

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-174**

February 8, 2023

VIA ELECTRONIC MAIL ONLY

Stephen Mercer

RE: FOIA Appeal 2022-174

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 Department of Forensic Science (“DFS”) to your DC FOIA request.

Background

On May 17, 2022, you submitted a DC FOIA request to DFS, identified as 2022-FOIA-06487, which sought the following:

April 16, 1998, Homicide (John Davis, Darnell Johnson, Cynthia Johnson) 1000 Block of Maryland Ave., NE
23:00-24:00 hours, Complaint No.: 195983 (Beat 511)
United States v. Ronald E. Sweeney, Jr. and Kirk J. Thomas, Jr.
1998 FEL 002875
Appeal Nos. 99-CF-966 and 99-CF-1197

A complete copy of the laboratory case file including but not limited to all records created in reference to any firearms and toolmark analysis and/or comparison(s) performed by Walter A. Dandridge, Jr., Firearms and Toolmark Examiner, Metropolitan Police, Washington, DC, on firearms, bullets, and cartridge case(s) (fired and unfired), including but not limited to the following records: chain of custody documents, laboratory notes, photographs, diagrams, sketches, bench notes, corrective action reports, communication logs, statistical calculations, final reports and draft reports.

DFS denied your request on June 8, 2022 for the following reasons:

Your request is denied pursuant to DC Code § 2-534(a)(3)(A)(i) and DC Code § 2-534(a)(3)(E) because the investigation is still open. The FOIA exemption found at § 2-534(a)(3)(A)(i) prohibits the disclosure investigatory records compiled for law-enforcement purposes where the production of such records would interfere with

enforcement proceedings. The FOIA exemption found at DC Code § 2-534(a)(3)(E) prohibits the disclosure of investigatory records compiled for law enforcement purposes where production of such records would disclose investigative techniques and procedures not generally known outside the government.

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 8, 2022, this Office notified DFS 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) or D.C. Code § 2-534(a)(3)(E), as asserted by DFS. For this reason, we remand this matter back to DFS to address your contention as to the closure of any pending proceeding, further explain the applicability of D.C. Code § 2-534(a)(3)(E), 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: DFS FOIA Officer (via email only)