

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PARTNERSHIP FOR CIVIL JUSTICE FUND
617 Florida Avenue, NW
Washington, D.C. 20001

Plaintiff,

v.

THE DISTRICT OF COLUMBIA

Serve: Muriel Bowser,
Mayor of the District of Columbia
1350 Pennsylvania Avenue NW,
Washington, DC 20004

Serve: Karl A. Racine
Attorney General of the District of Columbia
400 6th St NW,
Washington, DC 20001

Defendant.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

[Freedom of Information Act, D.C. Code § 2-531, et seq.]

1. This action is brought under the District of Columbia’s Freedom of Information Act (“FOIA”), D.C. Code § 2-531, *et seq.*, as amended. Plaintiff, the Partnership for Civil Justice Fund (PCJF) and its project, the Center for Protest Law and Litigation (“CPLL”), seek injunctive and other appropriate relief for the disclosure and production of specific public records related to the District’s controversial and violent response to racial justice demonstrations against police misconduct throughout 2020, including federal and local police actions in connection with the June 1, 2020, assault on protestors and journalists in the vicinity of Lafayette Park. The Metropolitan Police Department is unlawfully withholding this information to which the public is entitled.

2. In 2020, Plaintiff filed two FOIA requests to which no records have been produced.
3. The first request, transmitted initially on June 5, 2020, and re-filed on June 19, 2020 (FOIA request no. 2020-FOIA-06045), sought disclosure of MPD records related to MPD, federal law enforcement and/or military actions and communications regarding events occurring in the vicinity of the White House and Lafayette Park on June 1, 2020, on which date law enforcement engaged in a violent attack on protestors and journalists.
4. Within that time period and at points continuing throughout 2020, the D.C. MPD was criticized for its aggressive and violent actions against racial justice protestors who were challenging police abuse, including its use of chemical weapons and other less lethal weapons against them, while standing down and not intervening against right wing groups, including the Proud Boys, that brought marauding violence to Washington, D.C. *See, e.g.,* Marissa J. Lang and Peter Hermann, *Policing protests: Demonstrators say officers are taking sides as D.C. hosts pro-Trump rallies Saturday*, Washington Post, December 11, 2020.
5. The second request, filed on December 23, 2020 (FOIA request no. 2021-FOIA-01831) seeks use of force reports and other records related to these police actions on thirteen dates in 2020.
6. The records requested include certain records the police are required to create under the District's First Amendment Rights and Police Standards Act. The MPD is once again in willful violation of its obligations under the law that were explicitly put into place in order to ensure accountability in policing of free speech activities. In 2017, the D.C. Auditor¹ admonished the MPD for its similar refusal and failure to produce these responsive documents to the Partnership for Civil Justice Fund in response to its request for records

¹ July 3, 2017, Report by the Office of the District of Columbia Auditor available at: <https://dcauditor.org/report/metropolitan-police-monitor-nearly-2500-demonstrations-in-2014-2016-and-report-no-first-amendment-inquiries/>

related to the MPD's violent response to anti-Trump protestors in January, 2017 and the Auditor issued the MPD a "Management Alert Letter" to then-Chief of Police Peter Newsham regarding obligations to respond to the PCJF's request for information.

7. The MPD is again failing and refusing to abide by its legal obligations to produce requested information.
8. The production and publication of the records sought is essential to the public's understanding of and ability to evaluate the MPD's conduct in the context of mass demonstration activity.
9. The requestor, the Partnership for Civil Justice Fund, is a constitutional rights and legal organization that serves as a watchdog organization for the practices of the Metropolitan Police Department, particularly in the area of the handling of mass demonstration activity.
10. The information sought is also necessary for members of the public to adequately assess the risk that they will be subjected to use-of-force when attending future, lawful First Amendment demonstrations in the District of Columbia.
11. The MPD's failure to turn over the requested documents shortchanges the mechanisms which are intended to provide public oversight of the MPD, an important aspect of democratic accountability in the District of Columbia. Oversight in the specific context of First Amendment assemblies is an area of unique concern. The District of Columbia regularly host public demonstrations of all varieties, and MPD has a checkered history of flouting the rules when responding to mass demonstrations.
12. The public is entitled to access this information without any further delay in order to assess the conduct of the Metropolitan Police Department and to protect the public's First Amendment rights within the District of Columbia.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to D.C. Code § 2-537(a)(1) (D.C. FOIA) and § 11-921 (civil jurisdiction).
14. Venue properly lies with this Court as the Defendant is the District of Columbia Government, the actions forming the basis of the claim occurred principally within the District of Columbia and the agency records at issue are located in the District of Columbia.

