

Preliminary Statement

1. The Metropolitan Police Department is required by law to keep records of all arrests, stops, and other police-involved incidents. These events are recorded using PD-251 forms. Taken together, these forms provide a clear record of many police activities.

2. On April 20, 2023, Plaintiff Civil Rights Corps requested copies of all PD-251 reports in MPD's possession. MPD's response did not contest that all PD-251 reports must be produced without redaction and did not contend that MPD staff is even required to read the reports before producing them—which is obviously correct under this Court's ruling in *Civil Rights Corps v. District of Columbia [CRC I]*, 2020-CA-6265-B (Mar. 30, 2023), holding that PD-251s are public documents and must be produced *without redaction* and without regard to statutory exceptions. Instead, MPD claimed that it would cost approximately \$862,000 simply to *produce* the documents. MPD reached this astronomical figure by contending that “MPD is unable to mass produce the incident/offense reports.” But the website of MPD's own records-management system boasts that it allows “bulk data downloads direct from our application [user interface]” and further clarifies in technical documentation that MPD can easily “mass produce” the requested documents. Because MPD's fee assessment vastly exceeds the “actual cost of searching for, reviewing . . . and making copies of the records,” D.C. Code § 2-532(b), CRC seeks an injunction requiring MPD to produce the requested records upon payment of the actual costs MPD would incur as found by this Court after summary-judgment practice or trial.

3. After receiving MPD's astronomical fee assessment, CRC appealed to the Mayor as authorized by D.C. Code § 5-237(a). That section is pellucid: Her "determination *shall* be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays . . . and legal holidays) of the submission of the petition." Eleven business days after submitting it appeal, CRC emailed the Mayor's Office of Legal Counsel (which handles administrative appeals on behalf of the Mayor) to notify the Mayor that she had blown the deadline. In response, MOLC wrote "Your appeal remains in the queue for processing. Based on current turnaround time we anticipate issuing your appeal decision by the end of next month." Because MOLC maintains a pattern and practice of flagrantly disregarding its statutory deadlines, CRC seeks an injunction requiring it to comply with those deadlines.

Parties

4. Civil Rights Corps is a non-profit organization dedicated to challenging systemic injustice in the United States legal system, which CRC believes to be built on white supremacy and economic inequality. CRC works to shift power to community-led movements, particularly those led by Black, Brown, and poor people, who are most affected by the legal system, so they can build sufficient power to create structural change. One way that CRC works to empower these community-led movements is by seeking information about the workings of the system that CRC believes oppresses them and using that information to advocate for change.

5. The District of Columbia is a municipal corporation formed pursuant to Article I of the United States Constitution. It is the proper defendant in an action under FOIA seeking records in the possession of MPD, which is a *non sui juris* entity.

Jurisdiction

6. This Court has jurisdiction over this Action pursuant to D.C. Code § 2-532 *et seq.*

CRC Requests PD-251s And MPD Assesses a Huge Fee

7. On April 20, 2023, CRC requested “All incident/offense reports (i.e., PD-251 forms) in the possession of the Metropolitan Police Department.” (Exhibit A.) CRC’s representative wrote: “In the event that there are fees associated with this request, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request be filled electronically.” CRC further requested a fee waiver.

8. On May 18, 2023, MPD sent a letter to CRC denying CRC’s request for a fee waiver and assessing an estimated cost of \$862,093.62. (Exhibit B.)

9. Specifically, MPD wrote that it is “unable to mass produce” the reports. Instead, “[t]o search for and retrieve the 1,700,000 incident/offense reports [in MPD’s possession], personnel from the Enterprise Data Services Division of the Technical and Analytical Services Bureau, must first search MPD’s Records Management System (RMS) to locate the Central Complaint Number (CCN) for each of the incident/offense reports The eight-digit CCN for each individual incident/offense report must then be manually typed into RMS to locate the report. Once located, the

public incident/offense report must be exported and downloaded to a drive with sufficient memory to hold the 1,700,000 .pdf documents.”

