

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-025**

January 12, 2023

**VIA ELECTRONIC MAIL ONLY**

Ms. Erica Taranto

RE: FOIA Appeal 2022-025

Dear Ms. Taranto:

This letter responds to the administrative appeal that you have filed with 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 requests.

Background

On August 24, 2021, you submitted a DC FOIA request to MPD, identified as 2021-FOIA-07577, which sought the following:

[C]opies of public records, to include but not be limited to, emails, documents, text messages, social media posts, policies, manuals, logs, notes, written records, memos, reports, presentations, video recordings (including body camera footage) and all information available, regardless of form or format pertaining to the following:

Officer Jeffrey Smith’s activities on January 6th, 2021.

Officer Jeffrey Smith’s death on January 15, 2021.

Dr. David Wells-Kaufman’s activities on January 6th, 2021

(Date Range for Record Search: From 11/01/2020 To 08/24/2021)

On the same day, you submitted an additional DC FOIA request to MPD, identified as 2021-BWC-00392, which sought body-worm camera (“BWC”) footage of Officer Jeffrey Smith taken on January 6, 2021 at the U.S. Capitol.

MPD denied your requests on August 25, 2021, for the following reasons:

It has been determined that the information you are seeking is part of an ongoing investigation and criminal proceeding. With the exception of the portions of the video that has been shown publicly, MPD cannot fulfill your request. The release of this information could interfere with the 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 danger. For these reasons information about this incident is exempt from disclosure pursuant to D.C. Official Code § 2-534 (a)(2), (a)(3)(B), (a)(3)(A)(i), and (a)(3)(C).

Further, a search of our records did not locate a privacy waiver or authorization on file. Absent a privacy waiver and/ or authorization, a release of such information would constitute a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) and (a)(3)(C).

On appeal, you have asked this Office to reconsider the decision of MPD because, per a referenced new article, “Officer Jeffrey Smith’s body camera footage was shared with NBC News.”

### 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 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 may be examined to construe the local law.

D.C. Code § 2-534 (a)(3)(A)(i) (“*Exemption 3(A)(i)*”)

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes, the disclosure of which 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.*

The records you seek here are being used for the law enforcement purpose of investigating the events which took place at the U.S. Capitol and MPD has asserted criminal investigations and enforcement proceedings pertaining to the events are ongoing. As a result, MPD has met the

threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings.

MPD maintains that disclosing the records you requested could lead to attempts to destroy or alter evidence, subject witnesses to intimidation, or place them in danger.

Based on this representation, MPD has properly withheld the requested documents and video footage from disclosure under D.C. Code § 2-534 (a)(3)(A)(i). A review of the other exemptions cited by MPD is deferred at this time.

### Conclusion

Based on the forgoing we affirm MPD's decision 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 government in Superior Court.

Respectfully,

Mayor's Office of Legal Counsel

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