

**IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA**

CIVIL DIVISION

**WP COMPANY LLC
d/b/a THE WASHINGTON POST,
1301 K Street, NW
Washington, D.C. 20071**

Plaintiff,

v.

Case No.

**THE DISTRICT OF COLUMBIA,
John Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

Serve:

Mayor Muriel Bowser
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

and

Office of the Attorney
General
for the District of Columbia
441 4th Street NW
Washington, D.C. 20001

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff WP Company LLC d/b/a The Washington Post (the “Post”), by its undersigned counsel, alleges for its Complaint:

1. This is an action under the District of Columbia Freedom of Information Act, D.C. Code § 2-531 *et seq.* (“FOIA”), to compel the production of public records concerning the District’s preparations for and responses to the riot at the United States Capitol on January 6,

2021. The Executive Office of the Mayor (the “EOM”), the District of Columbia Metropolitan Police Department (the “MPD”), the Office of Unified Communications (the “OUC”), and the Office of the Chief Medical Examiner (the “OCME”) have improperly withheld these records, which are responsive to six FOIA requests that the Post has made since January 2021.

2. The Post has widely reported on the failures of gathering and disseminating intelligence between federal civilian agencies, the Capitol Police Department, the Pentagon, and the National Guard leading up to and during the attacks on the Capitol. These requested records will shed further light on how the District’s agencies prepared for and performed their duties.

3. Despite the national importance of the requested records, the District has repeatedly either ignored requests for these records or cited inapplicable exemptions in withholding them, against the spirit and text of FOIA.

4. The records at issue in this action concern issues of the highest public importance. Access to these records would permit the public to evaluate how the Mayor’s Office and the MPD acted (and reacted) when the Capitol Police called in the MPD for support on January 6. The requested records are also important to the public’s oversight of the investigation into whether the rioters’ chemical attack led to the death of Capitol Police Officer Brian D. Sicknick.

5. Despite the compelling public interest in all of the records, the EOM and the MPD both denied the Post’s FOIA requests, either expressly or constructively.

6. These denials are contrary to the legal requirements of FOIA and to the purpose of the statute. FOIA advances the District’s commitment to a transparent, participatory, and democratic form of government. Access to information about the District’s preparations for and responses to a violent attack on the federal government are at the very heart of the democratic accountability that FOIA is designed to serve.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action with respect pursuant to D.C. Code § 2-532(e), which provides that “[a]ny failure on the part of a public body to comply with a request . . . within the time provisions . . . of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request,” and D.C. Code § 2-537 (a)(1), which provides that “if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of § 2-532, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.”

8. This Court additionally has jurisdiction over this action pursuant to D.C. Code Mun. Regs. tit. 1 § 412.1, which provides that “[w]hen a request for records has been denied in whole or in part by an agency, the request . . . may seek immediate judicial review of the denial in the D.C. Superior Court.”

9. Venue properly lies with this Court as the defendant is the District of Columbia, 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

10. The Post is a news organization based in Washington, D.C. It publishes the leading daily newspaper, by print circulation, in the nation’s capital, as well as the website washingtonpost.com, which reaches more than 82.5 million unique visitors per month, according to independent auditor comScore. The Post has won 69 Pulitzer Prizes.

11. Because the Metropolitan Police Department is an agency within the District of Columbia government, the District of Columbia is the proper defendant in this FOIA action. The

OUC is a subgroup within the Metropolitan Police Department.¹ Similarly, the OCME is a subordinate agency of the Metropolitan Police Department.² Throughout this Complaint, “the MPD” shall reference the District of Columbia acting through its Metropolitan Police Department including the OUC and the OCME.

12. The Executive Office of the Mayor is also a public body within the District of Columbia government. Throughout this Complaint, “the EOM” shall reference the District of Columbia acting through its Executive Office of the Mayor and Mayor Muriel E. Bowser herself.

