



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT

Transmitted by electronic mail

August 27, 2018

Ms. Shana Knizhnik

Re: FOIA Appeal 2018-145

Dear Ms. Knizhnik,

This is in response to the direction from the Mayor's Office of Legal Counsel to either provide you with non-exempt portions of BWC videos and any other videos that exist related to the actions of Metropolitan Police Department (department) officers in the 5200 block of Sheriff Road, N.E. on June 13, 2018 and June 25, 2018, or provide additional information that supports the withholding of the videos from release to you. The department denied your initial request asserting that release of the videos could interfere with an ongoing administrative investigation of the police actions on the specified dates pursuant to D.C. Official Code § 2-534(3)(B). The department explained further that release of the videos could lead to efforts to destroy 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.

The department maintains its initial position on your request. FOIA exemption (a)(3)(B) exempts from release ". . . investigatory records that were compiled for law enforcement purposes and whose disclosure would deprive a person of a right to a fair trial or impartial adjudication." The standard to be applied in determining whether the requirements of this exemption have been met is "(1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." *Washington Post Co. v. DOJ*, 863 F.2d 96, 102 (D.C. Cir. 1988).

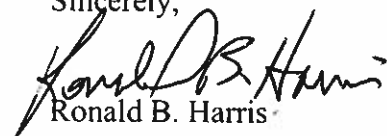
There is no question that the BWC videos were created for a law enforcement purpose. The department asserts that involved officers' rights to a fair or impartial adjudication would be adversely affected. With respect to the first prong of the standard, there is no pending trial or adjudicative proceeding. The department is currently engaged in active investigations of the officers' actions on the dates in question. As soon as the investigations have been completed, a determination will be made as to whether the administrative disciplinary process should be initiated against the subject officers. The due process protections afforded the subject officers by law and the collective bargaining agreement necessarily preclude the "truly imminent" scheduling of a disciplinary adjudication.

The police actions in question have garnered significant public interest. The release of the videos would make obtaining a fair and accurate assessment of the officers' actions extremely difficult. Involved persons could easily conform any statements or testimony to reflect what is in their interests as opposed to what actually transpired. Additionally, non-involved persons could

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interject themselves into the investigation simply by reflecting what they saw in the videos. This would surely render any investigatory findings false. Attached is a declaration from an official attesting to the harmful effects release of the videos would have on the pending investigations and any future administrative adjudication of allegations of misconduct by the officers. You may make a request for the videos after the investigations have been finalized.

Sincerely,

  
Ronald B. Harris  
Deputy General Counsel

Attachment: Declaration