IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA

MARISA KABAS Plaintiff, v. **THE DISTRICT OF COLUMBIA** Defendant.	Civil Action No. 2025-CAB-003703

PLAINTIFF'S COMBINED OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Superior Court Rule 56, Plaintiff respectfully submits this combined opposition to Defendant's motion for summary judgment and cross-motion for summary judgment. This is an action under the District of Columbia Freedom of Information Act, D.C. Code § 2-531 *et seq.* ("FOIA"), by independent journalist Marisa Kabas ("Plaintiff" or "Ms. Kabas") to compel the production of body-worn camera ("BWC") footage from the District of Columbia Metropolitan Police Department ("MPD"), a division within Defendant District of Columbia (the "District").[1] The requested videos document MPD's response to an incident involving members of the federal Department of Government Efficiency ("DOGE") at the United States Institute of Peace ("USIP" or the "Institute").

Nearly seven months after Plaintiff's FOIA request was submitted, the MPD provided Plaintiff with an accounting of video it deemed responsive to her request, amounting to 5 hours, 50 minutes, and 11 seconds of footage. MPD seeks to withhold 98.5% of that responsive footage. In so doing, MPD takes the extraordinary position that BWC footage may not be released if it

[1] Throughout this Cross-Motion, "the MPD" refers to the District acting through the MPD.

captures any third party or includes any information about how MPD accomplished the take-over of a nonprofit organization's headquarters. On both counts, MPD is wrong. No exemption applies to these videos, and FOIA requires that they be released.

The showdown at USIP headquarters on March 17, 2025 raises profound questions about the Constitution, policing, and the exercise of federal power. That day, MPD sided with DOGE and removed all of the Institute's personnel from the building. MPD's presence and actions prompted questions and alarm from Plaintiff, citizens of the District, a federal judge, a city councilmember, two advisory neighborhood commissions, and legal commentators, among others. More questions continue to arise. As recounted by one of Plaintiff's supporting declarants, the State Department employee that DOGE sought to install as the new USIP president, Kenneth Jackson, was giving orders to MPD officers inside the headquarters, including to remove USIP staff. As those staff were removed, MPD officers fist-bumped and high-fived one another. The footage withheld by MPD would, presumably, show these and other actions taken by its officers.

Although the public knows the end of the story of March 17, MPD's decision-making process and how it effectuated the transfer of USIP headquarters to the federal government are still shrouded in mystery. Plaintiff seeks to remedy that deficit. Accordingly, this Court should deny summary judgment to Defendant, grant summary judgment to Plaintiff, and order the District to produce the entirety of the requested BWC videos.

BACKGROUND

I. The USIP incident and MPD's involvement.

USIP is an "independent nonprofit corporation" created by Congress. Pl.'s Statement of Material Facts ("SMF") ¶ 1. In February 2025, President Donald Trump issued Executive Order 14217, which purported to direct several entities, including USIP, to "be eliminated to the

maximum extent consistent with applicable law." *Id.* ¶ 3. On March 14, 2025, USIP's ten appointed board members received emails from the White House purporting to terminate their positions. *Id.* ¶¶ 4–6. The same day, the remaining *ex-officio* board members signed a resolution purporting to remove USIP's acting president and CEO, George Moose ("Moose"), and replacing him with a State Department employee named Kenneth Jackson ("Jackson"). *Id.* ¶¶ 8–9. USIP took the position that that the terminations had no legal effect because it was an "independent nonprofit organization outside of the executive branch of the federal government." *Id*. ¶ 7. Nonetheless, DOGE representatives visited USIP's headquarters twice on March 14 and attempted to gain entry. *Id*. ¶ 10. In light of these efforts, USIP suspended its contract with its private security firm, Inter-Con, and revoked their ID-card access to the building. *Id*. ¶¶ 19, 44–45.