10. Figuring that each report would take about a minute, MPD calculated that 28,333.33 hours of staff time would be required to fulfill CRC’s request, which—under the fee schedule established by D.C. law—would result in a fee of \$862,093.62. MPD requested prepayment of the fee before it began work.

11. Unsurprisingly, CRC declined to pay \$862,093.62. Instead, CRC wrote to MPD asking for further clarification of its fee calculation—specifically, an explanation for why MPD could not either “mass produce” PD-251s or, in the alternative, why it could not (or would not allow CRC to) write a simple computer program to conduct the searches. (Exhibit C.) CRC offered to put its own technical experts in touch with MPD’s—at CRC’s expense—to ease the burden of production to the maximum extent possible.

12. MPD never responded.

MPD’s Fee Assessment Vastly Exceeds its Actual Cost

13. The bottom of each PD-251 form produced by MPD reads “Mark43 RMS Form v2.0 generated by [the MPD user who generated the report] at [the time the report was generated].” (Exhibit D.)

14. Mark 43 is a database-services vendor based in New York City. MPD uses Mark 43’s record-management system (RMS) to store the data used to generate PD-251 reports. *See, e.g.,* MARK 43, *How the D.C. Metropolitan Police Department Decreased Report Writing Time by 80%*, <https://mark43.com/resources/case-studies/washington-d-c/>, December 11, 2018.

15. Although PD-251 reports are usually produced to the public as form documents, the information used to generate them is stored in the RMS in raw form. For example, in Exhibit D, one can see the report of a “Protective Pat[-]Down” conducted by MPD officers on May 15, 2019, beginning at 5:50 PM. Each of those pieces of information and more is stored in the RMS and is composed into a viewable document when a user requests that output.

16. But the raw data can be used in many other ways. According to Mark 43’s website, its product is particularly useful *because* it allows agencies to “export data to meet your agency needs.” And of course the raw data can, itself, be exported in bulk: “bulk data downloads,” Mark 43 writes, are possible “direct from our application [user interface].”

17. In case this were not clear enough, Mark 43’s technical documentation further verifies the ease with which MPD could, in fact, “mass produce” the information CRC requests. Mark 43’s explanation of the “data lake” underlying its database services—a data lake is a repository of data stored in its raw format—makes abundantly clear that one can mass export the data in any reasonable form one wishes. *See generally* MARK 43, *Data Lake: Database Layout*, <https://get.mark43.help/hc/en-us/articles/360030971571-Data-Lake-Database-Layout> (last accessed July 7, 2023, 11:27 AM).

18. MPD’s claim that it cannot “mass produce” PD-251s is straightforwardly and indisputably false.

19. Mass production of the information in PD-251s is trivially easy: All MPD needs to do is “bulk download” that information from its RMS, put it on hard drive or upload it to a cloud server, and give it to CRC. There will be costs associated with this process, but they will be on the order of a few hundred, maybe a thousand, dollars—not the more than \$800,000 that MPD tried to extract from CRC.

MOLC Admits an Unreasonable Pattern of Delays

20. On June 15, 2023, CRC appealed MPD’s unreasonable fee determination to the Mayor. (Exhibit E.) Under D.C. Code § 2-537(a), the Mayor’s written response was due on July 3.

21. The same day CRC appealed, MOLC sent an email to Brandynn Reaves (MPD’s FOIA officer) and undersigned counsel, reading “Please provide us with your response to the appeal within five (5) business days of this communication If no response is received, a final decision will be made on the record before us.”

22. Five days came and went, and MPD did not respond.

23. Then July 3 came and went, and MOLC did not respond to CRC’s appeal.

24. And so, on July 5, 2023, undersigned counsel emailed MOLC: “By my calculation, under D.C. Code Section 2-537(a), MOLC's response to my appeal was due on Monday. I have not seen a response from MPD, but one is not required, and MOLC may not delay its own obligation to respond on the grounds that MPD has declined to. Please advise whether MOLC intends to respond and if so when it plans to. We will otherwise seek relief in Superior Court.”

