

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-70**

May 12, 2017

VIA ELECTRONIC MAIL

Jarrold S. Sharp, Esq.

RE: FOIA Appeal 2017-70

Dear Mr. Sharp:

This letter responds to the twenty-fifth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). Here, you appeal the response of the Metropolitan Police Department (“MPD”) to your request for records relating to “an unsigned and undated affidavit” that you claim a specific MPD employee provided to the Executive Office of the Mayor in March or April 2017.

On April 10, 2017, you submitted a FOIA request to MPD for “any and all records that relate, discuss, and/or include an unsigned and undated affidavit allegedly provided by [a named MPD employee] to attorneys at the Executive Office of the Mayor in either March or April 2017.” MPD responded to your request by stating that the named employee did not provide any unsigned or undated affidavits to attorneys at the Executive Office of the Mayor (“EOM”) during the relevant time period. As a result, MPD advised you that no responsive records exist.

You appealed MPD’s response by attaching a copy of what you contend is the “unsigned and [sic] affidavit” that the MPD employee at issue provided to the EOM. This Office notified MPD of your appeal. MPD responded by explaining that the underlying document about which you are seeking records is not an affidavit; it is a statement.¹ MPD explained that the statement was not purported to be made under oath or penalties of perjury and noted that MPD presumes you understand the distinction between a statement and an affidavit since you have represented that you are an attorney.

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 . . .” 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).

¹ A copy of MPD’s response is attached.

There is no dispute here as to the underlying document about which you are seeking records. MPD's FOIA Officer submitted a document to this Office in response to FOIA Appeal 2017-37, which you filed in March 2017. The document is a description by MPD's FOIA Officer of his role vis a vis FOIA appeals and the search that was the subject of your request in FOIA Appeal 2017-37. In our decision there, we characterized the document as "the FOIA officer's statement," and we provided a copy to you.² None of the attorneys in this Office, which adjudicated all FOIA appeals in March and April 2017, received an "unsigned and undated affidavit" from MPD during the relevant time period. As a result, we need not engage in an analysis of whether MPD's search was adequate; no records exist relating to an "unsigned and undated" affidavit because no such document was provided to this Office.

Based on the foregoing, we affirm MPD's decision. 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 Harris, Deputy General Counsel, MPD (via email)

² You responded in an email dated April 6, 2017, "The purported statement appears to be unsigned and undated."