

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-35**

March 16, 2015

VIA ELECTRONIC MAIL

Mr. Darryl Hawkins

RE: FOIA Appeal 2015-35

Dear Mr. Hawkins:

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"). You assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On January 12, 2015, you submitted a request to MPD for video footage from January 10, 2015, between 5:45 a.m. to 6:15 a.m. from the camera located at 12th Street and Constitution Avenue, N.W. The MPD responded to your request on January 16, 2015, explaining that according to the MPD's Technical Information Division ("TID"), the camera from which you sought footage was inoperable on January 12, 2015, and as a result no footage could be recovered.

The MPD responded to your appeal in a letter to this office dated March 13, 2015. MPD reiterated its position and stated that upon receiving your appeal, an MPD FOIA officer contacted the TID again, and the TID verified that the camera from which you seek footage was inoperable on January 10, 2015.

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).

Public records are defined under the DC FOIA as including "all books, papers, maps, photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Public records include information stored in an electronic format." D.C. Official Code § 2-502(18). 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.

The MPD has indicated that it does not possess the records that you have requested. Under the DC FOIA, an agency is required to disclose materials only if they are “retained by a public body.” D.C. Official Code § 2-502(18). Here, MPD does not possess the camera footage you have requested because the camera in question was not working on the date for which you requested footage.

Conclusion

Based on the foregoing, we uphold the MPD’s determination that it does not possess any records that are responsive to your request. If you are dissatisfied with the 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 Harris, Esq., MPD (via email)