25. Later the same day, MOLC wrote back: “We have not received a response from MPD. Your appeal remains in the queue for processing. Based on

current turnaround time we anticipate issuing your appeal decision *by the end of next month*. We apologize for the delay.”

26. In other words, MOLC’s *stated* policy is to disregard its statutory deadline of ten business days and instead “turnaround” its appeals in three or more months.

CRC’s Prior Experience With MOLC

27. This matter is not CRC’s first time suffering delays vastly in excess of those permitted by statute.

28. On June 8, 2021, CRC filed a FOIA request (attached as Exhibit F) with MPD for (among other things) “all documents indicating which members of the Metropolitan Police Department were in the Gun Recovery Unit [GRU] between April 1, 2021, and May 1, 2021.”

29. After a lengthy delay, MPD denied CRC’s request. And so on April 21, 2022, CRC appealed MPD’s decision to the Mayor’s Office of Legal Counsel as allowed by D.C. Code § 2-537. Under that section, MOLC was required to respond “in writing with a statement of reasons . . . within 10 days (excluding Saturdays, Sundays, days of the initial COVID-19 closure, and legal holidays)”

30. On May 13, 2022, MOLC emailed MPD, copying CRC. (Correspondence between CRC and MOLC, including CRC’s initial appeal, is attached as Exhibit G.) MOLC wrote that “We received the attached appeal based upon a FOIA decision (or lack of decision) issued by your agency. Please provide us with your response to the appeal within five (5) business days of this communication If no response is received, a final decision will be made on the record before us.”

31. On June 13, 2022, now more than a *year* after submitting a request for the names of the members of the GRU, a CRC employee emailed MOLC: “I wanted to follow up on this matter. It has been 20 business days since the previous message. I have not been contacted by MPD or forwarded any response to my appeal nor have I received any final decision. Is there any update on this matter?”

32. On June 22, 2022, MOLC still had not responded. So CRC emailed again, this time reminding MOLC that it was a month passed its statutory deadline to respond.

33. On June 30, 2022, MOLC wrote back: “When this office provides notice of an appeal to an agency, the agency is then instructed to provide a response to the appeal to this office directly. Once our office receives the agency’s response, we then compose a final decision regarding the appeal. As of today, our office is still awaiting a response from the Metropolitan Police Department (MPD) regarding your appeal. We will reach out to MPD to request an update on the status of their response. We apologize for the delay in your appeal decision and appreciate your patience thus far.”

34. MOLC did not explain why it told MPD that “[i]f no response is received, a final decision will be made on the record before us” but told CRC that a response is composed only “[o]nce our office receives the agency’s response.” It cited no authority for the proposition that it was permitted to disregard its statutory deadline, which says nothing about agency responses to administrative appeals.

35. CRC heard nothing regarding its June 8, 2021 request until it filed suit in this Court on July 26, 2022.

36. On March 23, 2022, CRC filed a FOIA request with MPD for “[a]ll Incident/Offense Reports (i.e., PD-251s) dated between March 23, 2019, and March 23, 2022, which list MPD Officer John Wright as the Report Author and/or Assisting Personnel.” (The request is attached as Exhibit H.)

37. On April 11, 2022, after MPD denied CRC’s request, CRC appealed to MOLC. (The appeal is attached as Exhibit I.)

38. On April 26, 2022, MOLC emailed MPD, copying CRC. (All correspondence between CRC and MOLC relating to this request is contained within Exhibits G, H, and I.) MOLC explained, as it did with CRC’s prior appeal, that MPD’s response was requested within five business days and that “[i]f no response is received, a final decision will be made on the record before us.”

