

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PARTNERSHIP FOR CIVIL JUSTICE FUND
617 Florida Ave N.W.
Washington, D.C. 20001

Plaintiff,

v.

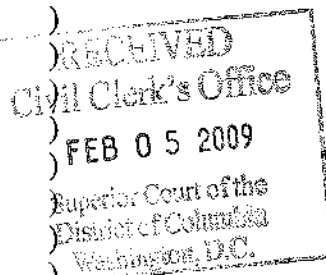
THE DISTRICT OF COLUMBIA

Serve: Adrian M. Fenty
Mayor of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Serve: Peter Nickles
Attorney General
441 4th Street, NW
Washington, D.C. 20001

Defendant.

Civil Action No. 0000748-09



**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
TO CAUSE D.C. METROPOLITAN POLICE DEPARTMENT TO DISCLOSE
DEPARTMENTAL POLICIES AND PROCEDURES
MADE PUBLIC UNDER THE D.C. FREEDOM OF INFORMATION ACT**

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

Introduction

The District of Columbia Metropolitan Police Department (MPD) is refusing to disclose information it is required to make public under law, and has further refused to make such information public upon written request under the D.C. Freedom of Information Act.

The MPD may prefer to operate in the shadows, but this would be a negation of democracy. Moreover, there are clear, unambiguous requirements about disclosure from which

the MPD cannot exempt itself. Since 2001, the MPD has been statutorily obligated to make public, produce upon demand, and publish on the Internet the public records at issue herein.

Eight years have passed, and the MPD still refuses to release the basic public records about its operation, orders and policies.

Of all agencies of the District of Columbia Government, the Metropolitan Police Department possesses the greatest authority to interact with (or against), or to surveil and observe personal and public activities of, D.C. residents and others present within its jurisdiction. The MPD monitors and intervenes in the lives of District of Columbia residents in a multitude of ways, in some ways more intrusive than others, sometimes overtly and sometimes surreptitiously. The MPD, as a law enforcement agency, has the license under certain circumstances to stop persons, deprive persons of their liberty, to engage in use of force, to question residents, to gather intelligence and to monitor the activities of those present within its jurisdiction. The MPD shares and provides its intelligence information with federal law enforcement and the potential distribution of the information it secures is global.

These are truly wide-reaching, but not unrestricted, powers. Limitations on the authority granted to, and conduct of the police arise from many sources. In its greatest particularity, authority is to be given effect through the police department's policies, orders and staff instructions. The written policies, orders and staff instructions provide notice to the public of how the police force is to conduct itself, at least according to formal rules. The policies, orders and staff instructions disclose to the public what operations the MPD may (or may assert itself as authorized to) engage in, what protections are in place for civilians, and what restrictions are in place as to collection and usage of data.

Public disclosure of the operational policies and practices, orders and staff instructions of the police department is essential for policing in a democratic society and to establish accountability. Disclosure is essential to ensure that the police department does not operate above the law and does not constitute the law, but performs those functions and exercises only that authority which the citizenry has deemed appropriate.

The public interest is paramount in having access to the policies, orders and procedures that set forth how, under what circumstances, and by what manner or means the MPD may execute its authorities to engage with or against members of the public.

This interest was recognized by the Council of the District of Columbia, not just for the MPD but for all executive agencies, in the District of Columbia Freedom of Information Act.

The D.C. FOIA mandates that the MPD specifically make public and make available upon demand its policies, procedures, manuals and staff instructions. See D.C. Code. § 2-536(a)(2) (making public all “[a]dministrative staff manuals and instructions to staff that affect a member of the public” and “[t]hose statements of policy and interpretations of policy, acts and rules which have been adopted by a public body”). Additionally, the MPD is required to publish a general index of all such records unless the materials are promptly published and copies offered for sale. D.C. Code § 2-536(a)(10). The publication of the index, and the requirement that all public records be identified in the index, prevents the existence of secret or undisclosed records.

For ease of access, the D.C. FOIA also requires this same body of public information be maintained in electronic format and be made “available on the Internet” or available “by other electronic means.” Alternately, a person may request to copy and inspect such information pursuant to a request under the D.C. FOIA. A request for these categories of public information

need not even be in writing, it may simply be an oral demand. D.C. Code § 2-536(a). Plaintiff's request at issue here, nevertheless, was written.