STATEMENT OF FACTS

The Capitol Riot

13. As the entire world now knows, on January 6, 2021, thousands of rioters breached the United States Capitol in an attempt to halt the Electoral College vote count by Congress and then-Vice President Pence, leading to hundreds of arrests and several deaths, including one member of the Capitol Police Department, Officer Brian Sicknick.

14. As United States Attorney General Merrick Garland has said in reference to the Capitol insurrection, “I have not seen a more dangerous threat to democracy than the invasion of the Capitol.”³

¹ *Gov’t of the District of Columbia Org. Chart*, Exec. Office of the Mayor (Jan. 15, 2019), <https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/publication/attachments/DCGovtOrgChart2019.pdf>.

² *Id.*

³ Devlin Barrett, Abigail Hauslohner, Spencer S. Hsu, & Ashlyn Still, *A Sprawling Investigation: What We Know So Far About the Capitol Riot Suspects*, The Washington Post (May 13, 2021), https://www.washingtonpost.com/nation/interactive/2021/capitol-riot-arrests-investigation/?itid=lb_complete-coverage-pro-trump-mob-storms-capitol-building_3.

15. Capitol Police called upon the MPD and the National Guard for support to protect the Capitol building during this dangerous threat, but they were unprepared for and easily overpowered by the force of the attacks.

16. A Capitol Police intelligence report warned about this possibility three days before the attack,⁴ and the Federal Bureau of Investigation likewise warned the MPD and Capitol Police of the threat of the attack less than twenty-four hours in advance.⁵

17. Leading up to January 6, 2021, the Pentagon restricted the D.C. National Guard's authority, requiring a rigorous process to receive formal approval from high-level officials who were concerned about the "visual of the National Guard standing a police line with the Capitol in the background."⁶

18. The Post has reported on "significant, widespread, and unacceptable breakdowns in intelligence gathering" during the preparations for and on the day of January 6, 2021, including "omissions and miscommunications" between federal agencies, the Capitol Police, the

⁴ Carol D. Leonning, *Capitol Police Intelligence Report Warned Three Days Before Attack that 'Congress Itself' Could be Targeted*, The Washington Post (Jan. 15, 2021), https://www.washingtonpost.com/politics/capitol-police-intelligence-warning/2021/01/15/c8b50744-5742-11eb-a08b-f1381ef3d207_story.html.

⁵ Beth Reinhard & Matt Zapposky, *FBI Alert About Possible 'War' Against Congress Reached D.C. and Capitol Police on Eve of Attack, Deepening Security Questions*, The Washington Post (Feb. 23, 2021), https://www.washingtonpost.com/politics/capitol-riot-intelligence/2021/02/23/1cdfd126-75f4-11eb-ae66-8b9e3c6918a1_story.html.

⁶ Paul Sonne, *Pentagon Restricted Commander of D.C. Guard Ahead of Capitol Riot*, The Washington Post (Jan. 26, 2021), https://www.washingtonpost.com/national-security/dc-guard-capitol-riots-william-walker-pentagon/2021/01/26/98879f44-5f69-11eb-ac8f-4ae05557196e_story.html (quoting then-Capitol Police Chief Steven Sund's recollection of Army Staff director Lt. Gen. Walter Piatt's statement).

National Guard, and the MPD, which contributed to the “security failures” and violence of the riot.⁷

19. The Post extensively reported on the Capitol insurrection – as it was happening and in the weeks and months since.⁸ The FOIA requests at issue in this action will shed light on important first-hand information before and during the Capitol riot and its deadly aftermath.

The Death of Capitol Police Officer Sicknick

20. As the Post has reported, Capitol Police Officer Brian Sicknick “was among scores of officers hurt when rioters supporting the false election fraud claims of President Donald

⁷ Karoun Demirjian, *Capitol Police Had Intelligence Indicating an Armed Invasion Weeks Before Jan. 6 Riot, Senate Probe Finds*, The Washington Post (June 8, 2021), https://www.washingtonpost.com/national-security/january-6-senate-investigation/2021/06/08/a8cc5b1e-c7d4-11eb-81b1-34796c7393af_story.html.