The situation came to a head on March 17, 2025. Around 2:30PM that day, Jackson arrived in a car at the USIP building along with several DOGE personnel, including Justin Aimonetti ("Aimonetti") and Nate Cavanaugh ("Cavanaugh"). *Id*. ¶¶ 13–15. Around the same time, members of the Inter-Con staff arrived at the building and attempted to access it. *Id*. ¶ 20. Although Inter-Con's ID-cards were disabled, one Inter-Con employee had retained a physical key and used it to enter the building. *Id*. ¶¶ 21–22, 44–46. Then, around 2:59PM, Colin O'Brien ("O'Brien"), USIP's head of security, and George Foote ("Foote"), USIP's outside counsel, called MPD to report the "unlawful intrusion" by the Inter-Con personnel. *Id*. ¶ 47. Before MPD arrived, "Inter-Con personnel agreed to leave the building." *Id*. ¶ 49. Foote and his co-counsel, Sophia Lin, walked outside the building and met with Jackson. *Id*. ¶ 51. Jackson suggested a meeting inside the building, but Foote and Lin declined and went back inside. *Id*. ¶¶ 52–53.

MPD officers did not arrive at USIP's headquarters until around 5:30PM. *Id*. ¶ 54. When they did, O'Brien "went down to meet them with the intention of filing a police report to document

the trespass earlier" by Inter-Con employees. *Id.* ¶ 55. O'Brien opened an entry-door to "let the District Commander and Deputy Captain of DC police into the building." *Id.* ¶ 56. Later, O'Brien let in another patrol officer, but "closed the door, which then locked." *Id.* ¶¶ 57–58. "Soon after, the police officers stated that they had another officer that needed to come in." *Id.* ¶ 59. That officer "held the door open behind him and refused to close the door when [O'Brien] asked him to," *id.* ¶ 61, at which point "[a] group of police officers, members of the DOGE team, and Kenneth Jackson entered the building through the open door." *Id.* ¶ 62. O'Brien then initiated a full building shutdown. *Id.* ¶ 63. He "was told by DC police officers to stay put and not move," and was "physically blocked by a DC police officer from moving around the building." *Id.* ¶¶ 64–65.

Foote and Lin then came down to meet MPD and "discovered that DOGE and Mr. Jackson were in the USIP building with the DC police." *Id.* ¶ 66. DOGE officials asserted that Jackson was acting president of USIP and handed them a copy of the resolution purporting to terminate Moose and install Jackson as USIP President. *Id.* ¶ 67. Jackson began giving MPD officers orders, including asking that MPD get lockpicking equipment and escort O'Brien, Foote, and Lin outside of the building. *Id.* ¶ 108. MPD officers adopted DOGE's position in the dispute, and "reiterated that Kenneth Jackson is the president of USIP." *Id.* ¶¶ 67–68. MPD then escorted Foote, O'Brien, and Lin, out of the building. *Id.* ¶ 69. MPD officers fist-bumped and high-fived each other as they did so. *Id.* ¶ 109. Once outside, MPD officers were seen removing lock-picking equipment, including a Halligan tool, from their vehicles. *Id.* ¶¶ 26, 111. Moose was in his office with chief of staff Anna Dean during this sequence of events, and sometime later, MPD and DOGE arrived at his office and escorted them outside. *Id.* ¶¶ 70–71.

On March 18, 2025, MPD released an official statement concerning the incident (the "MPD Statement"). *Id.* ¶ 29. It makes no mention of Foote's call for service for unlawful intrusion; it

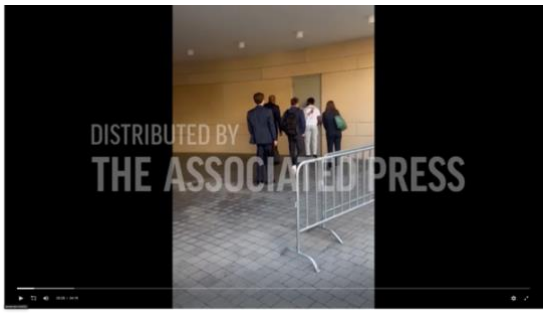
says MPD "was contacted by the United States Attorney's Office (USAO) regarding an ongoing incident at the United States Institute of Peace (USIP)." *Id.* ¶ 30. According to the MPD Statement, "MPD members met with the acting USIP President, and he provided the MPD members with documentation that he was the acting USIP President, with all powers delegated by the USIP Board of Directors to that role." *Id.* ¶ 31. The MPD Statement makes no mention of MPD's letting DOGE officials into the building or escorting USIP officials out—rather, it says: "MPD members went to the USIP building and contacted an individual who allowed MPD members inside of the building. Once inside of the building, the acting USIP President requested that all the unauthorized individuals inside of the building leave." *Id.*

