

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-180**

August 15, 2022

VIA ELECTRONIC MAIL

Ms. Tamara Mooney

RE: FOIA Appeal 2022-180

Dear Ms. Mooney:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you challenge the response made by the Office of the Inspector General (“OIG”) to a record request you submitted to OIG under DC FOIA.

Background

On June 17, 2022, you submitted a DC FOIA request to OIG seeking records pertaining to yourself. On June 30, 2022, OIG responded to your request, advising you “that information you seek is part of an ongoing matter and is exempt from disclosure in accordance with [D.C. Official Code § 2- 534(a)(3)(A)(i) (“Exemption 3(A)(i)”), which exempts from disclosure investigatory records pertaining to ongoing criminal and administrative matters because premature public disclosure would interfere with pending or prospective enforcement proceedings.”¹

On July 12, 2022, you filed an appeal with this Office asserting that you were terminated without explanation and “[w]ithout knowing the details of what [you are] accused of [you are] unable to properly provide accurate responses unlike those [you] provided when [you] participated in a questioning [you were] told was for a different purpose.” On July 14, 2022, we notified OIG of your appeal and requested a response. OIG responded on July 21, 2022 and reiterated its position that the records are protected from disclosure by Exemption 3(A)(i). OIG also provided this Office with a signed declaration explaining that the requested records are “part of an ongoing matter within [OIG’s] Investigations Unit.”²

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. Official 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. *Id.* at § 2-534.

¹ OIG’s response cited the nonexistent D.C. Code § 2-537(a)(3)(A), however based on their description of the exemption it is clear they meant Exemption 3(A)(i).

The 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).

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.*

Here, the records you seek were compiled for the law enforcement purpose of an OIG investigation, and OIG has asserted that the matter is ongoing. As a result, OIG has clearly met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings. OIG asserts that premature disclosure of the records “could compromise the integrity of the investigation by revealing to a subject the nature of the investigation as well as its scope and direction.” Further, “premature release of the information gained could unnecessarily damage the reputation of a subject, or anyone else associated with the matter, if the allegations are not substantiated.” As discussed, any investigatory details revealed would potentially interfere with enforcement efforts. Therefore, at this point, the investigatory records have been properly withheld from disclosure pursuant to Exemption 3(A)(i).

Conclusion

Based on the foregoing, we affirm OIG’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 the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Daniel W. Lucas, Inspector General, OIG (via email)