The upshot of the D.C. FOIA is plain and clear: The public, including plaintiff, is entitled to have paper or electronic access to the MPD's policies, orders, procedures, staff manuals and staff instructions. The records are required to be maintained and available in electronic format. Among other things, the electronic format requirement facilitates the computer-aided search and review of a large volume of information. Multiple other jurisdictions have adopted similar mandates. See, e.g., http://www.cityofseattle.net/police/publications/Policy/SPD_Manual.pdf (Seattle Police Department Police & Procedure Manual); <http://www.ci.minneapolis.mn.us/mpdpolicy/> (City of Minneapolis MPD Police and Procedure Manual, which is updated daily online).

The MPD has refused or failed to comply with this legal requirement under the D.C. FOIA, which has existed since the FOIA amendments of 2001. The MPD has apparently rejected the 2005 entreaty from the D.C. Police Complaints Board for MPD policies, procedures and other information to be published on the Internet. See, July 14, 2005, Publication of MPD Orders on the Internet: Recommendation of the Police Complaints Board to Mayor Anthony A. Williams, The Council of the District of Columbia, and Chief of Police Charles H. Ramsey.

Plaintiff, the Partnership for Civil Justice Fund (PCJF), is a not-for-profit legal and educational organization which, among other things, seeks to ensure constitutional accountability within police practices. The PCJF seeks to ensure that the MPD maintain openness and accountability in accordance with applicable law.

The PCJF submitted a written request to the MPD under the D.C. FOIA for production in electronic format of the following:

- Copies of all MPD staff manuals and instructions, including all general orders, all special orders, all Departmental directives and statements of policy; and
- A general index of all MPD records required to be made public.

The MPD refused to respond or produce materials in response to the original written Freedom of Information Act request or follow-up correspondence. The PCJF even sent with its initial request a set of blank recordable DVDs onto which the requested information, which is required to be made public in electronic format, could be placed.

The MPD's refusal to produce materials, and provide a substantive response, constitutes a denial under the D.C. FOIA.

Openness and transparency is not optional for the D.C. MPD which is accountable to the public.

The Partnership for Civil Justice Fund has filed this Complaint seeking injunctive and declaratory relief compelling production of the requested public information and also requiring the MPD to publish the requested information on the Internet on the MPD web site for the benefit of all of the citizenry and residents of the District of Columbia, and also seeks reasonable attorneys fees and costs as provided for by the D.C. FOIA.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to D.C. Code § 2-537(a)(1) (D.C. FOIA) and § 11-921 (civil jurisdiction).
2. 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

3. 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 is a not-for-profit legal and educational organization which, among other things, seeks to ensure constitutional accountability within police practices.
4. The DISTRICT OF COLUMBIA is a municipal corporation, subject to suit, that runs and constitutes the local government of the District of Columbia.
5. 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 enforcing, as well as abiding by, the law.

FACTUAL BACKGROUND

6. By letter dated September 29, 2008, the PCJF filed a Freedom of Information Act request with the District of Columbia Metropolitan Police Department.
7. At the time of the request, the plaintiff reviewed the MPD's web site and confirmed that the requested information was not published on the MPD web site.
8. The FOIA request sought production of "Copies of all MPD staff manuals and instructions, including all general orders, all special orders, all Departmental directives and all statements of policy." These materials "are specifically made public information" pursuant to the D.C. FOIA, D.C. Code § 2-536(a)(2) (making public all "[a]dministrative staff manuals and instructions to staff that affect a member of the public"); D.C. Code §

- 2-536(a)(4) (making public all “statements of policy and interpretations of policy, acts, and rules”).
9. The FOIA request also sought production of “A general index of all MPD records required to be made public pursuant to D.C. Code § 2-536(a).” This index is required to be maintained and be made public. D.C. Code § 2-536(a)(10) (requiring “A general index of the records [specifically made public] in this subsection, unless the materials are promptly published and copies offered for sale.”).
 10. All materials requested fall within categories of information specifically required to be made public pursuant to the D.C. FOIA. D.C. Code § 2-536(a).
 11. All materials requested are required to be made available upon demand and without the formality of a written FOIA request. D.C. Code § 2-536(a). The PCJF, as above, did make a formal written request dated September 29, 2008.
 12. On October 1, 2008, the MPD received the written FOIA request.
 13. On October 1, 2008, to document such receipt, District employee Monica Campbell affixed her signature upon a United States Postal Service return receipt for certified mail. That receipt was returned to the PCJF.
 14. The requested materials, as public records, are statutorily required to be maintained in electronic form. D.C. Code § 2-536(b). The PCJF cited the applicable code in its FOIA request and wrote, “As you know, the above-referenced materials are required to be made available on the Internet.” The PCJF also represented that “We have reviewed the MPD web site and have been unable to locate a repository of such records. If one exists, please provide us with the Internet address or URL at which the requested materials may be viewed and downloaded.”

