

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-065**

January 10, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Marlo A. Trotta

RE: FOIA Appeal 2022-065

Dear Mr. Trotta:

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.

Background

On December 17, 2021, a paralegal at your firm submitted a DC FOIA request to MPD, identified as 2022-FOIA-02091, which sought the following:

[A] copy of the video obtained by Officer Rodriguez from witness, Hagnes Harrell. MPD CCN#21058400.

On December 20, 2021, MPD denied your request for the following reasons:

It has been determined that the information you are seeking is part of an open investigation. 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 this reason information about this is exempt from disclosure pursuant to D.C. Official Code § 2-534 (a)(3)(A)(i)

On January 13, 2022, you filed an appeal with this Office asserting a “review of the video is of vital importance to [y]our client who suffered significant injuries” and “reviewing the video to ascertain [the identity of the car and driver] would have no adverse effect on any investigation [MPD is] pursuing for any traffic violations or criminal charges against the hit and run driver.”

Discussion

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). To satisfy D.C. Code § 2-534(a)(3)(A)(i), the records: 1) must have been compiled for law enforcement purposes; and 2) disclosure of those records would “interfere with enforcement proceedings.” *Bevis v. Department of State*, 801 F.2d 1386, 1388 (D.C.Cir.1986). 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, 110 S.Ct. 471

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.

Based on MPD’s representation that the requested footage is part of an ongoing criminal investigation, we hold that MPD may withhold the identified information.

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 Superior Court.

Sincerely,

The Mayor’s Office of Legal Counsel

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