

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-138**

October 27, 2022

VIA ELECTRONIC MAIL ONLY

Ms. Elvira Desiree' Copeland

RE: FOIA Appeal 2021-138

Dear Ms. Copeland:

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”). In your appeal, you have challenged the response of the Metropolitan Police Department (“MPD”) to your DC FOIA request.

Background

On March 26, 2021, you submitted a DC FOIA request to MPD, identified as 2021-BWC-00219, seeking body worn camera (“BWC”) footage pertaining to CCN# 20111469. MPD denied your request on March 29, 2021 because:

The body worn camera footage you are seeking is a part of an ongoing criminal investigation. The release of this footage could interfere with by revealing the direction and pace of the investigation. It could lead to attempts to destroy or alter evidence, reveal information about potential witnesses who could then be subjected to intimidation as part of an effort to frustrate future investigative activities, or could place witnesses in danger. For these reasons they are exempt from disclosure pursuant to DC Official Code §2- 534(a)(3)(A)(i), (a)(2), and (a)(3)(C).

In your March 31, 2021 appeal filed with this Office, you have asserted that you should be allowed to see the video because it likely contains a conversation about you.

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, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” D.C. Code § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. D.C. Code § 2-534.

DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

D.C. Code § 2-534(a)(3)(A)(i) (Exemption (a)(3)(A)(i))

Exemption (a)(3)(A)(i) 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). “[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 record exemption] applies.” See *Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.*

Given MPD’s representation that the records you seek were compiled for law enforcement purposes as part of an ongoing investigation, the disclosure of which would interfere with a law enforcement proceeding, it may withhold the same from disclosure. As such, the question of whether the subject information may be withheld under D.C. Code §2-534(a)(2) and (a)(3)(c) is moot at this time.

Conclusion

Based on the foregoing, we affirm MPD’s decision and hereby dismiss 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 government in Superior Court.

Respectfully,

Mayor’s Office of Legal Counsel

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