

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

_____)
The Profiling Project)
1530 Key Blvd.)
Suite 1222)
Arlington, Virginia 22201)
)
) Civil Action No. _____
Plaintiff,)
)
v.)
)
THE DISTRICT OF COLUMBIA)
)
Serve: Muriel Bowser,)
Mayor of the District of Columbia)
1350 Pennsylvania Ave. NW)
Washington, D.C. 20004)
)
Serve: Karl A. Racine)
Attorney General)
441 4th St. NW)
Washington, D.C. 20001)
)
Defendant.)
_____)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
[Freedom of Information Act, D.C. Code § 2-531, et seq.]

1. This action is brought under the District of Columbia’s Freedom of Information Act (“FOIA”), D.C. Code § 2-531, et seq., as amended. Plaintiff, The Profiling Project, seeks injunctive and other appropriate relief for the disclosure and production of specific information. The Profiling Project is an independent nonpartisan organization dedicated exclusively to solving the murder of Seth Rich. The D.C. Metropolitan Police Department (MPD) is obligated by law to maintain and make public records regarding the official acts of government and public officials. Specifically, The Profiling Project is seeking: 1) The surveillance video footage from the second-floor camera at Fragler Market; 2) The Medical Examiner’s report from the examination of the body of Seth Rich; and 3) The forensic ballistic report of from the murder of Seth Rich. The records sought are specific to the MPD’s controversial handling of the Seth Rich murder

and are crucial to the public's understanding of, and ability to evaluate, the MPD's conduct during its investigation.

2. MPD began their investigation of the Seth Rich murder on July 12, 2016 and has not released any new information since October 16, 2016. MPD essentially terminated their efforts in late October 2016. The case is now clearly a cold case. As such, the release of the desired information would not and could not harm MPD's efforts in any way, as there is no continuing effort.

3. Significantly, this information is being irresponsibly withheld because its release would inform the public and lead to solving the murder of Seth Rich.

4. The MPD, having mismanaged the murder of an important young man, and wanting to keep such information concealed from public knowledge, is refusing to fulfill its record keeping obligations and public disclosure requirement and make public those records.

5. The D.C. Metropolitan Police Department and Chief Peter Newsham are standing in willful disobedience of their lawful obligations to disclose information, including defiantly stating a refusal to disclose information where such information is mandated by law that it "shall be made available to the public on request."

6. This defies the police accountability and transparency that the D.C. City Council intended to protect.

7. The release of this crucial material will help bring peace to the victim's family, and it will help to either confirm or refute the various theories that swirl about this important murder case.

8. During the investigation of the murder of Seth Rich, MPD acquired two security videos from the Flagler Market taken during the early morning hours of July 12, 2016. They have not made either video available.

9. The medical examiner's report regarding the death of Seth Rich has never been released.

10. Without a proper medical examiner's report the public is unable to clearly determine whether the murder of Seth Rich was perpetrated by street thugs or whether it was the product of much broader and deeper political or international forces.

11. The medical examiner's report would be greatly corroborated and supported by the full forensic ballistic report from the victim Seth Rich's body.

12. Without the ballistic report of the death of Seth Rich, the public is unable to determine whether Seth Rich was the target of an out of control robbery or a merciless execution.

13. The public is entitled to access this information without any further delay in order to assess the conduct of the Metropolitan Police Department.

14. All of the information sought cannot be obtained through any other channels or any other sources.

15. MPD has neglected to fulfill its record keeping obligations and disclosure requirements and has neglected to release information critical to the case.

16. On or about the week of May 20th, 2016, the Profiling Project asked MPD about the security cameras, but no response was provided.

17. Plaintiff and its agents have repeatedly tried to obtain all of the requested material from the MPD but to no avail.

18. The public policy of the District of Columbia is clear: all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them.

19. D.C. law mandates the specific release of certain items. Delineated requirements of proper police conduct under the FARPSA are explicitly applicable in situations where there are also acts of criminal acts being carried out by some persons in proximity to First Amendment activity.

20. As the Washington Post Editorial Board wrote on January 25, 2017, addressing the police handling of the Seth Rich murder, : “It is important that the information collected be shared with the public and that there is an independent review by the D.C. Council.”

JURISDICTION AND VENUE

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

22. 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

24. THE PROFILING PROJECT is an independent non-partisan group created by JACK BURKMAN for the sole purpose of investigating the Seth Rich murder. The Profiling Project is based and headquartered in the Arlington, Virginia. The Profiling Project works to ensure transparency or openness in government operations. The sole function of the Profiling Project at this time is the investigation of the murder of Seth Rich.

25. The DISTRICT OF COLUMBIA is a municipal corporation, subject to suit, that runs and constitutes the local government of the District of Columbia.

26. 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 upholding and enforcing laws pertaining to demonstrations, protests and public assemblies.

FACTUAL BACKGROUND

27. Seth Rich was killed in the early morning hours of July 12, 2016 in the Bloomingdale neighborhood of Washington, D.C.

28. He was a 27 year-old employee of the Democratic National Committee, located in Washington, D.C.

29. Seth was shot twice in the back.

30. Flagler Market is located very close to the spot where Seth was killed. Flagler Market had two security cameras; police have not released the video footage from the camera on the second floor windowsill.

31. The medical examiner's report of his body was not released.

32. No forensic ballistic tests were released.

33. The surveillance video from the second floor camera was not released.

34. DC Public Policy mandates that MPD release records that are beneficial to the interest of public policy and not exempted.

35. The records are not sought for commercial use.

36. The records are sought by Jack Burkman, a vigilant citizen on a quest for justice.

37. The information is necessary in furtherance of the role of Jack Burkman as a watchdog to ensure accountability with legal requirements by the police, and to protect and defend the constitutional rights of those who wish to engage in political and associational activity protected by the First Amendment.

COUNT ONE

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

38. The preceding paragraphs numbered 1 through 37 are incorporated by reference as if set forth herein.

39. The District of Columbia has unlawfully failed to disclose pertinent information, requests for information submitted to the MPD under the FOIA.

40. The District of Columbia has unlawfully withheld all responsive public records subject to release under D.C. Code § 2-532.

41. The District of Columbia has unlawfully withheld all responsive public records subject to release under D.C. Code. § 5-331.16 (a).

PRAYER FOR RELIEF

42. WHEREFORE, Jack Burkman respectfully requests that this Court grant it the following relief:

- a. Declare that the denial of The Profile Project's requests, are in violation of D.C. Code. § 5-331.16 (a) and the D.C. FOIA;
- b. Enjoin the District of Columbia from withholding any records encompassed by The Profiling Project request for: 1) The surveillance video footage from the second-floor camera at Fragler Market, 2) The Medical Examiner's report from the examination of the body of Seth Rich and 3) The forensic ballistic report of from the murder of Seth Rich.
- c. Order that the District of Columbia produce the requested records within ten (10)

business days; and

d. Grant such further relief as the Court may deem to be just and appropriate.

May 25, 2017

Respectfully submitted,

/s/ Jack Burkman
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