

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



Mayor's Office of Legal Counsel

February 27, 2018

VIA ELECTRONIC MAIL

Ms. Victoria D. Baranetsky

RE: FOIA Appeal 2018-077

Dear Ms. Baranetsky:

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”), on the grounds that the Metropolitan Police Department (“MPD”) improperly withheld records responsive to your request under the DC FOIA.

On November 27, 2017, your organization submitted a FOIA request to MPD for records related to police escorts for foreign governments or dignitaries for a period between 2016 and 2017. The request noted that your organization was fine with MPD redacting names of individuals in its disclosure. On December 11, 2017, MPD denied the request, asserting that responsive records were exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(D) (“Exemption 3(D)”).

You appealed MPD’s denial, asserting that Exemption 3(D) was not applicable to the request and that it was improper for MPD to entirely withhold responsive records rather releasing segregable portions with redactions. This Office notified MPD of your appeal on February 13, 2018, and requested that it respond. MPD responded on February 22, 2018,¹ indicating that it disclosed a number of responsive records with portions of the records redacted pursuant to Exemption 3(D).² MPD advised us that it would reconsider its application of Exemption 3(D) and provide you with an additional response.

Exemption 3(D) provides an exemption for disclosure for “[i]nvestigatory records compiled for law-enforcement purposes... but only to the extent that the production of such records would . . . (D) Disclose the identity of a confidential source....” On its face, your request does not appear to

¹ A copy of MPD’s response is attached.

² MPD’s assertion that it provided redacted records contradicts your appeal, MPD’s initial denial letter, and the online portal, FOIAXpress, all of which state that your organization’s request was denied in full. Our decision is not affected by this contradiction; however, MPD should confirm whether or not its indented disclosures reached your organization.

involve records that would fall under the protection of Exemption 3(D). Further, MPD has not demonstrated that the records you seek are investigatory records or that the records involve the identity of confidential sources. As a result, we find MPD's denial based on Exemption 3(D) to be improper.

We hereby remand this matter to MPD to complete its review of the responsive records, and to disclose to you any non-exempt portions within 7 business days from the date of this decision. If MPD redacts portions of the records it discloses to you, it shall provide a reasonable explanation of the basis for the redactions. You may challenge MPD's subsequent response by separate appeal to 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)