

# Recent Records-Access Cases July 23, 2025

(supplemental materials incl.  
citations)



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Office of Open Government

# PART I: Procedure

# TWO TRACKS

Administrative Appeals to the  
Mayor's Office of Legal Counsel (the MOLC)...  
(procedural rules at 1 DCMR § 412)

...OR...

...Judicial Appeals to  
Superior Court

Case Management Plan (summary of procedure) at  
<https://www.dccourts.gov/sites/default/files/divisionspdfs/Civil-Division-Case-Management-Plan-Civil-Actions-Branch.pdf>

# PART II: Finding the Law

# Administrative (MOLC, etc.) Opinions (research sources)

## Lexis (since 1998):

*Example* — searching for opinions on exemptions:

(“freedom of information act appeal” or “foia appeal”) and exempt\* and (“2 534” or 204)

## Westlaw:

(“freedom #of information act appeal” or “foia appeal”) and exempt! and  
(“2 534” or 204)

## FREE public sources (though less robust search engines):

dcregs.dc.gov (10/2009–present) and dcregisterarchives.dc.gov (4/2003–9/2009)

## Older opinions:

“Brute force” method: Go to MLK (Central) Library’s Washingtoniana Collection (4th Fl.) or similar collection, consult the indexes at the start of each year of the *Register* for Freedom of Information Act Appeals, FOIA, District of Columbia F----..., or similar terms

## Searching All States' /Territories' Records-Access Opinions (to account for variations in short title)

foi or foia or "f o i" or "freedom of  
information" or "public records" or  
"public record" or sunshine or "open  
records" or "right to know" or "public  
information" or "records access" or  
"record access" or "government  
access" or "data practices"

The background features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.

## PART III:

# Specific Appellate Opinions

# Legal Boilerplate Okay, but not Question Marks??

Compare

*Chi. Justice Project v. District*,  
Case No. 2022 CA 001175 B (D.C. Super. Ct. Sept.  
21, 2022) (long, legalistic request),

with

In re *Rose*,  
Case No. 2019-211 (M.O.L.C. Nov. 5, 2019), 70  
*D.C. Reg.* 006045 (Apr. 21, 2023) (simple request,  
but asked in question syntax).



To: Metropolitan Police Department

Re: Gang Data Affiliation FOIA request

Inspector Vendette Parker  
Metropolitan Police Department  
300 Indiana Avenue, NW  
Room 4153  
Washington, D.C. 20001

Dear Sir or Madam,

Pursuant DC Code Title 2, Chapter 5, Subchapter II, Freedom of Information ("FOIA"), I, Tracy Siska, along with the Chicago Justice Project (the "Project"), respectfully requests copies of the below-listed public records from the District of Columbia Metropolitan Police Department ("MPD").

#### **DEFINITIONS**

##### **A. Records or Documents**

"Record" and/or "Records" means any documents or electronically stored information of any kind—including writings, drawings, graphs, charts, photographs, video recordings, sound recordings, images, databases, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

##### **B. Database**

"Database" means any collection of data or information that are specially organized for rapid search and retrieval by any electronic device. Databases are structured to facilitate the storage, retrieval, modification, and deletion of data in conjunction with various data-processing operations.

##### **C. Data Dictionary**

"Data Dictionary" means a collection of names, definitions, and attributes about data elements that are being used or captured in a database, information system, or part of a research project. A Data Dictionary also provides metadata about data elements.

##### **D. Gang Affiliation**

"Gang Affiliation" means the identifying of an individual with an organization, group, or association of people under a common name or symbol.

##### **E. Access (Accessible or any other form we use)**

"Access" means the ability to view, obtain, examine, edit, submit, share, or retrieve data.

#### **F. Private Entity**

"Private Entity" means any entity that is not a unit of government, including but not limited to a corporation, partnership, company, nonprofit organization, other legal entity, or a natural person.

#### **INSTRUCTIONS**

A. The requests below seek only non-privileged data. Please provide all non-privileged tables and fields related to the below requests. The "at a minimum" lists below are intended as a starting point for specificity, but are not exhaustive.

B. All data provided related to individuals should have identifying data such as name, phone number, and/or social security number removed from the data. Home address data should be altered to include only the hundred blocks. As an example, "2004 W. Roscoe St." would be transformed to "2000 W. Roscoe St."