15. The PCJF also wrote in its September 29, 2008 request, "Because the requested materials are required to be maintained and published in electronic format on the Internet, we expect there will be no photocopying costs associated with satisfaction of this request."
16. There is no legal basis for imposing fees for satisfying the request. The material is required to be published on the Internet or by other electronic means.
17. The PCJF also transmitted with its September 29, 2008 FOIA request a set of blank recordable media so that the MPD would not experience even the *de minimus* cost of media.
18. In its September 29, 2008 FOIA request, the PCJF represented that were the MPD to assert that there was a basis to impose costs for satisfying the request, then it was therein "requesting a fee waiver of all fees pursuant to D.C. Code § 2-532(b)."
19. Furnishing of the requested information upon request is a practice which primarily benefits the public interest, as reflected in the statutory obligation to make the requested information available to the public as per D.C. Code § 2-536(b).
20. The PCJF further represented in support of its (unnecessary) fee waiver request that "The Partnership for Civil Justice Fund is a not-for-profit legal and educational organization which, among other things, seeks to ensure constitutional accountability within police practices and to review and research police practices for such purposes. The material requested is not for commercial use and is sought for legal and scholarly review and research by the attorneys and staff with the PCJF."
21. The MPD failed to acknowledge the request within the time frame prescribed.
22. Due to the MPD's failure to comply with its obligations under the D.C. FOIA, and its failure to respond to the request within the time frame as obligated under law, plaintiff

again wrote to the MPD on October 30, advising that it was now not in compliance with its obligations to respond to the FOIA and to advise when the requested materials would be made available.

23. On November 13, 2008 - - almost one and a half months after receipt of the FOIA request - - the PCJF received in the mail a letter dated October 31, 2008 which "acknowledges the receipt of your request." The letter also acknowledged that the MPD has a "fifteen-day statutory time period permitted to process your request [which] begins on the first full workday after the receipt of your request."
24. The request was received October 1, 2008. The acknowledgement was dated 30 days later. The referenced period had already expired even by the date that was affixed on the letter. There was no substantive response to either the FOIA request or the follow-up correspondence.
25. Shortly prior to the filing of the instant complaint, plaintiff has again reviewed the MPD's web site to determine whether the requested material is published therein. There is published now on the web site an incomplete and selective set of general orders. According to the web site, "the MPD has posted some of the more requested General Orders online."
26. The posting of "some" written directive, however, does not constitute satisfaction of the requirements pursuant to the D.C. FOIA, D.C. Code § 2-536.
27. The MPD has opted to publish only a sliver of the information required to be made public under the FOIA statute and requested by plaintiff.
28. The publication of the General Orders is selective and incomplete.
29. Special Orders are not published on the web site.

30. Staff manuals are not published on the web site. Many instructions to staff are contained not in general orders or special orders, but are in departmental or staff manuals.
31. Staff instructions are not published on the web site, outside of the selective publication of selected General Orders.
32. The web site does not publish, as required, "all Departmental directives and all statements of policy" and rules.
33. The District failed to provide a substantive response to plaintiff's acknowledged FOIA request.
34. Accordingly, there have been no objections presented by the District to the full satisfaction of the request as submitted.
35. To date, the District of Columbia has produced no documents whatsoever to plaintiff in response to the September 29, 2008 FOIA request.

RIGHT TO JUDICIAL REVIEW

36. The District of Columbia and MPD have failed to comply with plaintiff's request under the D.C. FOIA. The plaintiff's request is deemed to have been denied and plaintiff has the right to judicial review of this denial. D.C. Official Code § 2-537(a)(1).

COUNT ONE

(Failure to produce public records in accordance with the D.C. Freedom of Information Act)

37. The preceding paragraphs numbered 1 through 36 are incorporated by reference as if set forth herein.
38. Plaintiff has filed a public records request dated September 29, 2008 seeking production of MPD documents statutorily required to be maintained as public records and to be produced upon demand pursuant to the D.C. Freedom of Information Act.

