

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-213**

January 27, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Marla Spindel

RE: FOIA Appeal 2022-213

Dear Ms. Spindel:

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 June 11, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-07102, which sought the following:

[C]opies of all arrest records, Gersteins, and charging documents of child abuse or neglect. [from January 1, 2018 to June 11, 2022].

MPD denied your request on August 16, 2022 for the following reasons:

A review of our records did not locate a response to our e-mail sent to you on June 13, 2022, of which we acknowledged your FOIA request, as well as, requested documents. Since that date, as we awaited your response to our request for documents, your request was placed on hold tolling our response time under 1 DCMR § 405.6.

However, please be advised, arrest records are not publicly released without the authorization and/or privacy waiver from the arrestees and/or their legal representatives. Under FOIA, a release of such records would constitute as a clearly unwarranted invasion of personal privacy and are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) and (a)(3)(C).

In addition, you are seeking arrest records specifically relating to child abuse or neglect. If you obtain authorization from an arrestee, and if such records exist pertaining to the abuse and/ or neglect of a child, please know, any identifying information pertaining to a child would be protected under D.C. Code § 2-534(a)(6), which exempts “[i]nformation specifically exempted from disclosure

by statute.” In this case, police and other law enforcement records of children are deemed confidential under D.C. Code § 16-2333(a).

Additionally, MPD referred you to the Office of the Attorney General for any “Gersteins and charging documents.”

On August 23, 2022, you filed an appeal with this Office asserting the following:

MPD refused to provide the arrest records of individuals arrested for allegations of child abuse or neglect. First, they refuse on grounds of privacy, but do not address whether they can reasonably segregate or just provide public incident reports that reflect those arrests, which do not disclose the names of the arrestee (see attached decision re same). Second, they cite to DC Code Section D.C. Code § 16-2333(a); however, this statute only protects the disclosure of records included in child abuse and neglect case files in DC Superior Court, not those of MPD.

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, FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Code § 2-532(a).

Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. 1 DCMR § 402.5. When the Freedom of Information Officer, pursuant to § 402.5, contacts the requester for additional information, the request is deemed received when the Freedom of Information Officer receives the additional information. 1 DCMR § 405.6.

Here, on June 13, 2022, MPD asked for the identity of your client and proof of your authority to receive the requested records. While arguably imperfect, this engagement both served the purpose of further identifying the records you were seeking but also, depending on whether or not the authority was presented, impacted the subsequent application of a personal privacy exemption and/or the information to be disclosed. The record is void of any response that was provided to MPD with regard to that inquiry, for which this Office would generally be inclined to deny the appeal.

While FOIA does not require a requester and an agency to consult in good faith, doing so is extremely encouraged. “A FOIA requester and the District entity receiving a request are not—or should not be—in an inherently adversarial relationship.” *Fraternal Order of Police v. District of Columbia*, 139 A.3d 853 (2016).

In the absence of any clarification, what is otherwise unclear to this Office is whether the request accurately describes the records sought in the context of MPD's ability to identify and locate them without an unreasonable amount of effort. A request shall reasonably describe the desired records. *See* 1 DCMR § 402.4. Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied. *Id.* A request for a request for "any and all documents" does not describe the records sought with "reasonably sufficient detail." *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002)("[T]he rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters." *Assassination Archives & Research Ctr. v. CIA*, 720 F.Supp. 217, 219 (D.D.C.1989). As such, a remand is appropriate.

Conclusion

Based on the foregoing, we remand this matter to MPD to perform a search for the requested records, as is, or to further engage with you on the issue of clarifying your request within the parameters of a search for which MPD believes it can reasonably perform. If the parties are unable to agree upon an adequate description of the records sought, following any attempt by MPD to clarify the request, you may file an additional appeal with this Office or exercise your rights in Superior Court. If MPD is able to identify any responsive records, it should subsequently present a final determination with respect to disclosure and/or the exercise of an applicable exemption while also specifically addressing the segregability issue as raised in 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 Superior Court in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

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