C. In any requests regarding data or information shared among MPD and other entities, all responses should be limited to data and information accessible to MPD. The below requests do not seek or require information outside that controlled by or shared with MPD.

D. Where available or obtainable, please provide the requested data, in order of preference, in comma delimited format, comma separated format, or other format common for databases. If necessary, a portable hard drive or other means of transmittal can be provided for the data. In order to ensure a compatible format and minimize exportation burden, I am willing to meet and confer before the data are transmitted.

E. If the MPD decides to withhold any document or information pertinent to the requests made herein, please identify the document or information in as much detail as possible, and describe and detail in specific language why each document or piece of information is being withheld.

F. If any information requested herein is withheld on the basis of a claim of privilege or other protection, then that claim shall be made expressly in a writing that describes the nature of the document(s), information, communications, or things not produced or disclosed, in a manner that will enable an assessment of the applicability of the claimed privilege or protection. With regard to each claim of privilege or protection, the following information should be provided in the response or the objection:

- 1) The type of Document, e.g., letter or memorandum;
- 2) General subject matter of the Document;
- 3) The date of the Document;
- 4) Such other information as is sufficient to identify the Document for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the Document, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;
- 5) The nature of the claimed privilege or protection and why it is applicable; and
- 6) If applicable, the litigation or trial of which the document was created in anticipation.

G. If any Document identified herein has been lost, discarded, or destroyed, such Document(s) should be identified as completely as possible, including as to each such Document: its date, general nature (e.g., letter, memorandum, email, telegram, telex, photograph, computer printout, etc.), subject matter, each author and/or originator, each person indicated as an addressee or copy recipient, and its former custodian(s). In addition, as to each such Document, the following information should be supplied:

- 1) Date of disposal, loss, or destruction;
- 2) Manner of disposal, loss, or destruction;
- 3) Reason for disposal or destruction, or any explanation of loss;
- 4) Persons authorizing the disposal or destruction;
- 5) Persons having knowledge of the disposal, destruction, or loss; and
- 6) Persons who destroyed, lost, or disposed of the Document or thing.

# CJP's Request # C2 (finally!)

2. Please provide Records sufficient to show each public or private entity—whether on the federal, state, or local level—that can view or otherwise has access to the data within each Database detailed in Request A 1.

C2: “Please provide Records sufficient to show each public or private entity—whether on the federal, state, or local level—that can view or otherwise has access to the data within each Database detailed in Request A 1.”

# In re Rose

## Request and MOLC Analysis

“[Y]ou state that the Metropolitan Police Department . . . denied your request for the following records:

*“The head of the unit of Rio de Janeiro, Brazil police investigating communist activity in that country is said to have had contact with the police in Washington, DC sometime between 1933 and 1939. The person in question was... Captain [(NAME)].*

*“Do you have any records of communication with this Brazilian officer?”*

# Rose's request, MOLC analysis (cont'd)

“. . . MPD [respond]s that it sent a letter to you acknowledging your request and informing you of [its] fee schedule, and you responded as follows:

*“While I am willing to pay, I do not need more than a simple ‘yes or no plus the date’ . . . if Brazilian police captain [(NAME)] was asked to have some kind of contact with the police in Washington, DC in 1936–1937. A ‘by whom’ he was asked would likewise be nice if it is available. I DO NOT need copies of any documents.*

“Based upon these statements, MPD denied your request on the grounds that [D.C.] FOIA does not require agencies to perform research, analyze data, answer written questions, or create records in order to respond to a request.

“We agree with MPD that it is not obligated create [sic] records for you. . . . Moreover, [D.C.] FOIA does not require MPD to perform legal research for you.”

# The leading MOLC opinions mentioning “Glomar”:

MOLC Opinion  
Nos. 2019-18 (*Hannagan*) and  
2019-84 (*Zangari*)

## Public interests vs. privacy interests:

MOLC Opinion No. 2019-238 (*Zavala*): affirmed exercise of Exemption 2 because adequate public interest not demonstrated w/ respect to third-party Uber receipts

MOLC Opinion No. 2019-236 (*Esfino*): affirmed exercise of Exemption 2 because adequate public interest not demonstrated w/ respect to V.I.S. (victim-impact statement)

MOLC Opinion No. 2019-179 (*Pearson*): “[T]here is a public interest associated with the resume and application [of] a successful candidate for a government position that outweighs the applicable privacy interest.”

