

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-155**

January 26, 2023

VIA ELECTRONIC MAIL ONLY

Stephen Mercer

RE: FOIA Appeal 2022-155

Dear Mr. Mercer:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code §§ 2-531, *et seq.* (“DC FOIA”). In your appeal, you have challenged the response of the Metropolitan Police Department (“MPD”) to your DC FOIA request.

Background

On May 4, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-06070, which sought the following:

The homicide file for the April 16, 1998, murders of John Davis, Darnell Johnson, and Cynthia Johnson, in the 1000 Block of Maryland Ave., NE, around 23:00-24:00 hours.

MPD responded to your request on May 10, 2022 by providing you with 2 pages of responsive records that had been redacted to protect the disclosure of information, the release of which would constitute a clearly unwarranted invasion of personal privacy. MPD withheld “all other records that may be responsive to this request as the case remains in the adjudication/appeals phase...”, 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).

As the basis for your appeal, you have asserted:

[T]he case is long closed and the appeal long-ago decided by the DC Court of Appeals in 2008. *See, Sweeney v. United States*, 943 A.2d 561, 99-cf-966 (DC 2008). With respect to how disclosure of the category of requested documents would interfere with law- enforcement proceedings under D.C. Code § 2-534(a)(3)(A)(i), the Metropolitan Police Department’s denial contains no meaningful explanation. *See, e.g., Fraternal Or. of Police, Metro. Lab. Comm. v. D.C.*, 82 A.3d 803, 817 (D.C. App. 2014).

On June 9, 2022, this Office notified MPD of your appeal and requested a response. To date, a response had not been received.

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

Based on the record before us, we are unable to make a determination as to the applicability of D.C. Code § 2-534 (a)(3)(A)(i), as asserted by MPD. For this reason, we remand this matter back to MPD to address your contention as to the closure of any pending proceeding, cite to another applicable exemption and/or produce a copy of any responsive records that are not exempt from disclosure.

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 in accordance with D.C. Code § 2-537.

Sincerely,

Mayor's Office of Legal Counsel

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