

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-08**

December 5, 2016

VIA ELECTRONIC MAIL

Ms. Qing Lu

RE: FOIA Appeal 2017-08

Dear Ms. Qing Lu:

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 challenge the response made by the Office of the Inspector General (“OIG”) to a record request you submitted to the OIG under DC FOIA.

Background

On the dates of August 2, September 13, and October 5, 2016, you submitted a series of FOIA requests to OIG for records relating to OIG case number 2016-1103. OIG responded to your requests, denying each on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings.

On November 21, 2016, this Office processed your appeal. In your appeal, you proffer your beliefs that the investigation should not take long to conduct and that you are entitled to the records that you requested.

The OIG responded to your appeal in a letter to this Office in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i). OIG provided this office with a signed affidavit explaining that the OIG investigation at issue, which is the subject of your records requests, is still ongoing.

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, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of 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), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). “[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies.” See *Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.*

Here, the records you seek were compiled for the law enforcement purpose of an OIG investigation, and OIG has asserted that the investigation pertaining to the matter is ongoing. As a result, OIG has clearly met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings. OIG asserts that disclosure of the records could reveal “nature, scope and direction of the investigation.” Further, disclosure could “unnecessarily taint the reputation of anyone associated with the matter if the allegations are unsubstantiated.” While your appeal raises several concerns regarding how long an investigation should take, these concerns do not overcome the purpose of Exemption 3(A)(i), which is to prevent interference of enforcement proceedings. As discussed, any investigatory details revealed would potentially interfere with enforcement efforts. Therefore at this point, the investigatory records have been properly withheld from disclosure pursuant to Exemption 3(A)(i).

Conclusion

Based on the foregoing, we affirm OIG’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.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Daniel W. Lucas, Inspector General, OIG (via email)