

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



Mayor's Office of Legal Counsel

March 7, 2018

VIA ELECTRONIC MAIL

Ms. Clare Garvie

RE: FOIA Appeal 2018-078

Dear Ms. Garvie:

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”) failed to perform an adequate search in response to your request for records related to MPD’s use of facial recognition technology (“FRT”).

In a letter dated December 18, 2017, you submitted a request to MPD for nine categories of records pertaining to FRT. On January 8, 2018, MPD denied your request, stating that it was unable to locate responsive records. MPD’s denial asserted that the reason it had no responsive records was because it had not acquired FRT.

On February 14, 2018, this Office received your appeal and asked MPD for its response. On appeal you assert that MPD uses FRT in its investigations; therefore, an adequate search should produce responsive records. Your appeal includes exhibits demonstrating that an investigating officer entered a photograph of a suspect’s face into “an MPD database that has facial recognition software” to determine the identity of the suspect.

On February 22, 2018, MPD requested an extension to respond to your appeal. On March 1, 2018, MPD advised us that it is awaiting a response from its software vendor to determine whether information regarding the FRT system is exempt from disclosure. On March 7, 2018, MPD asserted that it had conducted an additional search which located responsive records.

Based on the information provided in your appeal and MPD’s subsequent statements, it is apparent that MPD’s initial search was not adequate. MPD now represents that it has completed a search that resulted in responsive records; however, it is unclear to this Office whether MPD’s search sufficiently addressed the nine categories of your request.

Based on the foregoing, we remand this matter to MPD. Within 10 business days from the date of this decision, MPD shall identify the relevant locations for records for each category of your

request and describe the results of its search to you. Further, MPD shall disclose to you non-exempt portions of responsive records in accordance with DC FOIA. You are free to challenge MPD's forthcoming substantive 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)