

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-200**

November 1, 2022

VIA ELECTRONIC MAIL

Mr. Aaron Malin

RE: FOIA Appeal 2021-200

Dear Mr. Malin:

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"). In your appeal, you challenge the response of the Metropolitan Police Department ("MPD") to your DC FOIA request.

Background

On May 26, 2021, you submitted a DC FOIA request to MPD, identified as 2021-FOIA-05471, which sought the following:

[A]ny and all police reports and records, from the following incident: Location: George Washington Medical Faculty Associates, 2150 Pennsylvania Avenue NW, Washington, DC 20037

Time/date: records created, started, ended, or maintained between 2pm and 6pm on 5/24/2021 in relation to the aforementioned location/incident.

Name of officer(s) reports requested:

- E. Zamora
- O. Dilmac
- A.O. Tate
- All other officers involved in this incident

It is noted that this is a companion request to 2021-BWC-00298, which was interpreted as a request for body-worn camera footage from the named officers at the designated date, time and location. MPD's denial of this request was upheld by this Office in Appeal 2021-209.

On June 14, 2022, MPD denied your request because a review of the records did not locate a waiver on file. MPD asserted that absent authorization and/or waiver from involved parties, a release of such records would constitute a clearly unwarranted invasion of personal privacy and

is therefore exempt from disclosure pursuant to D.C. Code §§ 2-534 (a)(2) and (a)(3)(C).

In your June 15, 2021 appeal filed with this Office, you assert any segregable portion of the records should be provided in accordance with D.C. Code § 2-534(b).

Discussion

As a preliminary issue as to whether MPD may withhold any responsive records, is the identification of the information sought to be withheld. Pursuant to the aforementioned personal privacy provisions, in Appeal 2021-209, this Office affirmed MPD's decision to withhold the disclosure of any applicable BWC footage in response to the companion request identified as 2021- BWC-00298. What is unclear in this matter is whether—given the description of the documents sought—MPD was able to identify any additional responsive documents that may be subject to disclosure separate from the BWC footage.

This becomes relevant because if there are additional documents, under D.C. Official Code § 2- 534(b), even when an agency establishes that an exemption is applicable, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). “‘Entire records are exempt from disclosure when it is shown that the exempt and nonexempt information are ‘inextricably intertwined,’ such that the excision of exempt information would impose significant costs on the agency and produce an edited document with little information value.’ *See D.C. v. Fraternal Ord. of Police Metro. Police Lab. Comm.*, 33 A.3d 332, 346 (D.C. 2011).

Based on the foregoing, we remand this matter back to MPD for a determination as to whether, given the request, any additional documents have been or can be located, and whether any information contained therein is reasonably segregable.

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.

Respectfully,

Mayor's Office of Legal Counsel

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