⁸ See e.g., Aaron Blake, *What Trump Said Before His Supporters Stormed the Capitol, Annotated*, The Washington Post (Jan. 11, 2021), <https://www.washingtonpost.com/politics/interactive/2021/annotated-trump-speech-jan-6-capitol/> (analyzing then-President Trump’s speech); Aaron Blake, *The Big Holes in the First Big Jan. 6 Reports*, The Washington Post (June 8, 2021), <https://www.washingtonpost.com/politics/2021/06/08/very-conspicuous-holes-first-big-jan-6-report/> (analyzing holes in Senate Rules and Administration, Homeland Security, and Government Affairs committee bipartisan report); Beth Reinhard & Matt Zapotosky, *FBI Alert About Possible ‘War’ Against Congress Reached D.C. and Capitol Police on Eve of Attack, Deepening Security Questions*, The Washington Post (Feb. 23, 2021), https://www.washingtonpost.com/politics/capitol-riot-intelligence/2021/02/23/1cdfd126-75f4-11eb-ae66-8b9e3c6918a1_story.html (reporting FBI warning before Capitol insurrection); Paul Sonne, *Pentagon Restricted Commander of D.C. Guard Ahead of Capitol Riot*, The Washington Post (Jan. 26, 2021), https://www.washingtonpost.com/national-security/dc-guard-capitol-riots-william-walker-pentagon/2021/01/26/98879f44-5f69-11eb-ac8f-4ae05557196e_story.html (reporting Pentagon restricted National Guard before Capitol riot); Devlin Barrett, Abigail Hauslohner, Spencer S. Hsu, & Ashlyn Still, *A Sprawling Investigation: What We Know So Far About the Capitol Riot Suspects*, The Washington Post (May 13, 2021), https://www.washingtonpost.com/nation/interactive/2021/capitol-riot-arrests-investigation/?itid=lb_complete-coverage-pro-trump-mob-storms-capitol-building_3 (investigating the identity of rioters).

Trump violently besieged the Capitol, trying in vain to stop Congress from certifying Biden’s victory.”⁹

21. Two federal criminal defendants are presently “accused of assaulting Sicknick by spraying a powerful chemical irritant at him during the siege, but prosecutors have not tied that exposure to Sicknick’s death.”¹⁰

22. As the Post has reported, “[i]n the days after the riot, police and a Justice Department official attributed Sicknick’s death to his efforts to contain the riot.”¹¹

23. The District’s chief medical examiner, however, has concluded that Officer Sicknick “suffered two strokes and died of natural causes a day after he confronted rioters at the Jan. 6 insurrection.”¹² Despite the conclusion of the Chief Medical Examiner, questions remain about the causes of Officer Sicknick’s tragic death.

D.C. Mayor Muriel E. Bowser

24. District of Columbia Mayor Muriel E. Bowser was privy to intelligence, exerted control over the MPD during the Capitol siege, and reassured the District and the nation after the attacks.

25. Mayor Bowser was abreast of the MPD intelligence on the day of the siege and acted affirmatively. On January 6, 2021, as the Post reported, Mayor Bowser was called by D.C.

⁹ Meagan Flynn et al., *Officer Brian Sicknick Remembered as Hero Who Died Defending the U.S. Capitol*, The Washington Post (Feb. 3, 2021), https://www.washingtonpost.com/local/public-safety/sicknick-honor-capitol/2021/02/02/3878d5ae-6578-11eb-8c64-9595888caa15_story.html.

¹⁰ Peter Hermann & Spencer S. Hsu, *Capitol Police Officer Brian Sicknick, Who Engaged Rioters, Suffered Two Strokes and Died of Natural Causes, Officials Say*, The Washington Post (Apr. 19, 2021), https://www.washingtonpost.com/local/public-safety/brian-sicknick-death-strokes/2021/04/19/36d2d310-617e-11eb-afbe-9a11a127d146_story.html.

