

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-206**

February 1, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Sandra Seegars

RE: FOIA Appeal 2022-206

Dear Ms. Seegars:

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 October 25, 2021, you submitted a DC FOIA request to MPD, on behalf of Carol Bridges, identified as 2022-BWC-00025, which sought the following:

[T]he video from the body-worn camera from the morning of June 24, 2021, at 1311 Dexter Terrace SE, DC 20020.

MPD denied your request on October 26, 2021 because,

[a]bsent authorization and/or a waiver, a release of such records would constitute as 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).
[and]

...the majority of the (BWC) footage you have requested, was recorded inside a personal residence; therefore, exempt from disclosure pursuant to D.C. Official Codes § 2-534(2A)(A).

Additionally, MPD said the footage was exempt from disclosure pursuant to D.C. Code § 2-534 (a)(3)(A)(i) and (a)(3)(c) because it “is part of an open criminal investigation involving another jurisdiction.”

On October 26, 2021, you filed an appeal with this Office, which we docketed as FOIA Appeal 2022-011, asserting that MPD misunderstood the request. This Office dismissed this appeal as moot on April 27, 2022 based on MPD’s representation that it was in the process of

producing the requested body-worn camera (“BWC”) footage.

MPD provided you with the requested video clips on May 27, 2022 and resent them on June 9, 2022. On August 17, 2022, you filed the instant appeal asserting the following:

I am assisting Bridges.... On her behalf, and agreed by MPD, I was allowed to receive the requested video. The police entered Bridges’ home to arrest her son. The arrest was without incident. However, during the time the police were in her home, an officer knocked Bridges to the floor. MPD agreed to give her all the videos that she was in. They did not. They provided 16 clips. The clips they sent showed the police entering the home, then Bridges on the floor. They did not send the video of how she got to the floor. They did this by denying her the video from the officers whose cameras had a clear view of how she got to the floor.

You also provided the names of the officers whose footage you believed to be missing and stated that you got the names from a lieutenant who investigated the case. On September 16, 2022, we notified MPD of your appeal and requested a response. To date, a response has not been received.

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....” D.C. Code § 2-532(a).

DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *See Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

In determining whether an agency conducted an adequate search in response to a records request, the test is not whether documents might conceivably exist, but whether the agency’s search for responsive documents was adequate. *See Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search:

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to

produce the information requested.’ (*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)) . . . The court applies a ‘reasonableness’ test to determine the ‘adequacy’ of a search methodology, (*Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983))

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper- based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

Here, we do not have any information on MPD’s search for the requested BWC footage. Therefore, we are unable to determine whether or not MPD conducted an adequate search. As a result, a remand to the agency to address the additional information that you have provided.

Conclusion

Based on the foregoing, we remand this matter back to MPD to promptly issue a final determination letter describing its search and addressing your contention as to the missing BWC video footage by 1) producing the same; 2) affirming no additional BWC footage has been located; or 3) asserting an applicable exemption as to the production of any additional BWC footage identified.

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

Respectfully,

Mayor’s Office of Legal Counsel

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