

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

**Freedom of Information Act Appeal: 2012-10**

December 8, 2011

James McLaughlin, Esq.

Dear Mr. McLaughlin:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (“DC FOIA”), dated November 17, 2011 (the “Appeal”). You, on behalf of the Washington Post and Cheryl W. Thompson (“Appellant”), assert that the Metropolitan Police Department (“MPD”) improperly withheld records in response to your request for information under DC FOIA dated April 22, 2011 (the “FOIA Request”).

Appellant’s FOIA Request sought, with respect to 103 specified homicide cases, “[a]ll PD 251s, PD 252s, WACIIS reports, arrest warrant affidavits and any documentation used to justify an administrative closure.”<sup>1</sup>

In June, 2011, MPD notified Appellant that it was in the process of locating, reviewing, and, as necessary, redacting the requested records. Appellant and MPD “informally” agreed that records would be produced on a rolling basis. Appellant states that there have been disagreements as to records which have been withheld or redacted as part of the rolling production, but Appellant and MPD are still attempting to resolve all but one of such disagreements. The one exception is the basis for the Appeal. By letter dated September 13, 2011, MPD stated that it was withholding the Form PD-252, the Supplemental Incident Report. MPD explained that Form PD-252 is used to supplement Form PD-251, the Incident Report. While Form PD-251 is made publically available, Form PD-252 is used to record information which is too sensitive and/or confidential to record on Form PD-251. In the case of homicide investigations, it is used to “allow the homicide detectives to candidly document and thus communicate confidential information, procedures and/or case development within the Homicide Branch.” Based on the foregoing, MPD claimed that these records “fall squarely in the ‘investigative technique’ exemption under D.C. Code 2-534(a)(3E).”

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<sup>1</sup> Appellant indicates that there was a subsequent request, filed in June, 2011, adding an additional 75 cases, but the form of the request was not filed with the appeal.

On Appeal, Appellant challenges the categorical withholding of all Forms PD-252. Generally, Appellant states that the withholding was based on the general description of the use of the form and not with respect to the content of specific records at issue. Moreover, Appellant states that MPD has not indicated why any of these records cannot be redacted.

In particular, Appellant first contends that, contrary to the position of MPD, Form PD-252 has been released in the past (and to Appellant) and without any adverse consequences.

Second, Appellant contends that the specific statutory exemption cited by MPD, that is, for disclosures which would reveal investigative techniques and procedures, cannot apply to every Form PD-252 and to all information in each of such forms. It states that MPD has not identified any particular technique or procedure, but has only generally explained that the form is used to internally document confidential information or developments. Appellant does not believe that this can be applied to the documentation of interactions with general sources because such interactions are well known and would be covered by the statutory exemption regarding the identity of such sources. Appellant states that it would not object to the redaction of information relating to confidential sources under criteria which it sets forth, such as limitation to confidential sources and not all eyewitness statements.

Third, Appellant states that non-exempt information must be redacted and that there is no indication that MPD has considered the redaction of information in the forms.

In its response, dated December 7, 2011, MPD reconsidered its position. Upon review of the Appeal and the original request and response, MPD is releasing the requested Forms PD-252, subject to redaction for disclosures which may be exempt under DC FOIA. We note that Appellant has indicated, generally, that it would not object to appropriate redactions.

Based on the foregoing, we will now consider the Appeal to be moot and it is hereby dismissed, without prejudice to challenge the redactions to the Forms PD-252.

Sincerely,

Donald S. Kaufman  
Deputy General Counsel

cc: Ronald B. Harris, Esq.  
Natasha Cenatus