PARTIES

15. The PARTNERSHIP FOR CIVIL JUSTICE FUND (“PCJF”) is incorporated pursuant to the District of Columbia Non-Profit Corporations Act and is based and headquartered in the District of Columbia. The PCJF works to ensure transparency and openness in government operations. It also works to ensure constitutional conduct within government practices, including police practices, affecting First Amendment rights in the District of Columbia and nationwide. Among the focuses of the PCJF’s work has been effectuating significant changes to the laws and policies governing police handling of First Amendment activities. In its watchdog function, the PCJF has engaged in extensive litigation and education to ensure that the D.C. MPD exercises its authority within constitutional standards protecting free speech. The CENTER FOR PROTEST LAW AND LITIGATION (CPLL) is an ongoing project of the PCJF, which has as its object the protection of First Amendment rights.
16. The DISTRICT OF COLUMBIA is a municipal corporation, subject to suit, that runs and constitutes the local government of the District of Columbia.
17. The DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT (MPD) is an agency within the executive branch of the District of Columbia government. The MPD is the primary law enforcement agency for the District of Columbia and is charged with upholding

and enforcing laws pertaining to demonstrations, protests and public assemblies, and is subject to specific requirements under the FARPSA.

FACTUAL BACKGROUND

18. On May 25, 2020, in Minneapolis, Minnesota, George Floyd was murdered during an arrest performed by Derek Chauvin, then a member of the Minneapolis Police Department. News of the incident sparked nationwide outrage, demonstrations, and calls for racial justice and police reform. The demonstrations that followed were among the largest racial justice protests in the United States since the civil rights era, with an estimated 15-26 Million participants in June 2020 alone.²
19. In Washington, D.C., related racial justice and anti-police brutality demonstrations began on or about May 28, 2020, and continued through the remainder of 2020. At a number of these demonstrations, members of the MPD made regular, widespread and indiscriminate use of chemical irritants, flash-grenades, stinger grenades and a variety of less-lethal-munitions (LLMs) to attack, move or disperse demonstrators.
20. In applying these collective and blanket use-of-force practices, the MPD struck or otherwise affected a significant number of individuals who were not suspected of individualized unlawful conduct but were rather lawfully engaged in protected expressive activity.
21. This action seeks to enforce mandatory disclosure requirements under the D.C. FOIA with regards to two separate requests for information submitted to the MPD and the District of Columbia in 2020 by the PCJF and CPLL.
 - a. The first request concerns information the MPD possesses regarding the violent and unlawful clearing of demonstrators from the area surrounding Lafayette Park

² See Buchanan, Bui & Patel, *Black Lives Matter May be the Largest Movement in U.S. History*, The New York Times (July 3, 2020), <<https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>>.

on June 1, 2020, by federal law enforcement officers and related MPD activity against protestors. This includes data recorded and maintained through the Joint Operation Command Center (JOCC) and/or Special Operation Command Center(s) (SOCC) in a running resume or log of actions and commands by multiple involved agencies.

- b. The second request concerns thirteen (13) specific dates throughout 2020 where racial justice demonstrations took place in the District of Columbia and where the MPD reportedly used force, chemical irritants and/or less-lethal-munitions against or to attack protestors.

Request #1, June 19, 2020, D.C. FOIA Request No. 2020-FOIA-06045

22. On June 1, 2020, in Washington, D.C., on a section of H Street NW located along the northern boundary of Lafayette Square—which is itself directly north of the White House—peaceful demonstrators and journalists were violently dispersed by a variety of law enforcement officers. The officers, some of whom were mounted on horseback, charged into the crowd, using tear gas, stinger grenades, pepper spray, pepper ball projectiles, rubber bullets, and physical strikes from riot shields and batons to force hundreds of people, including demonstrators and credentialed journalists, to flee away from the Square and towards the safety of surrounding streets. Images of the violent conduct by law enforcement were broadcast live around the world. When the area was cleared, former President Trump exited the White House and crossed the area of H Street where demonstrators had been gathered to pose for photos in front of the neighboring St. John’s Church.³

³ See, e.g., Rebecca Tan, et. al., *Before Trump vows to end ‘lawlessness,’ federal officers confront protesters outside White House*, The Washington Post (June 2, 2020), <https://www.washingtonpost.com/local/washington-dc-protest-white-house-george-floyd/2020/06/01/6b193d1c-a3c9-11ea-bb20-ebf0921f3bbd_story.html>. Dalton Bennet, et. al., *The crackdown before Trump’s photo op: What video and other records show about the*

