing criminal investigation and the publicly available information detailing ongoing proceedings, we hold that MPD may withhold the identified information.

While you have asserted MPD has an obligation to segregate and release any non-exempt portions of the record, the extent to which this is possible is unlikely to be feasible given the scope of the request and the uncertainty in which this information may play in an ongoing or future enforcement proceeding. However, potentially segregable information may be available by submitting a more detailed request. *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).

This constitutes the final decision of this Office. You may challenge any subsequent response to your request by separate appeal to this Office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Sincerely,

The Mayor’s Office of Legal Counsel

cc: Brandynn Reaves, MPD FOIA Officer (via email only)