

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-229**

November 30, 2022

VIA ELECTRONIC MAIL

Eric Hasbrouck, JD

RE: FOIA Appeal 2021-229

Dear Mr. Hasbrouck:

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 challenged the response of the Metropolitan Police Department ("MPD") to your October 20, 2020 FOIA request, identified as 2021-BWC-00018, which sought body-worn camera video and audio related to a specific incident (CCN# 16165206).

On August 16, 2021, this Office asked MPD to provide the justification for the decision not to grant a review of the records requested, a *Vaughn* index of the documents withheld, and a copy of any public record(s) in dispute. MPD responded on September 27, 2022 stating, "BWC footage is only preserved for 90 days...The footage requested by Mr. Hasbrouck was deleted in January 2017, prior to his initial FOIA request."

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).

An agency is required to disclose materials only if they were "retained by a public body." D.C. Code § 2-502(18). An agency is only required to disclose records that are under its control at the time of the request. *DOJ v. Tax Analysts*, 492 U.S. 136, 145 (1989). Here, MPD has explained that it no longer possesses the requested footage.

Based on the foregoing, we conclude that MPD has properly responded to your FOIA request and deny 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 in Superior Court in accordance with D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

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