23. The D.C. MPD is in possession of information detailing the preparation and execution of the physical clearing of demonstrators from the area around Lafayette Park on June 1, 2020, including specifically running resumes and logs from the JOCC and any SOCC, as well as after-action reports and other information. To date, these documents have not been released to the public.
24. On June 5, 2020, PCJF attempted to submit a request through the D.C. MPD's online FOIA portal, requesting information relating to the clearing of protestors from the area near Lafayette Square. The online portal was malfunctioning, and the request was forwarded directly via email to the MPD's general account (mpd@dc.gov), to the individual the MPD listed as the MPD's FOIA contact (vendetta.parker@dc.gov), and to the FOIA administrator for the District of Columbia (FOIA.SystemAdmin@dc.gov).
25. After receiving no response to any of these emails, the request was subsequently successfully re-submitted through the MPD's online FOIA portal on June 19, 2020.
26. The request was designated by the D.C. Government as FOIA request number 2020-FOIA-06045.
27. This request sought:

[A]ll information and documents reflecting communications, events, and decisions made, including any running logs of police, local law enforcement, federal law enforcement, and/or military actions and communications, regarding actions occurring in the vicinity of the White House that includes H St. NW between 15th and 17th and Lafayette Park area, on Monday, June 1, 2020. These actions include the determination to move, and execution of moving, the perimeter, clearing persons from the area and all use of force or other means to do so. This request includes documents and communications in any format regardless of how they may be titled, including specifically all running resumes and logs of the JOCC (Joint Operations Command Center) or any SOCC (Special Operations Command Center) and all demonstration reports and after-action reports.

clearing of protesters outside the White House, The Washington Post (June 8, 2020), <<https://www.washingtonpost.com/investigations/2020/06/08/timeline-trump-church-photo-op/?arc404=true>>.

The time frame encompassed for materials sought is May 29, 2020 until the execution of the request, except for the JOCC, SOCC or other running resumes or real-time logs or communications, which are for June 1, 2020.

28. The request also sought expeditious processing to prevent a repeat occurrence of wanton violence, and thus help ensure the health and safety of residents and visitors of Washington, D.C., who planned to engage in peaceful First Amendment demonstrations in conjunction with racial justice protests.
29. A public interest fee waiver was submitted with the request. No denial of this fee waiver request has issued.
30. As of the date of the filing of this Complaint, the MPD has produced no records in response to this request. Nor has it asserted any exemption to production.
31. On November 30, 2022, Plaintiff e-mailed the MPD with a follow-up email, which stated: “I am reaching out to follow up on a FOIA request our office, the Partnership for Civil Justice Fund, filed back on June 19, 2020 (request number 2020-FOIA-06045). The District has had extensive time, more than two years, to comply with this request for public information; please provide the relevant data and information without further delay.”
32. There has been no response to that email.
33. The current status on the online portal is that the FOIA request is “assigned for processing.”

Request #2, December 23, 2020, D.C. FOIA Request No. 2021-FOIA-01831

34. On December 23, 2020, the PCJF and CPLL submitted a separate FOIA request (hereinafter request #2) concerning the MPD’s use of force at multiple demonstrations through the D.C. Government’s online FOIA portal.
35. The December 23, 2020, FOIA request was designated as request no. 2021-FOIA-01831.
36. The request sought records for a set of 13 dates on which MPD reportedly used force against

protestors: May 29, 2020; May 30, 2020; May 31, 2020; June 1, 2020; June 2, 2020; June 23, 2020; August 14, 2020; August 29, 2020; August 30, 2020; September 26, 2020; October 3, 2020; October 27, 2020.

37. For each date, the following records were requested:

- All filing(s) of PD Form 901-m (“Assembly or Demonstration Reportable Force Report”) executed in connection with protest-related events on the dates listed above, and
- All written report(s) by the scene commander(s) to the Chief of Police regarding his or her determination(s) to use chemical irritants on the dates listed above, including explanations of his or her actions pursuant to D.C. Code Sec. 5-331.16 (b). We are requesting the reports for each scene/location where chemical irritants were used.
- All other written reports, communications or logs regarding or reflecting police use of chemical irritants and/or less-lethal projectiles for each scene/location where such was used on the dates listed above. This includes both the requests for use, authorization for use, after-action reports regarding use and other documents that may identify officers who used force.

38. As a matter of policy, the Form 901-m (“Assembly or Demonstration Reportable Use of Force Report) is required to be completed whenever officials direct the use of force, to include less lethal weapons, in the context of First Amendment assemblies and mass demonstrations or civil disturbance unit (CDU) situations. An exemplar is attached.

