

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

JUDICIAL WATCH, INC.,

Plaintiff,

v.

DISTRICT OF COLUMBIA,

Defendant.

Case No. 2021 CA 001710 B

Judge Jason Park

Next Event: Initial Scheduling Conference

Date: November 5, 2021, at 9:30 a.m.

DEFENDANT DISTRICT OF COLUMBIA'S MOTION
TO EXTEND THE TIME TO RESPOND TO PLAINTIFF'S COMPLAINT

Defendant District of Columbia respectfully moves the Court under Super. Ct. Civ. R. 6(b)(1) to extend its deadline to answer or otherwise respond to Plaintiff's Complaint from September 8, 2021, until and including October 8, 2021. The District needs additional time to confer with its two client agencies and prepare a complete and adequate responsive pleading. Additionally, the Metropolitan Police Department is actively working with its federal law enforcement partners to determine whether the law enforcement exemption found under D.C. Code § 2-534(a)(3) continues to apply to certain responsive records. This is the District's second request for an extension of this deadline and this request will not affect any other deadline.

A memorandum of points and authorities in support of this motion and a proposed order are attached for the Court's consideration.

Date: September 3, 2021

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

CHAD COPELAND
Deputy Attorney General

**IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. 2021 CA 01710 B
v.)	Judge Jason Park
)	Next Event: Initial Scheduling Conference
DISTRICT OF COLUMBIA,)	Date: November 5, 2021; 9:30 am
)	
Defendant.)	
_____)	

**PLAINTIFF’S STATEMENT OF POINTS AND AUTHORITIES
OPPOSING DEFENDANT’S MOTION TO EXTEND THE
TIME TO RESPOND TO PLAINTIFF’S COMPLAINT**

1. Defendant’s second motion to extend the time to respond to Plaintiff’s complaint by another 30 days should be denied.¹

2. Tellingly, Defendant does not even assert – let alone demonstrate – that this second extension will not prejudice Plaintiff. Nor could it. Defendant has brazenly violated the law on an issue of significant public interest.

3. Plaintiff submitted its FOIA requests to the Office of the Chief Medical Examiner and the Metropolitan Police Department on April 8, 2021. Plaintiff also submitted its administrative appeal to the Mayor’s Office on April 9, 2021. Five months later, the Metropolitan Police Department and the Mayor’s Office still have not followed the law.

4. The records are of significant public interest. The records concern the shooting of Ashli Babbitt by a U.S. Capitol Police officer in the U.S. Capitol on January 6, 2021. On April 14, 2021, the U.S. Department of Justice announced, “The U.S. Attorney’s Office for the District

¹ Plaintiff consented to Defendant’s first request.

of Columbia and the Civil Rights Division of the U.S. Department of Justice will not pursue criminal charges against the U.S. Capitol Police officer involved in the fatal shooting of 35-year-old Ashli Babbitt.” See <https://www.justice.gov/usao-dc/pr/departement-justice-closes-investigation-death-ashli-babbitt>. Similarly, on August 23, 2021, U.S. Capitol Police announced that it “ha[d] completed the internal investigation into the fatal shooting of Ms. Ashli Babbitt” and that “USCP’s Office of Professional Responsibility determined the officer’s conduct was lawful and within Department policy.” See <https://www.uscp.gov/media-center/press-releases/uscp-completes-internal-investigation-january-6-officer-involved>. In addition, the officer who shot Ms. Babbitt gave an exclusive interview to NBC News on or about August 26, 2021. See <https://www.nbcnews.com/news/us-news/officer-who-shot-ashli-babbitt-during-capitol-riot-breaks-silence-n1277736>.

5. Defendant has not demonstrated that it cannot file an answer at this time. To the extent Defendant intends to continue to withhold records responsive to Plaintiff’s FOIA requests, any defense of those withholdings is proper on a motion for summary judgment. See e.g., *National Security Counselors v. Central Intelligence Agency*, 960 F. Supp. 2d 101, 133 (D.D.C. 2013) (“FOIA cases typically and appropriately are decided on motions for summary judgment.”).

For all the reasons stated above and the entire record herein, Plaintiff respectfully requests that the Court deny Defendant’s motion for an extension of time to respond to Plaintiff’s complaint”.²

² Although Plaintiff opposes Defendant 30-day request, Plaintiff does not oppose an extension of 10 additional days.