¹¹ *Id.*

¹² *Id.*

acting police chief Robert J. Contee, “his voice choked by mists of pepper spray, . . . and they agreed to enact a 6 p.m. curfew. Then they met up at a command center and watched video feeds as D.C. officers tried in vain to help their federal counterparts hold back the rioters engaged in acts of insurrection.”¹³

26. Mayor Bowser “held two news conferences in the hours during and after the riot, while federal authorities answered no questions from reporters. In the following days, with near-silence from Trump administration about the attack, Bowser spoke authoritatively to a nation hungry for information and reassurance.”¹⁴

27. Mayor Bowser’s communications leading up to, during, and directly after the Capitol insurrection will provide Washingtonians, and all Americans, with much-needed answers about whether all levels of leadership responded appropriately to the attack.

MPD’s Role in Defending the Capitol

28. The District of Columbia Metropolitan Police Department historically lends support as crowd control and surge support for protests and demonstrations on federal grounds, including the Capitol grounds.¹⁵

¹³ David Nakamura & Michael Brice Saddler, *After Coming to the Capitol’s Rescue, D.C. Leaders Seek More Autonomy Under Biden*, The Washington Post (Jan. 9, 2021), https://www.washingtonpost.com/local/dc-politics/bowser-trump-statehood-capitol/2021/01/09/71b27d78-51d4-11eb-b96e-0e54447b23a1_story.html.

¹⁴ Julie Zauzmer & Michael Brice-Saddler, *When Trump and Others Were Silent After Capitol Breach, D.C.’s Mayor Stepped Up*, The Washington Post (Jan. 17, 2021), https://www.washingtonpost.com/local/dc-politics/bowser-inauguration-dc-mayor/2021/01/17/756637ae-55f6-11eb-a817-e5e7f8a406d6_story.html.

¹⁵ D.C. Code § 5-133.17 (“Each covered Federal law enforcement agency may enter into a cooperative agreement with the Metropolitan Police Department of the District of Columbia”); *Our History*, United State Capitol Police, <https://www.uscp.gov/the-department/our-history> (noting historically the Capitol Police and the MPD were intertwined).

29. The MPD was dispatched to reinforce Capitol Police on January 6, 2021. As the Post has reported, “As right-wing rioters overwhelmed Capitol Police, killing an officer and badly injuring others, the District dispatched police officers—many of them D.C. residents—and at least 58 of them were injured, too.”¹⁶

30. The Post reported that the MPD, alongside Capitol Police, attempted to “restore order at the Capitol,”¹⁷ but failed after repeated unanswered requests from MPD Commander Robert Glover for reinforcement and munitions.¹⁸

31. As the Post has reported, the MPD was unprepared for the Capitol attack that was, in the words of U.S. Senator Gary Peters, “planned in plain sight.”¹⁹

32. As the Post has reported, “[a]t least seven congressional committees have launched probes into aspects of the Capitol attack.”²⁰

33. The MPD has provided video and written documents concerning the events of January 6, 2021 to the United States House Judiciary Committee as part of its investigation into the Capitol riot.

¹⁶ Robinson Woodward-Burns, *The Best Way to Secure the Capitol is to Make D.C. a State*, The Washington Post (Jan. 14, 2021), <https://www.washingtonpost.com/outlook/2021/01/13/dc-national-guard-bowser-capitol-riot-statehood/>.

¹⁷ Carol D. Leonning et al., *Capitol Breach Prompts Urgent Questions about Security Failures*, The Washington Post (Jan. 7, 2021), https://www.washingtonpost.com/politics/capitol-breach-security-failures/2021/01/06/e1e09b80-5061-11eb-b96e-0e54447b23a1_story.html.

¹⁸ Aaron Blake, *The Big Holes in the First Big Jan. 6 Reports*, The Washington Post (June 8, 2021), <https://www.washingtonpost.com/politics/2021/06/08/very-conspicuous-holes-first-big-jan-6-report/>.

