

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-003**

October 25, 2022

VIA ELECTRONIC MAIL ONLY

Ms. Miriam Thorne

RE: FOIA Appeal 2022-003

Dear Ms. Thorne:

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

On July 25, 2021, you submitted a DC FOIA request to MPD, identified as 2021-FOIA-06785, seeking the following:

[D]aily arrest / “lock-up list” data for the dates of January 1, 2015 – December 31, 2019. Please provide the following information for all arrests:

- Full name of arrestee
- PDID of arrestee
- DOB of arrestee
- Race of arrestee
- Sex of arrestee
- Prosecutor type
- Arrest number
- Arrest location/address
- Arrest charge(s)
- Arrest date and time
- Arresting officer name and badge number
- CCN for the corresponding police report
- Attorney name
- Case number
- Lock up list date
- Associated cases
- Whether each charge was papered or no papered

Please provide the data in an Excel sheet format.

On July 28, 2021, MPD closed your request because “[a] search located no responsive data for the period and in the format requested [and] [p]roducing such data as requested would require considerable research, consolidation and analysis of data, and data quality reviews” which an agency is not required to perform. MPD also noted that “[t]he great majority of the information you requested, if it did exist in an existing record as requested, would be exempt from release under the FOIA... [because] [a]bsent authorization, and/or (a) privacy waiver(s), a release of such information... would constitute an (a clearly) unwarranted invasion of personal privacy and would be exempt from disclosure pursuant to D.C. Official Code § 2-534 (a)(2) and (a)(3)(C).”

On October 6, 2021, you filed an appeal with this Office asserting that because MPD “posts a cumulative list of arrest data daily, it is [your] understanding that the data is at least partially available.” You also asserted that “there is no privacy concern given the public nature of the arrest and legal proceedings.”

Under DC 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). “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). Here, MPD did not have the cumulative data in the specific format requested, and it does not have a duty to create the same.

Based on the foregoing, we conclude that MPD properly responded to your DC FOIA request and we hereby 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 accordance with D.C. Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

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