

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-12**

November 13, 2015

VIA U.S. MAIL

Mr. Ronald L. Legg

RE: FOIA Appeal 2016-12

Dear Mr. Legg:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On September 24, 2015, you submitted a FOIA request to the MPD seeking “any information pertaining to the duty character of” a named officer along with “any information on the special training which accompanied [the named officer’s] performance of duties, and sponsors names of that training.”

On October 2, 2015, the MPD responded to your request, stating that any responsive records would be exempt from disclosure under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C) because producing them would constitute an unwarranted invasion of the officer’s personal privacy.

In your appeal, you assert that the requested information would help show the named officer’s “character of duty” and that there is a public interest in the information because it relates to “police work product,” justice, and ethics. Lastly, you raise a private interest argument, asserting that you were wrongly convicted of a crime as a result of the named officer’s actions, therefore the release of any disciplinary files pursuant to the request “does not constitute an unwarranted invasion of privacy.”

In response to your appeal, the MPD sent this office a letter on November 13, 2015, reaffirming its position that disclosing investigative reports, citations, and disciplinary files of identified police officers, if they existed, would constitute an unwarranted invasion of an officer’s personal privacy. MPD asserted, for the first time, that it could neither admit nor deny whether any complaints or investigations had been filed regarding the named officers, a so-called “Glomar” response. Nevertheless, MPD notes that a search of MPD’s human resources office determined that no records exist relating to the named officer, suggesting that MPD never employed him.

Discussion

It is the public policy of the District of Columbia 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 § 2-531. 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). The right to inspect public records is subject to various exemptions that may form the basis for a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute may be examined to construe the local law.

The crux of this matter is that it appears that the named officer has never worked for the MPD.¹ As a result, MPD has not withheld any records because none exist. This Office will therefore not consider the applicability of MPD’s asserted arguments related to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C) or the propriety of a Glomar response to this appeal.

Had MPD originally responded to your request with a Glomar response (a refusal to admit or deny the existence of a record), such a response may have been appropriate because neither admitting nor denying the existence of a disciplinary file is permissible to avoid the unwarranted privacy harm of associating a public employee with alleged, unproven misconduct. Unfortunately, MPD chose to deny your request by asserting that the non-existent records were exempt from disclosure under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C), prompting this appeal. We suggest that in response to similar future FOIA requests, the MPD should make an initial determination as to whether a named individual was employed by the MPD before denying records that definitively do not exist.

¹ A cursory internet search conducted by this Office indicates that the named officer may have worked for the Metro Transit Police Department, as opposed to the Metropolitan Police Department.

Conclusion

Based on the foregoing, we uphold the MPD's decision and hereby dismiss your appeal. Because the named officer appears to have never been employed by the MPD, no responsive documents are being withheld, and no privacy interests need to be protected.

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)