II. News Coverage and Reaction to the Incident

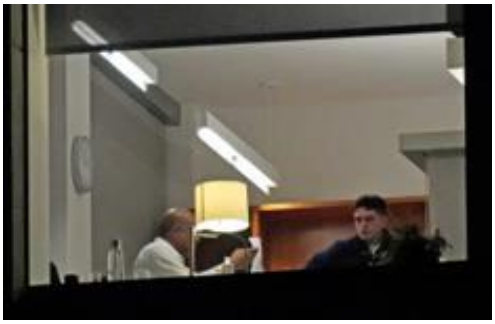
The Administration's authority to remove USIP's directors, install Jackson as its president, and obtain control of the USIP headquarters were immediately contested. *Id.* ¶ 39. USIP brought suit in federal court, naming Jackson and Cavanaugh in their official capacities, among others. *Id.* ¶¶ 39–41. As part of that litigation, three USIP representatives (O'Brien, Foote, and Moose) publicly filed declarations with further detail about their interactions with MPD at USIP's headquarters on March 17. *Id.* ¶¶ 42–43.

The March 17 incident, and MPD's involvement in it, was widely covered by the press. *Id.* ¶ 12. The DOGE representatives, USIP representatives, and Inter-Con staff members at the center of the controversy were photographed both inside and outside the building by members of the press and were publicly identified in press reports. *Id.* ¶¶ 13–18. Below are photos of Jackson, Aimonetti, and Cavanaugh taken by members of the press as they arrived:


SMF ¶¶ 16–18; Veile Decl. ¶ 20; Veile Decl. Ex. I. Jackson, Cavanaugh, and Aimonetti were recorded by members of the press while they were walking around USIP attempting to gain entry:



SMF ¶¶ 16–18; Veile Decl. ¶ 18.[2] They were also photographed and video-taped inside the USIP building throughout the day and evening through the windows of the building:




SMF ¶¶ 16–18; Veile Decl. Ex. H; Veile Decl. ¶ 19.

[2] The entirety of the video from which this still image was taken is available here: https://newsroom.ap.org/editorial-photos-videos/search?query=4562521&mediaType=video&st=keyword. Plaintiff requests that the Court take judicial notice of the entirety of the video. *See Broome v. United States*, 240 A.3d 35, 42–43 (D.C. 2020) ("[J]udicial notice may be taken of facts that are well-known by all reasonably intelligent people in the community, or so easily determinable with certainty from unimpeachable sources, that it would not be good sense to require formal proof." (cleaned up)).

Members of the Inter-Con staff were also identified and photographed by press while outside the building that day:

SMF ¶ 22; Veile Decl. Ex. H. USIP representatives including O'Brien, Foote, Lin, Moose, and Dean were also identified by press accounts of the event and were photographed and video-taped by the press throughout the day. SMF ¶¶ 24–25.

MPD officers were also observed by press carrying a car lockout kit out of the building:

SMF ¶ 26; Veile Decl. ¶ 22.[3] The aftermath of the incident prompted "questions for how officers arrived at the decision to side with the Trump administration." SMF ¶ 32. Plaintiff's reporting, for example, stated that "[w]hen USIP called MPD to report them as trespassing, officers arrived a short while later and instead of stepping in to prevent the gross government overreach, they helped DOGE gain full access." *Id.* ¶ 33. In the weeks and months that followed, two advisory neighborhood commissions passed resolutions expressing concern about why MPD had assisted

[3] The entirety of the video from which this still image was taken is available here: https://www.youtube.com/watch?v=kaa4lBQAH54. Plaintiff requests that the Court take judicial notice of the entirety of the video. *See Broome*, 240 A.3d at 42–43.

