

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**EXECUTIVE OFFICE OF THE MAYOR**



**Mayor's Office of Legal Counsel**

August 16, 2017

VIA ELECTRONIC MAIL

Anonymous Requestor

RE: FOIA Appeal 2017-120

Dear Anonymous Requestor:

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"), asserting that the Metropolitan Police Department ("MPD") improperly withheld records you requested.

Background

On June 15, 2017, you submitted a FOIA request to MPD for all arrest records from 2014 to 2017 in a spreadsheet format. MPD responded by providing you with links to websites where daily arrest reports for each police district are posted. You emailed MPD challenging its response because the information available was not in a spreadsheet format. MPD maintained that it had satisfied its obligation under FOIA by publically posting the information online.

On August 2, 2017, you appealed MPD's response, arguing that the information on the websites MPD provided is not easy to work with or analyze; therefore, MPD should provide the data in your requested format pursuant to 5 U.S.C. § 552(a)(3)(B)<sup>1</sup> and D.C. Official Code § 2-532(a-1). You asserted that MPD's database software can readily query and assemble the data into your requested format.

This Office notified MPD of your appeal. On August 10, 2017, MPD responded that its information technology staff could not determine if the format was feasible based on instruction in your request; therefore, MPD reserved its position on appeal until you provide specific instructions or a sample template for the records.<sup>2</sup> MPD's response noted that fees may be applicable to producing the requested format.

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

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<sup>1</sup> While cases construing the federal FOIA statute may be instructive to construe DC FOIA, the federal FOIA statute itself is not instructive or controlling to DC FOIA.

<sup>2</sup> A copy of MPD's statement is attached.

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 . . .” D.C. Official Code § 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. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

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 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).

The issue raised by your appeal is whether MPD is obligated to provide records in a different format after it has posted the information online. D.C. Official Code § 2-532(a-1) states that records will be provided “in any form or format requested by the person, provided that the person shall pay the costs of reproducing the record in that form or format.”<sup>1</sup> However, agencies are not required to satisfy formatting requests if they lack technological capacity. *See, e.g., Milton v. DOJ*, 842 F. Supp. 2d 257, 259-61 (D.D.C. 2012) (holding that an agency did not have to produce telephone conversation because it lacked the technological capacity to redact exempt portions of the recordings); *LaRoche v. SEC*, 289 F. App’x 231, 231 (9th Cir. 2008) (explaining that agency was not required to create new documents to satisfy FOIA request when it could not readily reproduce records sought in searchable electronic format requested).

Here, you assert that the data and format you seek are readily reproducible by MPD’s current database software. MPD has not addressed whether it has the technological capacity to produce the arrest data in the desired format because it claims it cannot determine specifically what data or format you seek. After reviewing the instructions provided in your request and appeal, it appears a reasonable interpretation of your request is that you are seeking the same data available in the daily public arrest reports aggregated into a CSV or Excel spreadsheet format. Therefore the responsive data fields would be: the arrest’s number, date, and location; the PSA; the offender’s last name, first name, and date of birth; an offense description; and the last name of the arresting officer. Presumably, each data field would have its own column in a spreadsheet; however, an appropriate format would be however MPD’s database software generates CSV or Excel files.

Based on MPD’s limited response, it is unclear if a spreadsheet produced by querying MPD’s database would require additional review for information exempt from disclosure under FOIA (e.g. arrest information regarding juveniles). Further, approximately four years of arrest records likely involves a voluminous amount of data. Consequently, as noted in MPD’s response there may be fees applicable to producing your request.

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<sup>1</sup> This differs from the corresponding section of federal FOIA, 5 U.S.C. § 552(a)(3)(B), which states that records will be produced “in any form or format requested by the person *if the record is readily reproducible by the agency in that form or format.*” (emphasis added)

Conclusion

Based on the foregoing, we remand MPD's decision. MPD shall: (1) contact you to verify the format of the records sought and (2) begin providing you with non-exempt responsive records in a spreadsheet format, subject to redaction, on a rolling basis, within 10 business days from the date of this decision.<sup>1</sup>

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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

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

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<sup>1</sup> If MPD determines that fees for review and production will exceed \$250, MPD may require advance payment before disclosing records pursuant to D.C. Official Code § 2-532(b-3)