¹⁹ Karoun Demirjian, *Capitol Police Had Intelligence Indicating an Armed Invasion Weeks Before Jan. 6 Riot, Senate Probe Finds*, The Washington Post (June 8, 2021), https://www.washingtonpost.com/national-security/january-6-senate-investigation/2021/06/08/a8cc5b1e-c7d4-11eb-81b1-34796c7393af_story.html (quoting United States Senator Gary Peters).

²⁰ *Id.*

34. Those public records contain facts, impressions, and other information critical to understanding the now-infamous events at the Capitol on January 6, 2021.

The Post’s FOIA Requests and the District’s Denials

35. Under FOIA, a “public record” includes all “recordings . . . or other documentary materials, regardless of physical form or characteristics prepared, owned, used in the possession of, or retained by a public body.” D.C. Code §§ 2-502(18), (18A); *id.* § 2-539.

36. Pursuant to D.C. law, a public body has fifteen days to respond to a FOIA request. D.C. Code § 2-532(c)(1) (“[A] public body, upon request reasonably describing any public record, shall within 15 days . . . of receipt of any such request either make the requested public record accessible or notify the person making such request of its determination”).

Request 1

37. On January 7, 2021, Post FOIA Director Nate Jones submitted a FOIA request to the EOM seeking “[a]ll messages sent by Mayor Muriel Bowser on her WhatsApp account and email account between January 5 and January 8, 2021.” The Post also requested fees be waived. This FOIA request (“Request 1”) was assigned handling number 2021-FOIA-02036. A true and correct copy of Request 1 is attached as Exhibit A.

38. The EOM’s response to Request 1 was due January 29, 2021. D.C. Code § 2-532(c)(1).

39. To date, the EOM has not responded to Request 1.

Request 2

40. On February 19, 2021 Post journalist Shawn Boburg submitted a FOIA request to the OUC, seeking “[a]ll 911 recordings, dispatch communications and CAD entries related to the Jan. 6, 2021 protest and subsequent riot at the U.S. Capitol,” and expressly “limit[ing] the

responsive records to events located in or calls originating from the First and Second police districts from 10 a.m. to 10 p.m. on Jan. 6, 2021.” The Post also requested fees be waived.

41. This FOIA request (“Request 2”) was assigned handling number 2021-FOIA-03235. A true and correct copy of Request 2 is attached as Exhibit B.

42. On March 30, 2021, more than a week after MPD’s statutory deadline to respond had passed, the District’s FOIA system notified Boburg that the status of Request 2 had changed and it was now “In Process.” A true and correct copy of that notice is attached as Exhibit C.

43. On March 30, 2021, MPD denied Request 2. A true and correct copy of that denial is attached as Exhibit D.

44. The MPD denied the request citing FOIA Exemption 3. *See* Ex. D (citing D.C. Code §§ 2-534 (a)(3)(A)(i) and (a)(3)(B)). MPD asserts that the requested records are “part of the ongoing open criminal investigation and enforcement proceedings.” *Id.* MPD further claims, without explanation, that its release could reveal the direction and pace of the investigation, and could lead to attempts to destroy evidence or intimidate witnesses. *Id.*

Requests 3, 4, and 5

45. On February 19, 2021, Boburg submitted a FOIA request to the MPD seeking “[a]ll audio, video and written documents provided to the U.S. House Judiciary Committee or its representatives related to the Jan. 6, 2021 protest and riot at the U.S. Capitol.” The Post also requested fees be waived. This FOIA request (“Request 3”) was assigned handling number 2021-FOIA-03236. A true and correct copy of Request 3 is attached as Exhibit E.

46. Also on February 19, 2021, Boburg submitted a FOIA request to the MPD seeking “[v]ideo taken from fixed security cameras located in the vicinity of the U.S. Capitol building that show the protest and riot from 12 p.m. to 6 p.m. on Jan. 6, 2021,” including “video

from a camera atop a D.C. tower positioned near Third Street Southwest that was used by MPD in command briefings following the Jan. 6 riot.” The Post also requested fees be waived. This FOIA request (“Request 4”) was assigned handling number 2021-FOIA-03237. A true and correct copy of Request 4 is attached as Exhibit F.

