

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

AMERICAN CIVIL LIBERTIES UNION
OF THE DISTRICT OF COLUMBIA
915 15th Street NW, 2nd Floor
Washington, D.C. 20005,

Plaintiff,

v.

DISTRICT OF COLUMBIA,
c/o Office of Attorney General for D.C.
400 6th Street NW
Washington, DC 20001,

Defendant.

No. _____

COMPLAINT
(Freedom of Information Act)

1. Plaintiff American Civil Liberties Union of the District of Columbia (ACLU-DC) brings this action against the District of Columbia under the D.C. Freedom of Information Act (FOIA), D.C. Code § 2-531 *et seq.*, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA and to immediately release improperly withheld records.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to D.C. Code § 1-204.31(a) which vests the Court with “jurisdiction of any civil action or other matter (at law or in equity) brought in the District.”

3. Plaintiff’s claim arises under the D.C. FOIA, which provides that a person “deemed to have exhausted . . . administrative remedies . . . may institute proceedings for injunctive or declaratory relief.” D.C. Code § 2-537(a)(1). This Court may “enjoin the public body from withholding records and order the production of any records improperly withheld.” D.C. Code § 2-537(b).

4. Plaintiff has met the administrative exhaustion requirement. Where, as here, a public body subject to the requirements of FOIA “fail[s] . . . to comply with a request . . . within the time provisions,” such failure is deemed a “denial of the request” and the requester “shall be deemed to have exhausted . . . administrative remedies.” D.C. Code § 2-532(e).

PARTIES

5. Plaintiff American Civil Liberties Union of the District of Columbia (ACLU-DC) is a 501(c)(4) nonprofit, nonpartisan, membership organization, incorporated in the District of Columbia, and dedicated to protecting civil liberties and civil rights in the District of Columbia. One central issue ACLU-DC seeks to advance through litigation, public advocacy, and coalition organizing is criminal justice reform, including protecting the fundamental rights of individuals to due process and to be free from discrimination and unreasonable searches and seizures.

6. Defendant District of Columbia is a municipal corporation, the local government of Washington, D.C., and operates and governs the Metropolitan Police Department (MPD) pursuant to the laws of the District of Columbia. In this case, the District of Columbia acted through its subdivisions, agents, employees, and servants, including MPD and its officials and agents.

7. As an agency of the District of Columbia and a public body, MPD is subject to the D.C. Freedom of Information Act. D.C. Code § 2-539(a); D.C. Code § 2-502(18A).

FACTS

8. In 2016, the D.C. Council unanimously passed the Neighborhood Engagement Achieves Results (NEAR) Act, which requires MPD to record specific information about all stops made in the District of Columbia, including the date, location, and time of the stop; the violation that led to the stop; whether a search was conducted; whether an arrest or citation resulted from the stop; and the gender, race and date of birth of the person stopped. D.C. Code § 5-113.01(a)(4B).

9. The D.C. Council allocated funds to implement this new data collection requirement in 2016, but, two years later, MPD still had not used those funds to make the changes to its data systems that were necessary to implement the NEAR Act’s data collection provisions.

10. MPD refused to fully implement the NEAR Act’s data collection provisions for more than three years after the statute passed.

11. On June 27, 2019, the D.C. Superior Court (Campbell, J.) issued a preliminary injunction ordering MPD to comply with the NEAR Act by collecting the required data and “keep[ing] and maintain[ing] the data collected.” *Black Lives Matter D.C. v. Bowser*, No. 2018 CA 003168 B, 2019 WL 4050218, at *11 (D.C. Super. Ct. June 27, 2019) (*BLMDC*).

12. MPD then implemented new methods for collecting the NEAR Act data and publicly committed in writing to publishing the data semiannually—three years after the NEAR Act had passed. After MPD made that commitment, the plaintiffs in *BLMDC* agreed to a motion to vacate the injunction and dismiss the case.

13. Despite promising to publish the NEAR Act data twice per year, MPD released data only once in 2020, and the data it published only covered stops from July 22 to December 31, 2019. No NEAR Act data for calendar year 2020 has been published.

14. NEAR Act data is vital to the ongoing debate about policing in the District. Mass protests against police brutality swept the District in 2020 after police killings of George Floyd and Breonna Taylor sparked nationwide outrage. Members of the public as well as Plaintiff and other organizations have called for sweeping changes to MPD and its operations.

15. The D.C. Council unanimously passed emergency legislation in June 2020 that made temporary changes to police practices such as the rules governing how officers respond to protests and the procedures for releasing body-worn camera footage. Legislative changes to policing in the

District continue to be debated, including a bill that would make permanent many of the changes from the June 2020 legislation while also addressing other policing issues.

16. The debate over policing continues with rapidly approaching forums for public input. On March 11, 2021, the Council will hold a performance oversight hearing on the MPD. This hearing is open to the public and includes testimony from the agency and community members about how the agency has performed during the past year. Additionally, the Council will soon hold a budget oversight hearing on the MPD and a confirmation hearing on Mayor Bowser's nomination of Robert J. Contee III to be the new police chief.

