

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-020**

October 19, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Rend Smith

RE: FOIA Appeal 2022-020

Dear Mr. Smith:

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 21, 2021 FOIA request, identified as 2022-FOIA-00545, which sought the following:

[A]ny and all records MPD has regarding the death of Corporal Christopher Stephen Brady on September 2, 1971, and the resulting homicide investigation. This is to include but not be limited to records consolidated within cold case indices.

On October 26, 2021, MPD denied your request because the release of such records could interfere with a future proceeding and are therefore exempt from disclosure under D.C. Code §§ 2-534(a)(3)(A)(i) and (a)(3)(B).

Under D.C. Code § 2-534(a)(3)(A)(i), records compiled for law enforcement purposes that pertain to investigations are exempt from disclosure to the extent the production of the records would interfere with an enforcement proceeding. *See Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974)(records compiled for law enforcement purposes that pertain to an investigation are exempt from disclosure if the focus of the investigation is on acts that could, if proven, result in civil or criminal sanctions).

The term "compiled for law enforcement purposes" does not limit the exemption to records that were "originally compiled" or created for that reason. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 154, 110 S.Ct. 471, 107 L.Ed.2d 462 (1989). An agency can also establish that such records were later gathered or used for law enforcement purposes at some time before the agency invokes the exemption, even if the information was "generated on an earlier occasion and for a different purpose." *John Doe*, 493 U.S. at 154.

Interference with enforcement proceedings is "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. 214, 232, 98 S.Ct. 2311, 57 L.Ed.2d

159 (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 records exemption] applies.” *Juarez v. Department of Justice*, 518 F.3d 54, 59 (D.C.Cir.2008). While “blanket” or “generic” determinations are generally disfavored, assertions that the disclosure of a particular kind of investigatory record would generally interfere with an enforcement proceeding, within the meaning of the FOIA exemption, is not precluded.. *Robbins Tire & Rubber Co.*, supra, 437 U.S. at 236.

In your appeal, you have asserted that MPD has an obligation to make “an evidentiary showing (1) that the records are to be used in a prospective law enforcement action and (2) that the disclosure of the records would be prejudicial to such an action.” *Dep’t of Pub. Safety v. Freedom of Info. Comm’n*, 51 Conn. App. 100, 105 (1998). To the extent MPD has represented that the records sought are part of an open and ongoing criminal investigation, we hold that MPD may withhold the identified information.

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