39. That same request also demands production of a general index of all records referred to in D.C. Code § 2-536.
40. On October 1, 2008, the District of Columbia received the September 29, 2008 FOIA request.
41. The District of Columbia has produced to plaintiff no records in response to the FOIA request.
42. The District of Columbia provided no response to the FOIA request, except for a letter acknowledging receipt and representing that the District had fifteen days from the date of receipt to respond to the request. That letter was sent after the fifteen day period had expired.
43. The District of Columbia has failed to comply, or for that matter even substantively respond, to the FOIA request within the statutorily provided period of fifteen days (except Saturdays, Sundays, and legal public holidays) of the receipt of such request. See D. C. Code § 2-532(c).
44. The failure to respond or comply within the statutorily determined fifteen day period constitutes and “shall be deemed a denial of the request.” D.C. Code § 2-532(e). Accordingly, the District of Columbia has categorically denied the September 29, 2008 FOIA request.
45. The PCJF, therefore, is deemed to have exhausted its administrative remedies with respect to the September 29, 2008 FOIA request. See D.C. Code § 2-532(e).
46. The District of Columbia provided no objections to full satisfaction of the September 29, 2008 FOIA request.

47. The District of Columbia provided no objections to the full satisfaction of that request without the imposition of any fees.
48. The District of Columbia has withheld production of the requested records in violation of the District of Columbia Freedom of Information Act.
49. Plaintiff is entitled to production of the requested public records in electronic form pursuant to the D.C. Freedom of Information Act, and to production of the requested general index.

COUNT TWO

(Failure to maintain and publish public records on the Internet, as required by statute in order to maintain public openness and accountability pursuant to the D.C. FOIA)

50. The preceding paragraphs numbered 1 through 49 are incorporated by reference as if set forth herein.
51. The District of Columbia is statutorily required to make available on the Internet the records requested pursuant to the PCJF's September 29, 2008 FOIA request. D.C. Code § 2-536(b) (imposing Internet publication requirement for all requested records created on or after November 1, 2001).
52. The purpose and effect of such requirement imposed upon public bodies and executive agencies is to eliminate or minimize the costs of production of requested information and to facilitate the dissemination of such public information to the public, including to plaintiff.
53. The District of Columbia has failed to make the requested records available on the Internet.
54. The MPD has failed to comply with the policy of the District of Columbia which is that all persons are entitled to full and complete information regarding the affairs of

government and the official acts of those who represent them as public officials and employees.

55. The District of Columbia harms and continues to harm the interests of the public and of the plaintiff by this refusal and failure by creating difficulties and obstacles to public information, by effectively imposing costs and time delays and burdens on access to public information about governance and police where such costs and burdens are to have been effectively eradicated under the statute, and by foreclosing openness in policing and failing to make required disclosures of public information.

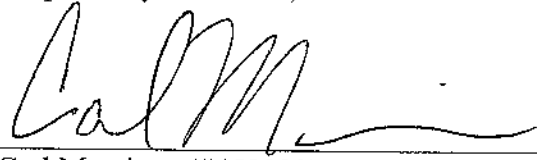
PRAYER FOR RELIEF

WHEREFORE, the plaintiff requests that this Honorable Court:

- A. Issue a declaratory judgment that the defendant is in violation of the D.C. FOIA;
- B. Order the defendant to comply with the D.C. FOIA and make all records within categories enumerated in D.C. Code § 2-536 available on the Internet as required by statute;
- C. Order the defendant to comply with the D.C. FOIA and produce to plaintiff in electronic format all records requested pursuant to the September 29, 2008 D.C. FOIA request without the charging of fees;
- F. Order the defendant to produce the requested records, without the charging of fees;
- G. Award reasonable attorneys fees and costs pursuant to D.C. Code § 2-537(c); and
- H. Grant such further relief as the Court may deem just and proper.

February 5, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl Messineo', written over a horizontal line.

Carl Messineo (#450033)

Mara Verheyden-Hilliard (#450031)

PARTNERSHIP FOR

CIVIL JUSTICE FUND

617 Florida Avenue, NW

Washington, D.C. 20001

(202) 232-1180

(202) 747-7747 (fax)