

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-082**

January 10, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Marcus Dean

RE: FOIA Appeal 2022-082

Dear Mr. Dean:

This letter responds to the administrative appeal that you have filed with the Mayor pursuant to 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 January 15, 2021, you submitted a DC FOIA request to MPD, identified as 2021-BWC- 00117, which sought the following:

[The] body camera footage of officer O. Forrest, DC Metropolitan Police, Badge #2657...the time would be approximately 2:50pm - 3:15pm. [January 6, 2021].

MPD denied your request on March 15, 2021, for the following reasons:

It has been determined that the information you are seeking is part of an ongoing criminal 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 these reasons information about this incident is exempt from disclosure pursuant to D.C. Official Code § 2-534 (a)(2), (a)(3)(A)(i), (a)(3)(B) and (a)(3)(C).

On appeal, you challenge MPD’s decision, stating,

In light of body camera footage released by the Department of Justice and other agencies over the last year, I believe there is no longer reason to not release this video.

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. Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a).

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 may be examined to construe the local law.

D.C. Code § 2-534 (a)(3)(A)(i) (“Exemption 3(A)(i)”)

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes, the disclosure of which 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 are being used for the law enforcement purpose of investigating events which took place at the U.S. Capitol and MPD has asserted that the criminal investigations and enforcement proceedings pertaining to the events 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.

Interference with enforcement proceedings is “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *Robbins Tire & Rubber Co.*, 437 at 232. “[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.*, 437 U.S. at 236.

Conclusion

Based on MPD’s representation that the requested media is part of an ongoing criminal investigation the disclosure of which would interfere with a law enforcement proceeding, we hold MPD may withhold the identified information. Any discussion as to whether the subject information may be withheld under D.C. Code §§ 2-534 (a)(2), (a)(3)(B) and (a)(3)(C) is deferred at this time.

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.

Respectfully,

Mayor's Office of Legal Counsel

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