

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-067**

January 18, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Elvira Copeland

RE: FOIA Appeal 2022-067

Dear Ms. Copeland:

This letter responds to the administrative appeal that you have submitted to the Mayor pursuant to D.C. Code § 2-537 of the District of Columbia Freedom of Information Act (“DC FOIA”). In your appeal, you have challenged the response of the Metropolitan Police Department (“MPD”) to your DC FOIA request.

Background

On March 31, 2021, you submitted a DC FOIA request to MPD, identified as 2021-BWC-00225, which sought body worn camera (“BWC”) video related to a specific incident report (CCN# 20060270). On September 16, 2021, MPD granted your request, in part, by providing you with access to the requested video footage. MPD denied your request, in part, by redacting the video because “where other individuals may appear or be heard in the footage, absent authorization and/or a waiver from those third party individuals, a release of such records would constitute as a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Code § 2-534 (a)(2) and (a)(3)(C).”

In your appeal, you assert the “footage received was botched. Technician lied about the date the botched footage was received. All footage was not released.”

Discussion

It is the public policy of the District of Columbia 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.” 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 right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. See D.C. Code § 2-534. Under DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Code § 2- 502(18).

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). Accordingly, 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).

FOIA only requires that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In assessing whether a District entity subject to FOIA has undertaken an adequate search to fulfill a FOIA request, courts look not to “the fruits of the search,” but instead to the “appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C.Cir.2003). “An agency's search conducted in response to a FOIA request ‘need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.’” *Fraternal Order of Police, Metro. Police Labor Comm. v. District of Columbia (FOP Peaceoholics)*, 79 A.3d 347, 360 (D.C.2013) (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C.Cir.1986)).

Here, MPD was able to produce a redacted copy of the requested video, after performing a search. If the footage you received was corrupted, you may contact the MPD FOIA Officer to address these concerns. In the absence of any dispute over MPD’s redactions, discussion of the cited exemptions, D.C. Code §§ 2-534 (a)(2) and (a)(3)(C), is reserved at this time.

Conclusion

Based on the foregoing, your appeal has been denied. This constitutes the final decision of this Office with respect to your appeal. 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 (by email only)