DOGE "despite not having a court order, warrant, or other legal documentation," but instead "chose to cooperate with the raid ordered by the DOGE office," *id.* ¶ 37, and about "the department's independence . . . and the potential for future conflicts between DC's local law enforcement priorities and federal overreach." *Id.* ¶ 36.

III. Plaintiff's FOIA Request

Ms. Kabas is an independent reporter who publishes her work through The Handbasket (thehandbasket.co). *Id.* ¶ 79. On March 19, 2025, Plaintiff submitted a FOIA request for BWC footage from the MPD's response to the March 17 incident (the "Request"). *Id.* ¶ 80–86. MPD failed to provide a substantive response to the Request, prompting this lawsuit. *Id.* ¶¶ 87–89.

On August 19, 2025—a week after the District filed its Answer to Plaintiff's Complaint—counsel for the District provided counsel for Plaintiff with a letter from MPD via email purporting to deny Plaintiff's request in full (the "Denial"). *Id.* ¶ 90. Although the Denial was dated March 21, 2025, it was not transmitted to Ms. Kabas on that date or any date before August 19, 2025. *Id.* ¶¶ 91–93. As of August 20, 2025, the Denial did not appear in Ms. Kabas's D.C. FOIA online portal account, and no email containing or regarding the Denial was sent to Ms. Kabas. *Id.* ¶ 92. Upon receipt of the Denial, Plaintiff's counsel promptly filed an administrative appeal with the Mayor's Office of Legal Counsel on August 20, 2025. *Id.* ¶ 94. On September 5, 2025, the Mayor's Office denied the appeal. *Id.* ¶ 95.

Notwithstanding the Denial, the District agreed to rereview the BWC footage and to produce any segregable portions thereof. Def.'s Statement of Material Facts ("Def.'s SMF") ¶ 35. On October 10, 2025, MPD provided Plaintiff with a *Vaughn* Index identifying approximately 5 hours, 50 minutes, and 11 seconds of video footage responsive to Plaintiff's request. SMF ¶ 96. Of that responsive video footage, MPD produced to Plaintiff approximately 5 minutes and 6

seconds of responsive video. *Id.* ¶ 97. MPD's production consists of 24 separate video files clipped to varying lengths, almost all of which are a just a few seconds long and show officers walking or standing around in various stairwells and hallways. *Id.* ¶ 98. The footage MPD has withheld, by contrast, amounts to approximately 5 hours, 45 minutes and 5 seconds, or 98.5% of identified responsive video. *Id.* ¶ 99–100.

STANDARD OF REVIEW

Summary judgment is appropriate if the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Super. Ct. Civ. R. 56(a)(1). FOIA was "designed to promote the disclosure of information, not to inhibit it." *Tax Analysts v. Dist. of Columbia*, 298 A.3d 334, 338 (D.C. 2023) (quoting *Wash. Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521 (D.C. 1989)). Accordingly, where the government seeks to shield records from public view in a FOIA case, "the burden is on the government agency to justify its withholding, and courts review such actions de novo." *Id.* To meet its burden, the government "is required to provide a reviewing court with sufficient information in the form of affidavits, so-called *Vaughn* indexes, oral testimony, or an *in camera* review of responsive documents to enable the court—not the agency—to be the final arbiter of the propriety of the agency's decision to withhold information." *Id*. (quoting *Riley v. Fenty*, 7 A.3d 1014, 1018 (D.C. 2010)). The government satisfies this burden when it "describes the documents and the justifications for nondisclosure with reasonably specific detail, demonstrates that the information withheld logically falls within the claimed exemption, and is not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Id.* (quoting *Fraternal Ord. of Police v. Dist. of Columbia*, 79 A.3d 347, 355–56 (D.C. 2013)). Moreover, in keeping with FOIA's strong policy in favor of disclosure, in evaluating the government's withholding,

"statutory exemptions from disclosure are to be narrowly construed, with ambiguities resolved in favor of disclosure." *Id.* at 339 (quoting *Riley*, 7 A.3d at 1018).