Requestor of records  
including PII (SSN, etc.) was  
himself the subject of the  
records:

MOLC Opinion No. 2019-188  
(*Winters*)



## More court cases (D.C.)

*DC v. Terris, Pravlik & Millian, LLP* (21-CV-0543)(D.C. Ct. App. 2025)  
(Court rejected the Mayor's claim of executive privilege and affirmed the Superior Court's order requiring production and online publication of the requested documents.)

*Gooch v. District of Columbia* (Metropolitan Police Dept.) (2023-CAB-002404) (D.C. Super. Ct.) (Requester sued the District for records related to his conviction. Plaintiff received partly redacted records. After agreeing to work on redactions, the parties reached an impasse. Requester-plaintiff alleges remaining redactions are insufficient as a matter of law.)

## More Court Cases (extra-juris., incl. D.D.C.)

*Gonzalez v. Miller*, 2024 WL 4536191 (Ga., 2024) (Georgia Supreme Court held that the state's Open Records Act ("ORA") applies to records maintained by district attorney's offices.)

*Teig v. Chavez*, (8 N.W.3d 484) (Ia., 2024) (Supreme Court of Iowa held that IOWA Open Records Act protects confidentiality of job applications received from external candidates but does not exempt from disclosure applications submitted by current government employees.)

*City of Portland v. Kessler*, (334 Or.App. 189) (Or., 2024) (Oregon Court of Appeals held that employees' personal cell phone numbers were subject to public disclosure, affirming a County District Attorney order and a Circuit Court decision ordering the disclosure.)

*Eddington v. D.O.D.*, (35 F.4<sup>th</sup> 883) (D.D.C. 2022) (No "mailbox rule" for emailed FOIA requests.)

## More Court Cases (cont'd) (extra-juris., incl. D.D.C.)

*Hjerstedt v. City of Sault Ste. Marie*, (2024 WL 3907176) (Mi., 2024) (On remand from the Michigan Supreme Court, the Court of Appeals held that a police department could not withhold portions of its use of force policy from public disclosure by invoking the state's Freedom of Information Act exemption for law enforcement staff manuals.)

*Michalski v. Dep't of Corr.* (315 A.3d 903) (Pa., 2024) (Commonwealth Court of Pennsylvania held that data available on Netflix's website identifying histories of movies that the DOC ordered were "public records" within the meaning of the state's Right-to-Know Law ("RTKL"))

*Town of Greenwich v. Freedom of Info. Commission* (226 Conn. App. 40, cert. denied) (Ct., 2024) (The Connecticut Appellate Court held that public agencies must search for and review records requested pursuant to the Connecticut Freedom of Information Act in order to prove that they are exempt from disclosure.)

## Adequacy of Search (D.C. Ct. of App. & MOLC)

*Doe v. M.P.D.*, 948 A.2d 1210 (D.C. 2008)

*F.O.P. v. District* (the “Peaceoholics” case), 79 A.3d 347 (D.C. 2013)

*F.O.P. v. District* (the “no void-for-volume” case), 139 A.3d 853 (D.C. 2016)

*Leith v. M.P.D.*, Case No. 2019-133 (*dictum*),  
(M.O.L.C.  
May 20, 2019), 66 DCR 14745 (Nov. 1, 2019)

Caselaw Standard for  
Responsive Adequacy:

(1)(a) show that search was “*reasonably calculated* to uncover *all* relevant documents” (and follow any leads along the way that *likely* will yield (not just *might* yield) more responsive records), and (b) evaluate your search in hindsight, as you go along, and don’t just stick to the initial, provisional plan you might have had at the top; and

(2) be prepared to “*adequately explain*” (such as in an affidavit) “both *how* the search was conducted and *why* it was conducted in that manner”

***Practice Tip: it’ll be easier to support that with a contemporaneous record kept in a routine/consistent, organized way)***

# CONTACT INFORMATION

For assistance with OMA/FOIA questions or comments,  
please reach us at 202-481-3411 or [opengovoffice@dc.gov](mailto:opengovoffice@dc.gov)

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