

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

December 13, 2017

VIA ELECTRONIC MAIL

Mr. Zachary Hill

RE: FOIA Appeal 2018-049

Dear Mr. Hill:

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 August 30, 2017, you submitted a request to MPD on behalf of your client for records related to forgery and felony murder charges against your client in 1994. These charges were dismissed, and you indicated that you were seeking the records to seal your client's criminal record. Your request also included a signed authorization from your client informing MPD that it could release the records to you. On November 20, 2017, you received MPD's response to your request, which granted your request in part and disclosed four pages of prosecution reports, and denied your request in part and withheld responsive documents on three grounds: (1) D.C. Official Code § 2-534(a)(3)(A)(i), which exempts from disclosure certain investigatory records compiled for law enforcement purposes that would interfere with enforcement proceedings; (2) D.C. Official Code § 2-534(a)(4), which exempts from disclosure certain records pursuant to the deliberative process privilege; and (3) D.C. Official Code § 2-534(a)(2) and (a)(C)(3), which exempt from disclosure records (or portions thereof) that would constitute an unwarranted invasion of person privacy.

On appeal, you challenge MPD's withholding of responsive records on the basis that the information is protected by the deliberative process and that disclosure would interfere with enforcement proceedings. You argue that the exculpatory facts contained the records are neither predecisional nor deliberative. Additionally, you assert that disclosure of information regarding your client's innocence would not interfere with any ongoing investigatory or enforcement efforts. Finally, you note that your client has no objection to the redaction of personally identifiable information of third parties or information that is not exculpatory.

On December 7, 2017, MPD sent this Office a response to your appeal.¹ MPD asserted that it reconsidered its initial denial and would provide you with additional responsive records by

¹ A copy of MPD's response is attached.

December 11, 2017. MPD stated its belief that its additional disclosure would satisfy your request; however, MPD did not identify which, if any, responsive records it continues to withhold or what exemptions apply to these records.

Since your appeal was based on MPD's withholding of exculpatory records and MPD asserted that it would disclose additional records to satisfy your request, we consider your appeal to be moot. You are free to assert any challenge, by separate appeal to this Office, to MPD's substantive response.

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)