39. A distinctive statutory obligation requires that a commanding officer who orders deployment of large scale canisters of chemical irritant, such as pepper spray, “shall file with the Chief of Police a written report explaining his or her action within 48 hours after the event.” D.C. Code Sec. 5-331.16(b); *See also* D.C. Code Sec. 5-331.16(a) (requiring written report to the Chief of Police within 48 hours of “any deployment of officers in riot gear”).

40. A public interest fee waiver was submitted with the request. No denial of this request has issued.

41. On November 21, 2020, with no records received, Plaintiff submitted a follow-up inquiry via

e-mail to the MPD FOIA Office: "I am reaching out to follow up on a FOIA request our office filed back on Dec. 23, 2020, request number 2021-FOIA-01831. We have had no response since the filing of this request and the District has had extensive time, nearly two years, to comply; please provide the relevant data and information without delay."

42. On that same day, Supervisory FOIA Specialist Lisa Archie-Mills responded via e-mail:

"Thank you for your email. We do regret the long delay as we are experiencing a large backlog. You [sic] request is still being processed. Hopefully, I will be able to provide you with another update soon."

43. As of the date of the filing of this Complaint, no records and no further communications have been received from the MPD regarding request number 2021-FOIA-01831. No claim of exemption for the requested material has been asserted.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

44. The PCJF and its project the CPLL have made requests with the MPD seeking production of public records, as described above.

45. The statutory deadline of 15 business days, plus a 10-day extension under unusual circumstances, has expired. *See* D.C. Code §§ 2-532(c), (d). The D.C. Code mandates the District provide requested records or issue a determination that records will not be disclosed within the time provisions provided by statute. *Id.*

46. The failure of the MPD to comply with a request under the D.C. FOIA within the proscribed time limits "shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies." D.C. Code § 2-2532(e).

47. As of the date of the filing of this complaint, no records have been produced for either of Plaintiff's requests after approximately 28 and 24 months, respectively.

48. Accordingly, the District of Columbia has categorically denied both FOIA request and the Plaintiff has exhausted its administrative remedies.

49. Pursuant to D.C. Code § 2-537(a)(1), the Plaintiff is authorized to institute proceedings for injunctive or declaratory relief in the Superior Court of the District of Columbia.

COUNT ONE

(Failure to produce public records in accordance with the D.C. Freedom of Information Act and the First Amendment Rights and Police Standards Act)

50. The preceding paragraphs numbered 1 through 49 are incorporated by reference as if set forth herein.

51. The District of Columbia unlawfully denied the Plaintiff's requests for information submitted on June 5, 2020 (resubmitted through the MPD's online FOIA portal on June 19, 2020) and December 23, 2020, both of which were submitted to the MPD pursuant to the D.C. FOIA.

52. The District of Columbia has unlawfully withheld all responsive public records subject to release under D.C. Code § 2-532.

53. The District of Columbia has unlawfully withheld all responsive public records subject to release under D.C. Code § 5-331.16(a).

54. To the extent its agencies might seek to assert fees under the D.C. FOIA, the District of Columbia has unlawfully denied Plaintiff's request for a public interest fee waiver.

PRAYER FOR RELIEF

55. WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- a. Declare that the denial of the Plaintiff's requests, including any requests for fee waiver or non-applicability of fees, are in violation of D.C. Code § 5-331.16(a) and the D.C. FOIA;

- b. Enjoin the District of Columbia from withholding any records encompassed by the June 5, 2020, request, as resubmitted on June 19, 2020, request #1: 2020-FOIA-06045; and the request submitted on December 23, 2020, request #2: 2021-FOIA-01831.
- c. Order that the District of Columbia produce the requested records within ten (10) business days;
- d. Award Plaintiff reasonable attorney's fees and costs incurred in this case pursuant to D.C. Code § 2 - 537(c); and
- e. Grant such further relief as the Court may deem to be just and appropriate.

December 15, 2022

Respectfully submitted,

/s/ Mara Verheyden-Hilliard
Mara Verheyden-Hilliard (Bar # 450031)
mvh@justiceonline.org

Carl Messineo (Bar # 450033)
cm@justiceonline.org

Amanda Eubanks (Bar # 1630436)
ace@justiceonline.org

Patrick Boyle (Bar # 90001908)
patrick.boyle@protestlaw.org

PARTNERSHIP FOR CIVIL JUSTICE
FUND
617 Florida Avenue, NW
Washington, D.C. 20001
(202) 232-1180
(202) 747-7747 (fax)