39. By June 6, MOLC still had not ruled on CRC’s appeal even though the ruling was due by statute on April 11. So a CRC employee wrote “to follow up on this FOIA Appeal. I submitted this Appeal on 4/11/2022,” the employee continued, “[and] [p]ursuant to D.C. Code 2- 537(a), a written determination with a statement of reasons was due to me within 10 business days. That timeline has long since expired. I have followed up repeatedly via the DC FOIA portal and have not received a response. Pursuant to your statutory obligations, I request a written determination with a statement of reasons without further delay. I also request an explanation of why the processing of my request has exceeded the statutory deadline.”

40. By June 14th, MOLC *still* had not ruled on the appeal or even responded to CRC's correspondence. CRC again wrote MOLC to remind the office of its statutory obligations.

41. On June 16, still having heard nothing of substance from MOLC, CRC emailed a letter (Exhibit J) explaining that MOLC was violating D.C. law by failing to respond.

42. On June 30th, MOLC emailed CRC: "As of today, our office is still awaiting a response from the Metropolitan Police Department (MPD) regarding your appeal. We have copied MPD on this email and request an update on the status of their response. We apologize for the delay in your appeal decision and appreciate your patience thus far." (MOLC sent a materially identical email to CRC regarding its other request the same day.)

43. MOLC did not explain why it told MPD that "[i]f no response is received, a final decision will be made on the record before us" but held its decision until a response is in fact received.

44. CRC heard nothing from MOLC or MPD regarding CRC's March 23, 2022, request until it filed suit in this Court on July 26, 2022.

Claim for Relief

Count One: Violation of D.C. Code § 2-532(b)

45. CRC incorporates all prior paragraphs by reference here.

46. On April 20, 2023, CRC requested "All incident/offense reports (i.e., PD-251 forms) in the possession of the Metropolitan Police Department."

47. On May 18, 2023, MPD sent a letter to CRC denying CRC's request for a fee waiver and assessing an estimated cost of \$862,093.62.

48. Under D.C. Code § 2-532(b), a public body may assess fees, but they are “not to exceed the actual cost of searching for, reviewing, redacting, and making copies of records.”

49. Because \$862,093.62 vastly exceeds the “actual cost” of “searching for . . . and making copies of” the records CRC requested, and because under D.C. law (as MPD concedes) MPD need not “review[]” or “redact” those records, MPD's fee assessment is illegal.

Count Two: Pattern or Practice of Violating D.C. Code § 2-537(a)

50. On June 15, 2023, CRC appealed MPD's unreasonable fee determination to the Mayor.

51. Under D.C. Code § 2-537(a), “any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination *shall* be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, days of the initial COVID-19 closure, and legal holidays) of the submission of the petition.” (emphasis added).

52. MOLC's deadline to respond was July 3, 2023.

53. MOLC did not respond by July 3, 2023.

54. Instead, MOLC adhered to its policy and practice of disregarding its statutory deadlines.

55. CRC has pending appeals before MOLC and intends to submit further requests to public bodies.

56. CRC reasonably anticipates that public bodies will wrongly deny its requests and that it will be forced again to appeal to MOLC.

Prayer for Relief

Plaintiff Civil Rights Corps respectfully requests:

- An order enjoining the District of Columbia to produce all incident/offense reports (i.e. PD-251s) in MPD's possession upon CRC's payment of the actual costs of searching for and making copies of that information; and,
- An order enjoining the Mayor to respond to appeals with written statements of reasons within ten business days of the appeal as required by law; and,
- An award of reasonable attorney fees and costs of litigation under D.C. Code Section 2-537(c); and,
- All other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Charles Gerstein

Charles Gerstein
Emily Gerrick
Sam Rosen
GERSTEIN HARROW LLP
810 7th Street NE, Suite 301
Washington, DC 20002
charlie@gerstein-harrow.com
(202) 670-4809

/s/ Jason Harrow

Jason Harrow
(*pro hac vice*)
GERSTEIN HARROW LLP
3243B S. La Cienega Blvd.,
Los Angeles, CA 90016
jason@gerstein-harrow.com
(323) 744-5293