ARGUMENT

I. This case is not moot.

Because this Court has not yet "determined whether the District has sustained its FOIA burden by disclosing all of the requested documents to which [Plaintiff] is entitled," this case is not moot. *Fraternal Ord. of Police v. Dist. of Columbia*, 82 A.3d 803, 816 (D.C. 2014). The District's bare contention that "it has produced all responsive documents" is not sufficient to moot a FOIA claim where the requestor "question[s] the adequacy of the District's production." *See id*. Such is the case here. The District has failed to produce all of the requested videos, withholding hours of them. As explained below, these withholdings are improper.

Count I of Plaintiff's Complaint is also not moot, as it seeks relief for the District's failure to timely respond to Plaintiff's FOIA request. Although the District belatedly responded to Plaintiff's request after the filing of this lawsuit, its failure to timely respond remains relevant to Plaintiff's request for an award of attorney fees and costs associated with bringing the instant suit. *Fraternal Ord. of Police v. Dist. of Columbia*, 113 A.3d 195, 200 (D.C. 2015) (agreeing "request for fees was not mooted by the District's complete and adequate production of documents" although request for declaratory judgment was mooted).[4]

Plaintiff is entitled to a judgment that the District failed to timely respond to her request. *Cf.* D.C. Code § 2-532(c)(2)(A) (requiring MPD, within 25 working days of a request, to "either make the requested recording accessible or notify the person making such request of its

[4] The issues of timeliness and adequacy are appropriately resolved on motion for summary judgment. Whether Plaintiff is ultimately entitled to attorneys' fees—and in what amount—is appropriately deferred until after judgment, at which point Plaintiff may file a separate motion. *See* Civ. Sup. Ct. R. 54(d)(2)(B).

determination not to make the requested recording or any part thereof accessible and the reasons therefor"). Before initiating this case, Plaintiff received only two administrative emails from MPD regarding her request. *See* SMF ¶¶ 87–89. Although the District claims it responded to Plaintiff's Request on March 21, the Denial was first transmitted to Plaintiff's counsel (and by them to Plaintiff) on August 19, 2025. *Id.* ¶¶ 90–93. A printout of what was visible to Plaintiff in the FOIA portal as of August 20, 2025 demonstrates that no such letter appeared as of that date. Kabas Decl. ¶¶ 9–10 & Ex. C. Accordingly, because the District failed to provide Ms. Kabas with a timely response to her Request, it violated FOIA. D.C. Code § 2-532(c)(2)(A).

The District has failed to submit any evidence demonstrating it timely responded. Exhibit A to the Declaration of Aaron Harden does not show that the Denial was transmitted to Plaintiff before August 19. And the Declaration of Teresa Quon-Hyden conspicuously fails to include any documentation that the Denial was transmitted to Plaintiff although it includes other emails sent to Plaintiff via FOIA portal—showing that if an email transmitting the Denial existed, the District should be able to produce it. *Compare* Quon Decl. Ex. A, *with* Quon Decl. Ex. B.

In an apparent concession, MPD falls back on the argument that "even if Plaintiff never *received* the letter, MPD *responded* to her FOIA request within the statutorily prescribed time-period." Def.'s Mot. for Summ. J. ("Def.'s Mot.") at 6. That construction of the statute is absurd. FOIA requires a responding agency to "notify" a requester of a denial "and the reasons therefor." D.C. Code § 2-532(c)(2)(A). A requester must actually be notified; it is insufficient for MPD to make an internal decision and not provide actual notice to a requester, as that would divest requesters of their rights to challenge withholdings and/or denials. Indeed, FOIA contains diverging paths for requesters whose requests are constructively denied, *id.* § 2-532(e), versus when they must take an administrative appeal to the Mayor, *id.* § 2-537. To adopt the District's

interpretation of its obligations under FOIA—to merely craft a denial letter that is never sent—is contrary to the plain text of the statute and would fundamentally undermine its functionality.

