

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR**

**Freedom of Information Act Appeal: 2011-04**

February 2, 2011

Pat Cresta-Savage

Dear Ms. Cresta-Savage:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-531 (a) (2001) (the “DC FOIA”), dated December 21, 2010 (the “Appeal”).<sup>1</sup> The present action asserts that the D.C. Metropolitan Police Department (“MPD”) improperly withheld records in response to your request for information under FOIA dated December 30, 2010 (“FOIA Request”).

**Background**

Appellant’s FOIA Request sought “The PD 252 [sic] in this case (supplement to the PD251 [sic] in this case) for the date of 6/27/10 CCN# 10-089913...” In response, MPD denied the record sought by the FOIA Request pursuant to D.C. Official Code § 2-534(a)(3)(A), arguing that the record was the subject of an on-going MPD investigation, the release of which would interfere with law enforcement proceedings. On Appeal, Appellant challenges MPD’s withholding stating that MPD failed to state “how the disclosure [of the record in question] actually does interfere with an ongoing investigation.” Further, the Appeal asserts that the record contains the identity of a witness who could offer exculpatory information that could exonerate her client, Nathan Headspeth, a defendant in a D.C. Superior Court case charged with First Degree Murder while Armed. Moreover, Appellant notes that if the record sought contains information that is exempted under DC FOIA, MPD is nonetheless required to at least release any “reasonable segregable” portion of the requested public document.

MPD responded to the FOIA Appeal on January 10, 2011 elaborating the grounds for its decision to withhold the record in question, MPD Form PD-252, Supplement to the Incident Based Event Report. Specifically, MPD asserted that the record was compiled for law-enforcement purposes involving an “underlying criminal case [that] is still an active and open criminal investigation...[and] a Grand Jury indictment for murder against Nathan Headspeth

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<sup>1</sup> Talib I. Karim, Esq., Acting Special Counsel with the Office of General Counsel participated in the preparation of this decision.

is...pending.” As evidence of how the release of the PD-252 would interfere with law enforcement proceedings, MPD asserts that release of this record “would reveal investigative information that is not yet final and still in the stage of active compilation.” Furthermore, MPD argues that the release of the MPD Form PD-252 sought by Appellant would unduly circumvent the court discovery process, since this material may be released at a later stage during discovery. Finally, MPD raises a new objection to releasing the record at issue, asserting that pursuant to D.C. Official Code § 2-534(a)(3E), the PD-252 form is exempt since it is not usually available to the public through the DC FOIA.

## **Discussion**

It is the public policy of the District of Columbia (the “District”) 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 § 2-537(a). In aid of that policy, the DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532 (a). Moreover, in his first full day in office, the District’s Mayor Vincent Gray announced his Administration’s intent to ensure that the DC FOIA be “construed with the view toward ‘expansion of public access and the minimization of costs and time delays to persons requesting information.’” Mayor’s Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id.* at § 2-534.

District of Columbia Official Code § 2-534(a)(3)(A)(i), provides that records compiled for law enforcement purposes are exempt from disclosure under DC FOIA to the extent that such disclosure would interfere with enforcement proceedings. In interpreting D.C. Official Code § 2-534(a)(3)(A)(i), the court in *Barry v. Washington Post*, 529 A.2d 319 (D.C. 1987) stated:

Given the broad policy of disclosure underlying both the federal and District of Columbia statutes, we think it appropriate to adopt this interpretation for the District of Columbia FOIA as well. We therefore hold that the phrase "investigatory records compiled for law enforcement purposes" in exemption 3 refers only to records prepared or assembled in the course of "investigations which focus directly on specifically alleged illegal acts, illegal acts of particular identified [persons], acts which could, if proved, result in civil or criminal sanctions."

*Id.* at 321-322.

The name of the form, the “MPD Internal...Incident-Based Event Report,” demonstrates that the form is prepared for law enforcement purposes. Furthermore, MPD establishes a theory for how the premature release of this record, during the early stages of an ongoing criminal investigation concerning a murder could interfere with the investigation. With these two elements met, this office finds that the MPD Form PD-252 is exempt from disclosure under D.C. Code §2-534(a)(3)(A). Moreover, we find it unnecessary to address the other grounds offered by MPD for withholding this record, given that we have already found that the requested form PD-252 is excluded under an exception to the D.C. FOIA.

**Conclusion**

Therefore, we uphold MPD's decision to withhold the entire document that Appellant has requested. This appeal is hereby DISMISSED.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Sincerely,

Brian K. Flowers  
General Counsel to the Mayor

cc: Ron Harris, Esq., MPD