

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-31**

March 11, 2015

Mr. Byron Smith

RE: FOIA Appeal 2015-31

Dear Mr. Smith:

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) ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On October 29, 2014, you submitted a request under the DC FOIA to the MPD seeking surveillance and arrest reports, notes, tape recorded statements, witness statements, video tapes, photographs, and letters from 1984-1990 related to criminal case number F-6051-89. The MPD responded to your request on January 28, 2015, stating that your request could not be granted because "A search for records responsive to your request was conducted by the Criminal Investigative Unit for the [MPD] and yielded negative results." The MPD further explained that it retains the types of records you are seeking for 15 years, and the MPD was unable to fulfill your request because your records fall outside of that timeframe. You sent a letter to the Mayor dated February 3, 2015, appealing the MPD's response to your request.

The MPD responded to your appeal in a letter to this office dated March 11, 2015. The MPD affirmed its position that it conducted a search for the records you requested and determined that no documents could be located and the retention period for these documents has expired.

Discussion

It is the public policy of the District of Columbia 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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect ... and ... copy any public record of a public body ..." *Id.* at § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

Under the DC FOIA, an agency is required to disclose materials if they were "retained by a public body." D.C. Official Code § 2-502(18). Here, MPD does not possess records that are responsive to your request. You are seeking records from investigations that were conducted

from 1984-1990, and the MPD retains these records for 15 years. Since your records fall outside of the 15-year timeframe, the MPD is unable to produce what you are seeking.

Conclusion

Based on the foregoing, we uphold the MPD's decision and hereby dismiss 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 the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)