

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-029**

January 12, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Curt Devine

RE: FOIA Appeal 2022-029

Dear Ms. Devine:

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 January 11, 2021 FOIA request, identified as 2021-FOIA-02292, which sought the following:

All correspondence sent or received by Acting MPD Chief Robert Contee III, Assistant Chief Jeffrey Carrol or Inspector Robert Glover between January 7, 2021 and January 11, 2021 that discusses protests, demonstrations, or riots on January 6th. This should include but not be limited to any correspondence that mentions any of the following terms in this time:

"protest"
"demonstration"
"rally"
"riot"
"Capitol"
"Stop the Steal" or "stopthesteal"
"March to Save America" or "Marchtosaveamerica"
"Proud Boys"
"Qanon"
"Antifa"

This should include correspondence both internal and external correspondence (in other words, if a letter, email or other form of message was sent to an external agency, such as

the mayor's office or US Capitol Police, such correspondence should be included in this request).

On November 23, 2021, MPD denied your request in full, disputing its ability to perform a reasonable and adequate search given the request. Specifically, MPD stated,

Upon review, the description of this request is such that we are not able to perform a reasonable and adequate search relative to specific subject content or other identifying characteristics in order to allow a reasonable search to be completed. The FOIA specifies that a FOIA request must reasonably describe records sought such that agency staff familiar with the records may reasonably ascertain exactly which records are being requested, and to locate them. The courts have recognized that the legislative history of the FOIA indicates that a description of a requested record is sufficient if it enables a professional agency employee familiar with the subject area to locate the record with a "reasonable amount of effort." The courts have also found that requests that are so broad and sweeping that they lack specificity are not reasonably described.

This FOIA request, essentially, asks for research to be performed on behalf of the requester, as it asks for records by broad category or categories, i.e., for "all correspondence", without specific, particularized subject matter/content as to specific records except for a number of key words that might be matched/found within documents. Electronic searches for such a category or categories may produce large volumes of miscellaneous and unrelated materials, and processing documents produced in an initial search for such a request or requests may take an inordinate amount of limited FOIA processing time, as these initial search results must be further manually searched, again, for records that might be responsive to the request. The courts have said that the FOIA was not intended to reduce government agencies to be investigators or to perform research on behalf of requesters. Again, the FOIA does not require agencies to conduct "unreasonably burdensome" searches for records.

In your November 23, 2021 appeal filed with this Office, you agreed to limit the scope of the request to "only include email correspondence...containing only specific key terms...in the timeframe requested..."

On November 23, 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. To date, this Office has not received a response.

Discussion

Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary

information. 1 DCMR § 402.5. When the Freedom of Information Officer, pursuant to § 402.5, contacts the requester for additional information, the request is deemed received when the Freedom of Information Officer receives the additional information. 1 DCMR § 405.6.

Here, the record does not reflect any effort by MPD to engage with you as to what, if any, clarification(s) could be provided to address its concerns, prior to closing your request. Nonetheless, you have refined your request by way of filing this appeal. This Office is not aware of MPD's position as to your clarification.

While FOIA does not require a requester and an agency to consult in good faith, doing so is extremely encouraged. "A FOIA requester and the District entity receiving a request are not—or should not be—in an inherently adversarial relationship." *Fraternal Order of Police v. District of Columbia*, 139 A.3d 853 (2016).

Based on the foregoing, we remand this matter to MPD to address your request as clarified.

Conclusion

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.

Sincerely,

Mayor's Office of Legal Counsel

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