

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



Mayor's Office of Legal Counsel

December 5, 2017

VIA ELECTRONIC MAIL

Mr. Sean Dunagan

RE: FOIA Appeal 2018-044

Dear Mr. Dunagan:

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 from MPD under DC FOIA.

Background

On May 16, 2017, you submitted a request to MPD for records related to an unsolved homicide that occurred on July 10, 2016. On June 2, 2017, MPD denied your request withholding all responsive documents 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 appeal, you challenge MPD’s blanket denial of your FOIA request, asserting that reasonably segregable portions of the records should be disclosed pursuant to D.C. Official Code § 2-534(b). Further, you argue that some of the responsive records have already been made public and should not be withheld as exempt from disclosure. Finally, you request that MPD conduct a more thorough review of the responsive records to determine whether certain documents can be disclosed.

On November 20, 2017, MPD sent you a response to your appeal. MPD reconsidered its initial denial and provided you with non-exempt responsive records. MPD reasserted its position that its investigative records are protected from disclosure by Exemption 3(A)(i).¹ In support of this position, MPD proffered that its investigation into the matter is ongoing and that release of the requested records could adversely affect MPD’s enforcement efforts by informing any suspects or witnesses on the direction of the investigation and enabling them to conform testimony to escape culpability.

¹ MPD sent of copy of its response to this Office.

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.*

On appeal you assert that certain information should be reasonably segregable from records protected by Exemption 3(A)(i). In response to your appeal, MPD made available its incident report, press release, and reward flyer. MPD asserts that the remaining responsive records you seek were compiled for the law enforcement purpose of investigating a homicide, and MPD has asserted that the criminal investigation pertaining to the homicide is ongoing. As a result, MPD has met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings.

Your appeal does not appear to challenge the application of Exemption 3(A)(i) to certain responsive records. The Exemption’s purpose is to protect against releasing investigatory details that could interfere with law enforcement efforts. MPD maintains that disclosing any portion of its remaining investigatory records could reveal the direction of its ongoing investigation and allow suspects to avoid detection, arrest, and prosecution. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD properly withheld from disclosure the investigatory records you requested.

Conclusion

Based on the foregoing, we affirm MPD'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.

Sincerely,

The Mayor's Office of Legal Counsel

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