

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-074**

January 18, 2023

VIA ELECTRONIC MAIL ONLY

D. Michelle Douglas

RE: FOIA Appeal 2022-074

Dear Ms. Douglas:

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 the December 1, 2021 FOIA request of Eric Siegel, identified as 2022-FOIA-01668, which sought the following:

[A] copy of all closed circuit television ("CCTV") and body-worn camera ("BWC") video footage at the west tunnel of the Capitol Building, the Capitol Building "crypt", Representative Steny Hoyer's office, the Capitol Rotunda and/or any other location on the Capitol grounds on January 6, 2021 for the period after 3:00 p.m. EST, as well as all communications, reports, findings, information and/or memoranda pertaining to the existence, whereabouts, transport and/or handling of Rosanne Marie Boyland. I also seek all materials contained in the MPD investigation file pertaining to Ms. Boyland and her death, Criminal Complaint no. 21-002-794 or another number.

In your appeal, you acknowledge an interim response has been provided by MPD, but a copy of that response was not included in the appeal. *See* 1 DCMR § 412.4 ("An appeal to the Mayor shall be in writing and shall include: (a) Statement of the circumstances, reasons or arguments advanced in support of disclosure; (b) Copy of the original request, if any; (c) Copy of any written denial issued under § 407.2; and (d) Daytime telephone number, email address for the requester.")

On February 25, 2022, 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. While this Office did not receive a response, a review of the District's FOIA-tracking data indicates MPD continues to process the request.

It is the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of the District government and the official acts of those who represent them as public officials and employees. D.C. Code § 2-531. The ultimate responsibility for responding to requests for records of an agency is vested in the agency head. 1 DCMR § 400.1

Under 1 DCMR § 405.1 when no decision can be dispatched within the applicable time limits, an agency shall nevertheless continue to process the request and inform the requester of the reason for delay, the date on which a determination may be expected; and the right to treat the delay as a denial and the right to appeal.

Based on the record before us, we are unable to make a determination as to the applicability of the exemptions asserted by MPD. However, it is noted that this Office routinely affirms agency decisions to withhold documents pursuant to D.C. Code § 2-534(a)(3)(A)(i)(investigatory records compiled for law enforcement purposes are exempt from disclosure to the extent the production of the records would interfere with an enforcement proceeding). *See also 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).

Notwithstanding the aforementioned, we remand this matter back to MPD to comply with 1 DCMR § 405.1, if it has not already done so, with the objective of issuing a final determination and producing any non-exempt records that are responsive to your request as soon as practical.

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 against the District of Columbia government in Superior Court in accordance with D.C. Code § 2-537.

Sincerely,

Mayor's Office of Legal Counsel

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