

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2021-210**

October 18, 2022

**VIA ELECTRONIC MAIL**

Ms. Elvira Desiree' Copeland

RE: FOIA Appeal 2021-210

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 June 27, 2021, you submitted a DC FOIA request to MPD, identified as 2021-BWC-00317, seeking body worn camera (“BWC”) footage pertaining to CCN# 21068787. MPD denied your request on June 28, 2021, because the footage sought was exempt from disclosure under DC FOIA.

In your July 1, 2021 appeal filed with this Office, you have asserted that MPD “[d]id not apply law properly.”

On July 6, 2021, we notified MPD of your appeal and requested a response. MPD responded on August 29, 2022 stating it properly denied the request pursuant to D.C. Code §§ 2-534(a)(2), (a)(3)(A)(i) and (a)(3)(C) and the footage is part of an open investigation. MPD further explained that:

The release of any records could interfere with enforcement proceedings by revealing the direction and pace of the investigation. It could also 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 dangers.

**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 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.

### 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 the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

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