

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
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Counsel for Plaintiff

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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]

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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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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.
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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."