

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-158**

December 20, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Charles Washington

RE: FOIA Appeal 2022-158

Dear Mr. Washington:

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 May 9, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-06227, which sought the following:

On April 22, MPD reported on various social media accounts that the department was investigating a confirmed shooting in the 600 block of Kennedy Street NW with 3 victims. This request is for the: 1) police report related to this incident; 2) follow up reports, notes and documents related to this incident; and 3) any charging documents or warrants related to this incident. (Date Range for Record Search: From 04/22/2022 To 05/09/2022)

On May 20, 2022, MPD denied your request in full because “the information you are seeking is part of an open investigation.” MPD explained that the records are exempt from disclosure pursuant to D.C. Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because 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.” MPD also explained that “[a]bsent a privacy waiver and/ or authorization, a release of such information would constitute a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) and (a)(3)(C).”

On May 26, 2022, you filed an appeal with this Office asserting that “MPD’s claims that all records related to this incident would interfere with enforcement proceedings is not credible, is overly broad and speculative, and could apply to nearly any record in MPD’s possession.”

You also stated that MPD “failed to provide evidence of a privacy interest” and “[t]he public is entitled to understand the progress MPD has made in investigating gun violence in the District of Columbia.”

We notified MPD of your appeal on June 13, 2022 and requested a response. MPD responded on September 16, 2022. In its response, MPD reiterated its position that the records are protected from disclosure by Exemption 3(A)(i). In support of this position, MPD proffered that “[i]n addition to the destruction of evidence and witness intimidation/tampering, the release of the investigatory files regarding the investigation would hinder the investigation/prosecution by making it more difficult for MPD to: (a) verify and corroborate future witness statements and evidence; (b) discern which tips, leads, and confessions have merit and deserve further investigation and which are inconsistent with the known facts and can be safely ignored, and (c) conduct effective interrogations of suspects.”

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, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. D.C. Code § 2-534.

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 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).

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 and whose disclosure 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 were compiled for the law enforcement purpose of investigating a crime, and MPD has asserted that the criminal investigation pertaining to the incident is 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.

MPD maintains that disclosing the records you requested could reveal the direction of its ongoing investigation and allow suspects to avoid detection, arrest, and prosecution. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD properly withheld from disclosure the investigatory records you have requested. As such, any discussion as to whether the subject information may be withheld under D.C. Code §§ 2-534 (a)(2) and (a)(3)(C) is deferred at this time.

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 accordance with D.C. Code § 2-537.

Sincerely,

The Mayor's Office of Legal Counsel

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