17. Plaintiff wishes to use and disseminate NEAR Act data for 2020 in connection with the March 11 MPD oversight hearing, and in connection with the upcoming budget and confirmation hearings. This data is "information that is not only mandated by the Act but that is absolutely essential to a full public understanding of police stops in the District." *BLMDC*, 2019 WL 4050218, at *9. The data serves "the larger purpose of transparency and accountability" because the public "cannot know how the police are interacting with citizens" without it. *Id.* at *1, *9.

18. Because the D.C. Council permitted agencies to refrain from processing FOIA requests during the "initial COVID-19 closure," *see* D.C. Code §§ 2-532(c)(3)(A), Plaintiff did not submit a request for this data during that period. That closure ended on January 15, 2021, *see* D.C. Code § 2-539(c)(2), and, immediately afterward, Plaintiff submitted a FOIA request that MPD received on January 19, 2021. The request was assigned number 2021-FOIA-02491.

19. In the January 19, 2021 FOIA request, Plaintiff asked for NEAR Act data collected from January 1, 2020 until the date of search, inclusive. Plaintiff asked MPD to produce the records in a specific format but stated that, if the data was not available in that format, Plaintiff would accept the underlying records that MPD collected to comply with its NEAR Act obligations.

20. Plaintiff's request made clear that MPD could withhold any personally identifiable information.

21. The records Plaintiff requested are not subject to any of the statutory exemptions that allow agencies to withhold records, *see* D.C. Code § 2-534. The D.C. FOIA therefore requires MPD to disclose the requested material, *see* D.C. Code § 2-532(a).

22. The records Plaintiff requested will be easy to produce. As part of its changes to its data collection in response to *BLMDC*, MPD has implemented new systems to allow for aggregation of NEAR Act data. In its March 2020 production of data from 2019, the agency produced the same type of data in the same format as Plaintiff has now requested.

23. MPD confirmed receipt of Plaintiff's FOIA request on January 19, 2021.

24. On January 22, 2021, Plaintiff emailed a courtesy copy of the FOIA request to the Metropolitan Police Department's General Counsel.

25. The MPD General Counsel acknowledged receipt on January 22, 2021.

26. FOIA requires a public body in the District to produce requested records, in the format requested, unless a specific statutory exemption applies. D.C. Code § 2-532(a), (a-1).

27. An agency must produce requested records or notify the requester of its determination not to make the requested record public and the reasons therefor within 15 business days of the receipt of a request. D.C. Code § 2-532(c)(1). In unusual circumstances, a public body may extend the deadline by written notice. D.C. Code § 2-532(d)(1).

28. Defendant's time to respond expired on February 10, 2021, 15 business days after January 19, 2021. Plaintiff did not receive written notice of an extension.

29. To date, Defendant has neither produced any records nor stated that it intends to deny Plaintiff's request.

30. A public body that fails to comply with a request within the applicable time limit provisions is deemed to have denied the request and the requester deemed to have exhausted administrative remedies. D.C. Code § 2-532(e).

CLAIM FOR RELIEF

(Violation of FOIA, D.C. Code § 2-531, et seq.)

31. The D.C. FOIA provides that, within 15 business days of receiving a request for records, an agency must either produce the records or issue a letter of denial explaining its decision to withhold that information. D.C. Code § 2-532(c)(1). MPD has violated that obligation because it has provided no response to Plaintiff's FOIA request as of the date of filing this complaint, which is 18 business days after the request was received.

32. Plaintiff has a "right to inspect and . . . copy any public record of a public body, except as otherwise expressly provided by § 2-534." D.C. Code § 2-532(a). MPD violated this right by withholding public records requested by Plaintiff, which are not subject to withholding under § 2-534.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- (a) Declare that Defendant has violated its obligations under the Freedom of Information Act, D.C. Code § 2-531 *et seq.*;
- (b) Enjoin Defendant from continuing to withhold records responsive to Plaintiff's request;
- (c) Order Defendant to produce the requested records promptly;
- (d) Award Plaintiff its costs and reasonable attorneys' fees; and
- (e) Grant Plaintiff such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Michael Perloff

Michael Perloff (D.C. Bar No. 1601047)

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February 16, 2021

Counsel for Plaintiff

* Not a D.C. bar member; practicing under supervision pursuant to D.C. App. R. 49(c)(8A).

PLAINTIFF’S RULE 7.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Superior Court Rule of Civil Procedure Rule 7.1, Plaintiff American Civil Liberties Union of the District of Columbia, through undersigned counsel, certifies that it has no parent corporations and that no publicly held corporation owns 10% or more of its stock. Per Rule 7.1(a), Plaintiff hereby includes two copies of this statement.

Respectfully submitted,

/s/ Michael Perloff _____
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