47. Also on February 19, 2021, Boburg submitted a FOIA request to the MPD seeking “[a]ll police radio communications -- audio and transcripts of audio -- between D.C. police officers, up to and including the chief of police, and with other law enforcement agencies, including the U.S. Capitol police, on Jan. 6, 2021 regarding the March to Save America rally and the subsequent riot at the U.S. Capitol,” including “communications between the times of 10 a.m. through 10 p.m. on Jan. 6, 2021.” The Post also requested fees be waived. This FOIA request (“Request 5”) was assigned handling number 2021-FOIA-03238. A true and correct copy of Request 5 is attached as Exhibit G.

48. On March 22, 2021, more than a week after MPD’s statutory deadline to respond, the Post received notice that specialist Lisa Archie-Mills had been assigned to Requests 3, 4, and 5. True and correct copies of the District’s notices are attached as Exhibits H, I, and J.

49. The MPD did not seek an extension to fulfil these requests. See Exs. H, I, & J.

50. Neither the MPD nor any other District agency has disclosed any public documents or further contacted the Post regarding Requests 3, 4, or 5.

51. MPD’s responses to Requests 3, 4, and 5 were due March 19, 2021. D.C. Code § 2-532(c)(1).

52. To date, the MPD has failed to respond to Requests 3, 4, and 5.

Request 6

53. On April 20, 2021, Post reporter Peter Hermann submitted a FOIA request to the OCME seeking a copy of “the autopsy report for Brian D. Sicknick, a Capitol police officer who died Jan. 7, a day after the insurrection at the U.S. Capitol.” The FOIA request (“Request 6”) was assigned handling number 2021-FOIA-04598.

54. On April 27, 2021, MPD denied Request 6. A true and correct copy of the MPD’s denial letter is attached hereto as Exhibit K.

55. The MPD denied Request 6, citing FOIA Exemption 2. *See* Ex. K at 1 (citing D.C. Code § 2-534(a)(2)). MPD asserts that releasing the autopsy record would constitute the disclosure of personal information. *See id.*

56. The MPD stated that the OCME “does not release its case files in response to FOIA requests. A direct request to OCME for a case file would need to be accompanied by . . . a court order.” *Id.*

COUNT 1

VIOLATION OF FOIA: CONSTRUCTIVE DENIAL OF REQUEST 1

57. The Post repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

58. The EOM and the Mayor’s communications are subject to FOIA. D.C. Code § 2-532(a).

59. Pursuant to FOIA, the EOM must release, in response to a FOIA request, any disclosable public records in its control or possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

60. The records responsive to Request 1 are public records.

61. The requested records are within the EOM’s constructive control or possession.

62. The requested records do not fall within any lawful FOIA exemption.

63. The Mayor's failure to disclose the requested public records violates FOIA.

64. The Post is entitled to an order compelling the Mayor to disclose the records that are the subject of Request 1.

COUNT 2

VIOLATION OF FOIA: IMPROPER DENIAL OF REQUEST 2

65. The Post repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

66. The MPD is subject to FOIA. D.C. Code § 2-532(a).

67. Pursuant to FOIA, the MPD must release, in response to a FOIA request, any disclosable public records in its control or possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

68. The records responsive to Request 2 are public records.

69. The requested records are within the constructive control or possession of the OUC, and thus are within the constructive control or possession of the MPD.

70. The requested records do not fall within the statutory exemptions cited by MPD or within any other lawful FOIA exemption.

