

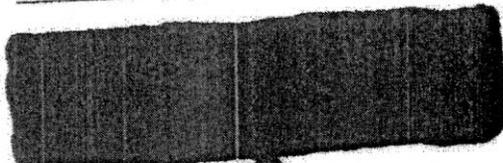
GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

May 18, 2007

VIA U.S. MAIL



Washington, DC 200

Re: Freedom of Information Act Appeal

Dear 

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act (the "FOIA"), D.C. Official Code, 2001 Ed. § 2-531 *et seq.*, dated May 7, 2007, and received in this office on May 10, 2007 (the "Appeal").

In an initial request to the District of Columbia Metropolitan Police Department ("MPD"), dated November 10, 2006, you sought access to and copies of the following:

1. All Automated Speed and Red-Light Enforcement tickets/citations issued from January 1, 2005 through November 9, 2006 for the vehicles with Maryland license plates MGM 503 and AEY 02G; and
2. All Automated Speed Enforcement tickets/citations issued from June 1, 2006 through November 9, 2006 with respect to the camera located at the 4700 block of MacArthur Blvd., NW

MPD responded to your FOIA request by letter dated April 23, 2007. MPD partially denied your request. They refused to provide automated speed enforcement tickets relying on an exemption found in D.C. Official Code, 2001 Ed. § 2-534(a)(3)(C) which exempts disclosing information compiled for law enforcement purposes that would constitute an unwarranted invasion of personal privacy. Your Appeal argues that: (1) MPD mischaracterized the original FOIA request; (2) MPD erroneously relied on an exemption that does not apply because "information cannot be private if it pertains to a public entity..."; and (3) MPD cannot lawfully deny a FOIA request based on privacy if that information can safely be redacted.

We forwarded the Appeal to MPD with a request for a response. MPD responded by letter dated May 17, 2007 (the "MPD's Response to Appeal"), and forwarded a copy to you. Included with MPD's Response to Appeal was a copy of a letter to you, dated May 3, 2007 and a list of citations issued at the 4700 block of MacArthur Blvd., NW. MPD relies on *Wenhoff v. District of Columbia*, 887 A.2d 1004 (2005) to support its position that the identities and

addresses of motorists cited for "red light camera" violations are protected from disclosure. More importantly, MPD indicated that the automated traffic enforcement program is maintained by a third party vendor, and, copies of citations issued as part of that program are not maintained either by MPD or the vendor. Our inquiry on appeal may end here, as an agency is not obligated to create or retain documents; FOIA only obligates them to provide access to those which they, in fact, have created and retained. *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 100 S. Ct. 960, 63 L. Ed.2d 267 (1980).

MPD's efforts to help you obtain these records extend beyond their requirements under FOIA. Therefore, given that MPD does not maintain the requested records, and that MPD has offered to assist you in obtaining those records from a third party, your Appeal is hereby DISMISSED.

However, you are also free under the FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court, without awaiting further action from MPD.

Sincerely,



Andrew T. Richardson, III, Esq.
Deputy General Counsel, EOM

cc Ronald B. Harris, Esq.
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