

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-032**

March 1, 2022

VIA ELECTRONIC MAIL

Mr. Rend Smith

RE: FOIA Appeal 2022-032

Dear Mr. Smith:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested from MPD under DC FOIA.

Background

You submitted a request to MPD seeking “any and all records MPD has regarding the death of Ritchie Hooker Reed on September 2, 1971, and the resulting homicide investigation” and “all records pertaining to the investigation into Brady's murder, including but not limited to investigative reports, follow-up reports, photos, evidence vouchers, forensic testing results, audio and video recordings, transcripts, case jackets and crime scene examination case files” for the September 1971 through September 1973 timeframe. MPD denied your request, withholding its investigative documents on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings. MPD’s denial indicated that the unsolved homicide cases are considered open investigations.

On appeal, you challenge MPD’s denial of your FOIA request contending that the open investigation ground is “not well founded.” Citing the Department of Justice Guide to the Freedom of Information Act, you state that exemption based on an open investigation is “temporal in nature and is not intended to endlessly protect material simply because it [is] in an investigatory file.” Citing caselaw, you assert that an agency must 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).

MPD responded to your appeal in an email to this Office in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i).¹ In support of this position,

¹ MPD’s response is attached for your reference.

MPD proffered that its investigations into the murders are ongoing and that release of the requested records could adversely affect MPD's enforcement efforts by informing any suspects or witnesses on the direction of the investigation and enabling them to conform testimony to escape culpability.

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. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right "to inspect ... and ... copy any public record of a public body . . ." *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

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 are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure 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 were compiled for the law enforcement purpose of investigating 2 homicides, and MPD has asserted that the criminal investigations pertaining to the homicides 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.

The old age of the cases does not overcome the purpose of Exemption 3(A)(i), which is to protect releasing investigatory details that could interfere with law enforcement efforts. *See Dickerson v. DOJ*, 992 F.2d 1426, 1432 (6th Cir. 1993) (finding that an investigation into 1975 disappearance remained ongoing and therefore was still "prospective" law enforcement proceeding.) MPD maintains that disclosing the records you requested could reveal the direction of its ongoing investigation and allow suspects to avoid detection, arrest, and prosecution. In

light of the statutory purpose of Exemption 3(A)(i), we find that MPD properly withheld from disclosure the investigatory records you requested.²

Conclusion

Based on the foregoing, we affirm MPD's decision and hereby dismiss 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 the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Teresa Quon Hyden, Assistant General Counsel, MPD (via email)

² Although MPD's application of Exemption 3(A)(i) is appropriate, we note that this exemption, like others, is discretionary. Due to the age of the case, MPD may determine that the benefits of disclosure outweigh the potential harm to the ongoing law enforcement proceeding. MPD, as the agency responsible for the ongoing investigation, is in the best position to assess the potential impact of disclosure. Therefore, MPD may elect to disclose or continue to withhold its investigative records related to the unsolved homicide.