Dated: September 7, 2021

Respectfully submitted,

/s/ Michael Bekesha
Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street S.W., Suite 800
Washington, DC 20024
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Email: mbekesha@judicialwatch.org

Counsel for Plaintiff

**IN THE SUPERIOR COURT
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[PROPOSED] ORDER

Upon consideration of Plaintiff’s Statement of Points and Authorities Opposing Defendant’s Motion To Extend the Time To Respond to Plaintiff’s Complaint, and the entire record herein, it is hereby ORDERED that:

1 Defendant’s motion is denied.

SO ORDERED this ____ day of _____, 2021.

Hon. Jason Park
Superior Court Judge

Civil Litigation Division

/s/ Alicia M. Cullen

ALICIA M. CULLEN [1015227]

Chief, Civil Litigation Division, Section III

/s/ Adam P. Daniel

ADAM P. DANIEL [1048359]

KATRINA SEEMAN [1671729]

Assistant Attorneys General

Civil Litigation Division

400 6th Street, NW

Washington, D.C. 20001

Phone: (202) 724-6607

Fax: (202) 724-5917

Email: katrina.seeman@dc.gov

Counsel for Defendant District of Columbia

RULE 12-I CERTIFICATION

I certify that on September 3, 2021, I emailed Plaintiff's counsel who represented that Plaintiff opposes the relief requested herein.

/s/ Adam P. Daniel

ADAM P. DANIEL

Assistant Attorney General

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT
DISTRICT OF COLUMBIA’S MOTION TO EXTEND THE TIME TO RESPOND TO
PLAINTIFF’S COMPLAINT**

Plaintiff Judicial Watch sues Defendant District of Columbia under the D.C. Freedom of Information Act, D.C. Code § 2-531. Plaintiff alleges it submitted a FOIA request on April 8, 2021, to the Metropolitan Police Department (MPD) requesting all records about the death of Ashli Babbitt. Compl. ¶ 4. Plaintiff also claims it submitted a similar FOIA request to the District of Columbia Office of the Chief Medical Examiner (OCME) on April 8, 2021, seeking access to all records related to Ms. Babbitt’s death and its related investigation. *Id.* ¶ 7. Plaintiff claims that OCME denied Plaintiff’s FOIA request and, as of May 24, 2021, OCME “failed to provide Plaintiff with a final determination of its administrative appeal.” *Id.* ¶ 8-11. The District requests a 30-day extension of its September 8, 2021 deadline to answer or otherwise respond to Plaintiff’s Complaint, making its response due by October 8, 2021. *See* 08/05/2021 Order.

Super. Ct. Civ. R. 6(b)(1)(A) provides that “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time” and the District files this motion at least two days before its deadline to answer as required by the Court’s Supplemental Order. Plaintiff’s Complaint concerns two separate District agencies and their respective responses to

D.C. FOIA requests. The District needs additional time to confer with MPD and OCME, determine whether information can and should be produced, evaluate how to respond to Plaintiff's Complaint, and to prepare a responsive pleading. MPD is actively working with its federal law enforcement partners to determine whether the law enforcement exemption found under D.C. Code § 2-534(a)(3) continues to apply to certain responsive records. This is the District's second request for an extension of its response deadline. No other deadline will be affected by this relief.

For these reasons, the District respectfully requests that the Court grant this motion.

Date: September 3, 2021

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

CHAD COPELAND
Deputy Attorney General
Civil Litigation Division

/s/ Alicia M. Cullen
ALICIA M. CULLEN [1015227]
Chief, Civil Litigation Division, Section III

/s/ Adam P. Daniel
ADAM P. DANIEL [1048359]
KATRINA SEEMAN [1671729]
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Counsel for Defendant District of Columbia

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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ORDER

Upon consideration of Defendant District of Columbia's Motion to Extend the Time to Respond to Plaintiff's Complaint, any opposition and reply thereto, it is this ____ day of _____, 2021, hereby

ORDERED that the District's Motion is **GRANTED**; and it is further

ORDERED that the District shall answer or otherwise respond to Plaintiff's Complaint on or before October 8, 2021.

SO ORDERED.

Jason Park
Associate Judge

Copies e-served to:

Michael Besheka, Esq.
Counsel for Plaintiff Judicial Watch, Inc.

Adam Daniel, Assistant Attorney General
Katrina Seeman, Assistant Attorney General
Counsel for Defendant District of Columbia

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**PLAINTIFF’S SUPPLEMENTAL STATEMENT OF POINTS
AND AUTHORITIES OPPOSING DEFENDANT’S MOTION TO
EXTEND THE TIME TO RESPOND TO PLAINTIFF’S COMPLAINT**

1. After Plaintiff filed its statement of points and authorities opposing Defendant’s motion to extend the time to respond to Plaintiff’s Complaint, Plaintiff received a final determination from the Metropolitan Police Department in response to the FOIA request at issue in this case. The final determination is highly relevant to Defendant’s motion for an extension of time.