71. The MPD's refusal to disclose the requested public records violates FOIA.

72. The Post is entitled to an order compelling the MPD to disclose the records that are the subject of Request 2.

COUNT 3

VIOLATION OF FOIA: CONSTRUCTIVE DENIAL OF REQUEST 3

73. The Post repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

74. The MPD is subject to FOIA. D.C. Code § 2-532(a).

75. Pursuant to FOIA, the MPD must release, in response to a FOIA request, any disclosable public records in its control or possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

76. The records responsive to Request 3 are public records.

77. The requested records are within the MPD's constructive control or possession.

78. The requested records do not fall within any lawful FOIA exemption.

79. The MPD's refusal to disclose the requested public records violates FOIA.

80. The Post is entitled to an order compelling the MPD to disclose the records that are the subject of Request 3.

COUNT 4

VIOLATION OF FOIA: CONSTRUCTIVE DENIAL OF REQUEST 4

81. The Post repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

82. The MPD is subject to FOIA. D.C. Code § 2-532(a).

83. Pursuant to FOIA, the MPD must release, in response to a FOIA request, any disclosable public records in its control or possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

84. The records responsive to Request 4 are public records.

85. The requested records are within the MPD's constructive control or possession.

86. The requested records do not fall within any lawful FOIA exemption.

87. The MPD's refusal to disclose the requested public records violates FOIA.

88. The Post is entitled to an order compelling the MPD to disclose the records that are the subject of Request 4.

COUNT 5

VIOLATION OF FOIA: CONSTRUCTIVE DENIAL OF REQUEST 5

89. The Post repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

90. The MPD is subject to FOIA. D.C. Code § 2-532(a).

91. Pursuant to FOIA, the MPD must release, in response to a FOIA request, any disclosable public records in its control or possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

92. The records responsive to Request 5 are public records.

93. The requested records are within the MPD's constructive control or possession.

94. The requested records do not fall within any lawful FOIA exemption.

95. The MPD's refusal to disclose the requested public records violates FOIA.

96. The Post is entitled to an order compelling the MPD to disclose the records that are the subject of Request 5.

COUNT 6

VIOLATION OF FOIA: IMPROPER DENIAL OF REQUEST 6

97. The Post repeats, re-alleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

98. The MPD is subject to FOIA. D.C. Code § 2-532(a).

99. Pursuant to FOIA, the MPD must release, in response to a FOIA request, any disclosable public records in its control or possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

100. The records responsive to Request 6 are public records.

101. The requested records are within the constructive control or possession of the OCME, and thus are within the constructive control or possession of the MPD.

102. The requested records do not fall within the statutory exemption cited by MPD, or within any other lawful FOIA exemption.

103. The MPD's refusal to disclose the requested public records violates FOIA.

104. The Post is entitled to an order compelling the MPD to disclose the records that are the subject of Request 6.

REQUESTED RELIEF

WHEREFORE, the Post respectfully requests that this Court:

- a. Declare that the documents sought by Requests 1-6 are public records under D.C. Code § 2-531 *et seq.* and must be disclosed;
- b. Declare that the documents sought by Requests 1-6 are within the control of the MPD or EOM under D.C. Code § 2-531 *et seq.* and must be disclosed;
- c. Order the MPD and EOM to conduct a search for and produce to the Post all documents responsive to Requests 1-6 within 10 business days of the Court's order;
- d. Award the Post the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and
- e. Grant the Post such other and further relief as this Court deems just and proper.

Dated: June 23, 2021

Respectfully submitted,



Of counsel:

James A. McLaughlin (#469203)
Deputy General Counsel &
Director of Government Affairs
The Washington Post
One Franklin Square, N.W.
Washington, D.C. 20071
(202) 334-7988
james.mclaughlin@washpost.com

Chad R. Bowman (#484150)
Charles D. Tobin (#455593)
Maxwell S. Mishkin (#1031356)
Margaret N. Strouse (*PHV* forthcoming)
BALLARD SPAHR LLP
1909 K Street, N.W., 12th Floor
Washington, D.C. 20006
Tel: (202) 661-2200 | Fax: (202) 661-2299
bowmanchad@ballardspahr.com
tobinc@ballardspahr.com
mishkinm@ballardspahr.com
strousem@ballardspahr.com

Counsel for Plaintiff The Washington Post