

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2021-083**

September 28, 2022

**VIA ELECTRONIC MAIL ONLY**

Mr. William F. Marshall

RE: FOIA Appeal 2021-083

Dear Mr. Marshall:

This letter is in response to the administrative appeal 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 appeal, you have challenged the response of the Metropolitan Police Department ("MPD") to your April 13, 2020 FOIA request, identified as 2020-FOIA-04777, which sought the following:

All records related to an alleged 1993 sexual assault by then-Senator Joseph R. Biden against aide Tara Reade, including but not limited to incident reports and communications sent to and from MPD officials regarding Ms. Reade and/or the alleged sexual assault.

On May 1, 2020, MPD, through the Office of Communications, closed your request after providing a copy of an incident report.

As the basis for your appeal, you have questioned whether it is the position of MPD that there are not any more records that are responsive to your request, and otherwise challenged the adequacy of the search performed by MPD.

**Discussion**

It is the public policy of the District of Columbia government 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." D.C. Code § 2-531. In aid of that policy, FOIA creates the right "to inspect...and...copy any public record of a public body..." D.C. Code § 2-532(a).

Under FOIA, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Envtl. 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 122, 129-130 (D.D.C. 2009).

As a preliminary issue of whether MPD conducted an adequate search is whether the request adequately describes the records for which you believe to exist.

Your request broadly uses the terms “all” records related to an incident for which MPD is then tasked with identifying and disclosing. Such a request does not reasonably describe the records sought and is insufficient to permit the identification and location of records within an agency without an unreasonable amount of effort. 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). “[T]he rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.” *Assassination Archives & Research Ctr. v. CIA*, 720 F.Supp. 217, 219 (D.D.C.1989).

Further, FOIA only requires that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

While MPD was able to identify an incident report given the request as written, additional information may be available through the submission of a FOIA request with additional details, e.g. specific names, dates etc.

### Conclusion

Based on the foregoing, this appeal is denied. 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: Brandynn Reaves, MPD FOIA Officer (via email only)