2. In its motion, Defendant asserts it “needs additional time to confer with MPD and OCME, determine whether information can and should be produced, evaluate how to respond to Plaintiff’s Complaint, and to prepare a responsive pleading. MPD is actively working with its federal law enforcement partners to determine whether the law enforcement exemption found under D.C. Code § 2-534(a)(3) continues to apply to certain responsive records.” Yet, MPD’s final determination suggests such time is not necessary.

3. In its email dated September 7, 2021 and sent at 3:39 p.m., MPD informed Plaintiff:

Upon review, to the extent that this request asks for specific records of specific incidents or certain activities referred to occurring on or related to such incidents on January 6, 2021, at the U.S. Capitol, I have determined to withhold any records, in their entirety, that may be responsive to this request because the subject matter of the records you seek remain the subject of open and ongoing investigation(s) and are exempt under DC Official Code §2-534 (a)(3)(A)(i) and (a)(3)(B), which protects investigatory records compiled for law-enforcement purposes to the extent that the production of such records would interfere with enforcement proceedings.

4. In other words, based on MPD's own statement, it appears MPD has concluded "determin[ing] whether information can and should be produced" and has finished "actively working with its federal law enforcement partners to determine whether the law enforcement exemption found under D.C. Code § 2-534(a)(3) continues to apply to certain responsive records." If such steps were still ongoing, MPD would not have issued a final determination on September 7, 2021, five months after the FOIA request was sent.¹

5. In short, this new information demonstrates that Defendant seeks delay for nothing more than delay's sake.

Dated: September 8, 2021

Respectfully submitted,

/s/ Michael Bekesha
Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street S.W., Suite 800
Washington, DC 20024
Phone: (202) 646-5172
Email: mbekesha@judicialwatch.org

Counsel for Plaintiff

¹ In addition, as noted previously, the Office of the Chief Medical Examiner produced records, albeit many in redacted form, on June 30, 2021. Therefore, it cannot be said that OCME also not concluded "determin[ing] whether information can and should be produced."

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**DEFENDANT DISTRICT OF COLUMBIA'S REPLY TO PLAINTIFF'S OPPOSITION
TO DEFENDANT'S MOTION TO EXTEND THE TIME TO RESPOND TO
PLAINTIFF'S COMPLAINT**

On September 7, 2021, William Marshall, the D.C. FOIA requestor, received an email in error from the Metropolitan Police Department (MPD) stating that his request was being denied. *See* 09/07/2021 Email from R. Eckert to W. Marshall at 3:39 p.m., attached hereto as Exhibit A. On September 8, 2021, MPD sent a follow-up email informing Mr. Marshall that the original email he received was sent in error. *See* 09/08/2021 Email from L. Archie-Mills to W. Marshall at 4:16 p.m., attached as Exhibit B. The second email makes clear that MPD is “continuing [their] review of the requested documents to determine whether all, or any portion thereof, fall within the exemptions set forth in the DC Freedom of Information Act.” *Id.* In other words, the grounds for the District’s requested extension remain fully in place.

Moreover, Plaintiff Judicial Watch’s baseless assertions of prejudice and delay are just that. *See* 09/08/2021 Pl.’s Suppl. at 2; 09/07/2021 Pl.’s Opp’n at 1. Notably, Plaintiff consents to a 10-day extension but does not explain why granting the District’s full requested extension will be prejudicial. *See* 09/07/2021 Pl.’s Opp’n at 2 n.2. Indeed, Plaintiff’s Opposition highlights several developments since Mr. Marshall submitted his D.C. FOIA request to MPD on

April 8, 2021, and since this lawsuit was filed on May 24, 2021, that have kept the situation in flux. *Id.* ¶ 4. As stated in the District’s motion, MPD is actively working with its federal law enforcement partners to determine whether the law enforcement exemption found under D.C. Code § 2-534(a)(3) continues to apply to certain responsive records and to ensure the release of some records will not compromise any other law enforcement investigations, or the safety and security of the law enforcement officers responding to the Capitol Insurrection on January 6, 2021. The requested extension provides for additional time to navigate this process and will likely narrow the issues that would require this Court’s attention.

For these reasons, along with those in the District’s initial motion, the Court should grant the District’s motion.

