

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

DISTRICT OF COLUMBIA,

Defendant.

Case No. 2024 CAB 003453

Judge Carl E. Ross

Next Court Date: April 30, 2025

Event: Mediation

**DEFENDANT DISTRICT OF COLUMBIA'S PRAECIPE
REGARDING MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Defendant District of Columbia (the District) submits this praecipe to update the Court of a modified position on its pending motion for summary judgment, in light of recent developments relating to the United States' investigation and prosecution of the January 6, 2021 U.S. Capitol rioters, and the pardon issued by President Donald J. Trump.

BACKGROUND

This matter arises out of two Freedom of Information Act (FOIA) requests submitted by Plaintiff on August 5 and 6, 2021, about seven months after the attack on the U.S. Capitol. In the first request, Plaintiff sought "[a]ll 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" (First Request). *See* Def.'s Mot. for Summary Judgment (Def.'s MSJ) at 1–2. In the second request, Plaintiff more broadly sought "[a]ll 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" (Second Request). *See* Def.'s MSJ at 2. Prior to President

Trump’s inauguration, the District timely moved for a stay of discovery and summary judgment on the following grounds: *one*, that the requested body-worn camera (BWC) footage was exempt from disclosure to Plaintiff under D.C. Code § 2–534(a)(3), as investigatory records compiled for law-enforcement purposes where production of such records would interfere with enforcement proceedings; *two*, that the BWC footage was exempt from disclosure to Plaintiff under D.C. Code § 2–534(a)(2)–(3), as investigatory records compiled for law-enforcement purposes where production thereof would constitute an unwarranted invasion of personal privacy; and *three*, that production of the requested BWC footage, even if not exempt from disclosure, would impose an unreasonable burden on the agency. *See generally* Def.’s MSJ. Metropolitan Police Department (MPD) personnel identified as responsive to Plaintiff’s requests 1,756 videos, ranging from two seconds to four hours and 57 minutes in length. *See* Def.’s MSJ at 2–3.

On January 20, 2025, President Trump commuted the sentences of certain individuals convicted of offenses related to the events of January 6, 2021, to time served; granted “a full, complete and unconditional pardon to all other individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021”; and directed the Attorney General “to pursue dismissal with prejudice to the government” of pending indictments against individuals for their conduct related to the events at or near the U.S. Capitol on January 6. *Granting Pardons & Commutation of Sentences for Certain Offenses Relating to Events at or Near the U.S. Capitol on Jan. 6, 2021*, THE WHITE HOUSE (Jan. 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/granting-pardons-and-commutation-of-sentences-for-certain-offenses-relating-to-the-events-at-or-near-the-united-states-capitol-on-january-6-2021/>. Although not expressly required by President Trump’s Proclamation, investigation of January 6 offenders has effectively concluded. *See, e.g.*, Glenn Thrush, *Trump*

Crushes Justice Department's Biggest Investigation in an Instant, THE NEW YORK TIMES (Jan. 20, 2025), available at <https://www.nytimes.com/2025/01/20/us/politics/justice-department-jan-6-investigation-trump.html>. The Federal Bureau of Investigation's (FBI) landing page for its January 6 investigative efforts, <https://www.fbi.gov/wanted/capitol-violence>, which the District cited to in its motion for summary judgment, now redirects to the FBI's homepage.

STATEMENT OF CURRENT POSITION

Given the above-stated posture, the District modifies its position on summary judgment as follows. As to the First Request, the District will produce the two responsive videos, *see* Def.'s MSJ at 2, to Plaintiff after reviewing for any requisite personal privacy redactions. As to the Second Request, the District withdraws its categorical reliance on the previously invoked FOIA exemption for records compiled for law-enforcement purposes where production of such records would interfere with enforcement proceedings, under D.C. Code § 2-534(a)(3). However, the District does not concede that production of responsive but wholly unaltered BWC footage to Plaintiff is proper. The District reiterates that the BWC footage may capture certain personnel, namely third parties, who maintain cognizable privacy interests in their names, images, and likenesses, and disclosure of these people's identities would not serve the public interest nor shed light on MPD's performance of its statutory duties. *See* Def.'s MSJ at 6-8. The District similarly reiterates that production of all BWC footage identified as responsive to Plaintiff's Second Request would impose an unreasonable burden upon MPD. *See* Def.'s MSJ at 8-9. MPD would be required to review all 1,754 videos, some approaching five hours in length, to complete any privacy redactions of non-law enforcement personnel. In retrieving the videos identified as responsive to Plaintiff's Second Request, Teresa Quon Hyden, Assistant General Counsel at MPD, has calculated the total hours of responsive footage as 1,047.09 and has

estimated that the cost of redacting these videos would be at least \$25 per minute of footage. MPD would have to locate a vendor to implement these redactions, and it is unclear whether the District would need to accept bids from multiple vendors on such a large undertaking. Lastly, the District reiterates its position that discovery is not proper in this FOIA case. *See generally* Def.'s Opp'n to Pl.'s Mot. to Stay at 3–4, *Judicial Watch, Inc. v. District of Columbia*, 2024-CAB-003453 (D.C. Super. Ct. Dec. 2, 2024).

Prior to filing this praecipe, the District consulted Plaintiff's Counsel to assess whether they would be willing to modify the scope of the Second Request, to make the production less burdensome on MPD, or if they would be willing to bear the costs of production, consistent with the provisions of 1 DCMR § 408 (Plaintiff requested a fee waiver in submitting both the First and Second Requests). In emails February 26 and 27, Plaintiff did not immediately provide a modification to the Second Request. The District is awaiting Plaintiff's position on the issue and will notify the Court as necessary.

Dated: February 28, 2025

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CHAD COPELAND
Deputy Attorney General
Civil Litigation Division

/s/ Fernando Amarillas
FERNANDO AMARILLAS [974858]
Assistant Deputy Attorney General
Civil Litigation Division

/s/ Patrick Duprey
JAMES UNDERWOOD [1765117]
PATRICK DUPREY [90030521]
Assistant Attorneys General
Civil Litigation Division, Section I
400 6th Street, NW
Washington, D.C. 20001

(202) 701-0255; (202) 957-2861
james.underwood@dc.gov; patrick.duprey@dc.gov

Counsel for Defendant District of Columbia