

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

JUDICIAL WATCH, INC., )  
425 Third Street, S.W., Suite 800 )  
Washington, DC 20024, )

Plaintiff, )

Civil Action No. 2024-CAB-003453

v. )

DISTRICT OF COLUMBIA, )  
John A. Wilson Building )  
1350 Pennsylvania Avenue, N.W. )  
Washington, DC 20004, )

Defendant. )

**COMPLAINT**

Plaintiff Judicial Watch, Inc. brings this action against Defendant District of Columbia to compel compliance with the District of Columbia Freedom of Information Act, D.C. Code § 2-531. As grounds therefor, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over the persons and subject matter of this action pursuant to D.C. Code § 11-921.

**PARTIES**

2. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street S.W., Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Judicial Watch regularly requests records under federal and state open records laws, analyzes the

responses and any records it receives, and disseminates its findings and the records to the public to inform them about “what their government is up to.”

3. Defendant is the District of Columbia. Defendant has possession, custody, and control of records to which Plaintiff seeks access. See *Kane v. District of Columbia*, 180 A.3d 1073, 1078-1079 (D.C. 2018). Defendant is headquartered at John A. Wilson Building, 1350 Pennsylvania Avenue N.W., Washington, DC 20004.

## **STATEMENT OF FACTS**

### **A. FIRST REQUEST**

4. On August 5, 2021, Plaintiff submitted a FOIA request (“First Request”) to the Metropolitan Police Department, a public body within the District, seeking access to:

All body worn camera video captured by Washington, DC Metropolitan Police Officer Michael Fanone when responding to protests at the Capitol Building on Jan. 6, 2021. Date range Jan. 6, 2021 – Jan. 6, 2021.

5. The next day, August 6, 2021, MPD acknowledged receipt of the request and advised Plaintiff that the request had been assigned case number 2021-BWC-00367.

6. Later that same day, August 6, 2021, MPD issued a complete denial of Plaintiff’s request:

It has been determined that the information you are seeking is part of an ongoing investigation and criminal proceeding. With exception of the portions of the video that has been shown publicly (sic), MPD cannot fulfill your request. The release of this information could interfere with the enforcement proceedings by revealing the direction and pace of the investigation. It could also 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, or could place witnesses in danger. For these reasons information about this incident is exempt from disclosure pursuant to D.C. Official Code § 2-534 (a)(2), (a)(3)(B), (a)(3)(A)(i), and (a)(3)(C).

Further, a search of our records did not locate a privacy waiver or authorization on file. Absent a privacy waiver and/or authorization, a release of such information would constitute a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) and (a)(3)(C).

7. In the same letter, MPD advised Plaintiff of its right to appeal the denial. This letter was the last communication Plaintiff received from MPD.

8. On August 9, 2021, Plaintiff appealed the MPD's denial via the DC FOIA portal:

We appeal the denial of the records sought in the instant request, given that the records in question are of great public interest, which outweighs any asserted privacy interests. Furthermore, the assertion of an ongoing criminal investigation does not preclude the release of the requested video, as police body-worn camera video is routinely released pending the conclusion of law enforcement proceedings.

9. On the same day, Plaintiff received an email from the DC FOIA portal acknowledging receipt of the appeal and assigning it reference number 2021-APP-00189.

10. Plaintiff has received no response to its appeal.

11. As of the date of this Complaint, MPD has failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; or (ii) respond to Plaintiff's timely appeal.

## **B. SECOND REQUEST**

12. On August 6, 2021, Plaintiff filed a second FOIA request ("Second Request") with MPD, seeking access to:

All audio/video recordings captured on body-worn cameras from MPD officers during their response to protest activities in and around the Capitol Building on Jan. 6, 2021.

13. On August 9, 2021, MPD acknowledged the request and advised Plaintiff that the request had been assigned 2021-BWC-00369.

14. Three days later, on August 12, 2021, MPD issued a complete denial identical to MPD's response to the First Request, quoted in paragraph 7, claiming the same vague justifications, broadly citing exemptions to disclosure, and outlining the appeals process.

15. Plaintiff promptly appealed MPD's denial on August 13, 2021 via the DC FOIA portal. Plaintiff again reasoned that MPD's justification for withholding due to an ongoing investigation does not comport with prior practice where officers' body-worn camera footage is ordinarily released during the pendency of investigations and law enforcement proceedings.

16. On the same day, Plaintiff received an email from the DC FOIA portal acknowledging receipt of the appeal and assigning it reference number 2021-APP-00193.

17. Plaintiff has received no response to its appeal.

18. As of the date of this Complaint, Defendant has failed to: (i) produce the requested records in full or in part, or demonstrate that the requested records or specific portions thereof are lawfully exempt from production; or (ii) respond to Plaintiff's timely appeal.

**COUNT I**  
**(Violation of FOIA, D.C. Code § 2-531)**

19. Plaintiff realleges paragraphs 1 through 18 as if fully stated herein.

20. Defendant is in violation of FOIA.

21. Plaintiff is being irreparably harmed by Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

22. Defendant was required to make determinations on Plaintiff's administrative appeals within 10 business days: on the First Request, by August 23, 2021, and on the Second

Request, by August 27, 2021. D.C. Code § 2-537(a). Accordingly, Plaintiff exhausted its administrative remedies required by FOIA when Defendant failed to respond to Plaintiff's timely appeals. D.C. Code § 2-537(a)(1); D.C. Code § 2-532(e).

**COUNT TWO**  
**(Failure to Produce All Non-Exempt, Responsive Records)**

23. Plaintiff reaffirms paragraphs 1-22 as though fully restated herein.

24. Defendant failed to produce all non-exempt records responsive to Plaintiff's FOIA request and failed to provide reasonable justification for withholding the records in total.

25. Plaintiff is irreparably harmed by Defendant's failure to produce all non-exempt, responsive records as Plaintiff is being denied its legal right to inspect public records.

26. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that the Court: (A) declare Defendant to be in violation of the D.C. Freedom of Information Act, D.C. Code § 2-531, *et seq.*; (B) enjoin Defendant from continuing to withhold access to non-exempt public records responsive to Plaintiff's Requests; (C) order Defendant to conduct searches reasonably calculated to discover the requested records and demonstrate that its searches were conducted in good faith; (D) order Defendant to produce, by a date certain, any and all non-exempt, public records responsive to Plaintiff's FOIA requests; (E) order Defendant to prepare a *Vaughn* index identifying with specificity all public records responsive to Plaintiff's FOIA requests that are claimed to be subject to legal exemption from disclosure and further identifying with specificity the reason(s) for any such claim of exemption; (F) award Plaintiff reasonable attorneys' fees and costs reasonably incurred in this action pursuant to D.C. Code § 2-537(c); and (F) order such other and further relief as the Court finds just and equitable.

Dated: June 3, 2024

Respectfully submitted,

/s/ Michael Bekesha

Michael Bekesha (D.C. Bar No. 995749)

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