Date: September 10, 2021

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

CHAD COPELAND
Deputy Attorney General
Civil Litigation Division

/s/ Alicia M. Cullen
ALICIA M. CULLEN [1015227]
Chief, Civil Litigation Division, Section III

/s/ Katrina Seeman
ADAM P. DANIEL [1048359]
KATRINA SEEMAN [1671729]
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Counsel for Defendant District of Columbia

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EXHIBIT A

From: [Eckert, Robert \(MPD\)](mailto:Eckert, Robert (MPD))
To: bmarshall@judicialwatch.org
Cc: [Eckert, Robert \(MPD\)](mailto:Eckert, Robert (MPD))
Subject: FW: Final Response - FOIA Request No. 2021-FOIA-04292, from William F. Marshall (Judicial Watch)
Date: Tuesday, September 7, 2021 3:39:03 PM

September 7, 2021

William F. Marshall
Senior Investigator
Judicial Watch
425 Third Street
Suite 800
Washington, DC 20024
bmarshall@judicialwatch.org

RE: FOIA Request No. 2021-FOIA-04292

Dear Marshall:

This concerns your Freedom of Information Act (FOIA) request for: “All records, including but not limited to investigative reports, photographs, witness statements, dispatch logs, schematics, ballistics, video footage, and MPD officials' electronic communications, concerning the January 6, 2021 death of Ashli Babbitt in the Capitol Building and its related investigation.” Date Range for Record Search: “01/06/2021 To 04/08/2021”

Upon review, to the extent that this request asks for specific records of specific incidents or certain activities referred to occurring on or related to such incidents on January 6, 2021, at the U.S. Capitol, I have determined to withhold any records, in their entirety, that may be responsive to this request because the subject matter of the records you seek remain the subject of open and ongoing investigation(s) and are exempt under DC Official Code §2-534 (a)(3)(A)(i) and (a)(3)(B), which protects investigatory records compiled for law-enforcement purposes to the extent that the production of such records would interfere with enforcement proceedings. The material you seek remains the subject of open and ongoing criminal investigation(s); could interfere with enforcement proceedings by revealing the direction and pace of (the) investigation(s); lead to attempts to destroy or alter evidence; reveal information about potential witnesses who could then be subjected to intimidation as part of an effort to frustrate future investigative activities; place any witnesses in danger; and, could deprive a person of a right to a fair trial or an impartial adjudication.

Portions of the withheld material are also withheld under D.C. Official Code § 2-534 (a) (2), which covers information of a personal nature the release of which would constitute a clearly unwarranted invasion of personal privacy; and, (a)(3)(C), which protects investigatory records compiled for law-enforcement purposes to the extent that the production of such records would constitute an unwarranted invasion of personal privacy. Such privacy information includes names/personal identifiers, other personal information, and information that may lead to the identity of individuals.

Please know that, under D.C. Official Code § 2-537 and 1 DCMR § 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter as well on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) a daytime telephone number, an e-mail and/or U.S. mailing address at which you can be reached.

The appeal must be mailed to: The Mayor’s Office of Legal Counsel, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 407, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to The Mayor’s Office of Legal Counsel at foia.appeals@dc.gov. Further, a copy of all appeal materials must be forwarded to the Freedom of Information Officer of the involved agency, or to the agency head of that agency, if there is no designated Freedom of Information Officer there. Failure to follow these administrative steps will result in delay in the processing and commencement of a response to your appeal to the Mayor.

**Sincerely,
Bob Eckert
FOIA Specialist
Freedom of Information Act Office
Metropolitan Police Department
District of Columbia
Robert.eckert@dc.gov
“Excellence is transferable.”**

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

JUDICIAL WATCH, INC.,

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EXHIBIT B

Archie-Mills, Lisa (MPD)

From: Archie-Mills, Lisa (MPD)
Sent: Wednesday, September 8, 2021 4:16 PM
To: 'bmarshall@judicialwatch.org'
Subject: Update Re: Response to FOIA Request No.: 2021-FOIA-04292

Dear Mr. Marshall:

This e-mail is an update to our response provided to you on September 7, 2021.

Please disregard our prior response to **FOIA Request No.: 2021-FOIA-04292**, it was sent in error. We are continuing our review of the requested documents to determine whether all, or any portion thereof, fall within the exemptions set forth in the DC Freedom of Information Act.

We apologize for any confusion this may have caused.

Regards,

Lisa Archie-Mills
Supervisory FOIA Specialist
Freedom of Information Act Office (FOIA)
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Metropolitan Police Department
Washington, DC 20001
(202) 727-3721
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“Excellence is Transferable.”