

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-267**

October 25, 2022

VIA ELECTRONIC MAIL

Mr. Steven Marcus

RE: FOIA Appeal 2021-267

Dear Mr. Marcus:

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 July 9, 2021 FOIA request, identified as 2021-FOIA-06387, which sought the following:

[A]ny and all policies, procedures, practices, regulations, rules, memoranda, guidance, and guidelines that contain the terms "gang database," "gang data base," "gang tracking," or the term "gang" within three words of "database" or "data base."

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[I]nformation about the gang database, or the "Gang Tracking and Analysis System" that is referenced in Special Order 09-03. Specifically, I am requesting, as of July 9, 2021:

- The total number of entries into the database
- The total number of entries by race, gender, and by zip code
- The total number of "gang names" in the database
- For all "verified" entries in the database, a listing of all "validation dates"

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[A]ny MPD guidelines, materials, guides, photographs, or guidance related to determining a "gang tattoo," "gang symbol and/or hand sign," and "gang area," as those terms are used in Special Order 09-03.

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[A]ny correspondence, including electronic correspondence, from January 1, 2017 to the present, to or from any MPD employee in the "Intelligence Branch" that contain the terms "gang database,"

“gang data base,” “gang tracking,” or the term “gang” within three words of “database” or “data base” in the subject, body, or attachment of the correspondence.”

MPD responded to your request on September 15, 2021, by granting it, in part, and denying it, in part. In the response, MPD advised you that it was unable to provide the total number of entries within the “Gang Tracking and Analysis System” by race, gender and zip code because these figures could not be readily obtained within the system without performing a manual count and/or other analysis, or creating a new record. MPD also provided you a copy of responsive documents—to the request for MPD guidelines, materials, guides, photographs, or guidance related to determining a “gang tattoo,” “gang symbol and/or hand sign,” and “gang area”—which had been redacted pursuant to D.C. Code § 2-534(a)(2), which exempts information of a personal nature, the release of which would constitute a clearly unwarranted invasion of personal privacy. Further, MPD asserted the last portion of your request, for “any correspondence...containing the terms ‘gang database,’ ‘gang data base,’ ‘gang tracking,’ or the term ‘gang’ within three words of ‘database’ or ‘data base’ in the subject, body, or attachment of the correspondence.”, was inadequate for the purpose of making a reasonable and adequate records search.

As the basis for your appeal, you have asserted that MPD’s denial of the request for the number of entries within the subject database by race, gender, and zip code was erroneous because it would not require the creation of new records as MPD admits its database captures all of the requested information. Moreover, you have asserted the refusal to disclose any correspondence (or to even perform a search) “runs directly contrary to binding D.C. Court of Appeals precedent and an advisory BEGA opinion.”

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).

To the extent that MPD has indicated that it is unable to derive the requested data related to race, gender and zip code from the subject database, MPD has provided an adequate response. It does not have a duty to compile statistics in response to your questions if the numbers are not otherwise readily accessible within a requested record. While you have asserted, “[t]he requester would welcome the receipt of a redacted table that included the race, zip code, and gender of entries, and the requester would be able to count the entries himself...”, without speculating as to whether MPD could satisfy such a request, that was not the request that was made.

Finally, as to the issue of whether MPD properly denied your request for “any correspondence” because it did not adequately describe the records sought, we affirm MPD’s decision.

Your request broadly uses the terms “any correspondence” to describe documents sought over an expanded period of time from unidentified personnel, for which MPD would then be tasked with identifying, reviewing 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). “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).

While the provided citations and BEGA opinion are acknowledged, the underlying requests in those cases were specifically for emails. *See BEGA Opinion (OOG-0004_4.13.17_FOIA AO)*(“This legal advisory opinion resolves the issue of whether a FOIA request that provides the agency with an individual’s name whose email box is to be searched and a specific date range for the search constitutes a reasonable description of public records sought under FOIA.”); *FOP v. District of Columbia*, 139 A.3d 853 (2016)(Request reasonably described that union sought, including police department emails from a discrete time period that were sent to or by particular individuals, or that were about a particular entity...). Here, while your request for records containing certain keywords might be sufficient in the context of an automated email search, the term “any correspondence” does little to limit or focus MPD’s search for responsive documents. With such limitless parameters, MPD would need to manually review a significant subsection of agency records without the benefit of any specificity including but not limited to the designation of specific information regarding names, places, events, subjects, files, titles, file designation, or other identifying information.

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 accordance with D.C. Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

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