Because Plaintiff continues to challenge the adequacy and timeliness of MPD's response and seeks relief not only in the form of declarative and injunctive relief but in the form of attorneys' fees and costs, this case is not moot. And because Plaintiff has submitted clear evidence that MPD failed to respond to her Request within the statutory deadline, summary judgment on Count I should be denied to Defendant and granted in Plaintiff's favor.

II. The District is unlawfully withholding bodycam videos where no privacy exemption applies.

D.C. Code § 2-534(a)(2) allows for the withholding of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Similarly, D.C. Code § 2-534(a)(3)(C) allows for the withholding of "[i]nvestigatory records compiled for law-enforcement purposes . . . but only to the extent that the production of such records would . . . [c]onstitute an unwarranted invasion of personal privacy." To invoke either exemption, there must be a more than *de minimus* "privacy interest at stake in the information sought." *Dist. of Columbia v. Fraternal Ord. of Police*, 75 A.3d 259, 265 (D.C. 2013). And even if such a privacy interest has been demonstrated, the information can only be withheld if the government shows that it outweighs "the public interest in disclosure." *Id.*

Neither D.C. Code § 2-534(a)(2) nor § 2-534(a)(3)(C) apply to the requested BWC footage. There is no substantial privacy interest at stake, and even if there were, any such interest would be exceptionally weak and readily outweighed by the public's interest in disclosure in understanding how MPD officials assisted DOGE in its takeover of USIP. Moreover, six persons who worked at or with USIP on March 17, 2025 have provided declarations in support of Plaintiff's Cross-Motion,

waiving any privacy interest they might have had and requesting the BWC footage at issue be released as it is in the public interest to gain a full accounting of MPD's actions.

A. Subjects of BWC footage do not have a more than *de minimis* privacy interest where the footage does not reveal any private facts about them and was not recorded in a private space.

In resisting disclosure, MPD asserts the privacy interests of "the involved officials, the third-party security contractors, and of the third-party individuals." Def's. Mot. at 10. But as to all three categories, "this case does not involve a request for private financial information, hospital admission records, social security numbers, medical records or similar materials where disclosure would compromise an interest in personal privacy with possible deleterious consequences." *WP Co., LLC v. Dist. of Columbia*, No. 2018 CA 005576 B, 2019 WL 1422433, at *3 (D.C. Super. Jan. 07, 2019). Rather, it involves BWC footage captured by MPD in response to two separate calls for service by governmental officials and public-facing persons who have a diminished expectation of privacy in their workplace. *Cf. Fraternal Ord. of Police v. Dist. of Columbia*, 290 A.3d 29, 45 (D.C. 2023) ("[P]rivacy interests are diminished when the party seeking protection is a public person subject to legitimate public scrutiny.") (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787 (3d Cir. 1994).[5] MPD's response to those dueling calls does not reflect anything of a private or personal nature—it shows how law enforcement personnel navigated a dispute about who had lawful control of an office building. As the MPD Statement made clear, no arrests were made and no criminal charges arising from the incident have been filed. *See* SMF ¶ 31 ("[N]o arrests were made.").

[5] While USIP's status is the subject of ongoing litigation, there is no dispute it is subject to federal FOIA requests. *USIP v. Jackson*, 783 F. Supp. 3d at 341. And at least one court has concluded that DOGE, too, is likely subject to FOIA. *See Citizens for Resp. & Ethics in Wash. v. DOGE Serv.*, 769 F. Supp. 3d 8, 26 (D.D.C. 2025). That both entities are (or are likely) subject to FOIA is further evidence that their employees' activities are the subject of legitimate public scrutiny and transparency.

Notwithstanding the non-private nature of the BWC footage at issue, the District asks this Court to establish a categorical rule that "individuals portrayed in the BWC footage have a privacy interest in their image and voice," Def.'s Mot. at 10, for purposes of FOIA. The Court should decline that invitation for multiple reasons. As an initial matter, such a rule has no basis in traditional privacy principles. *See, e.g.*, *United States v. Dionisio*, 410 U.S. 1, 14 (1973) ("No person can have a reasonable expectation that others will not know the sound of his voice, any more than he can reasonably expect that his face will be a mystery to the world."). Nonetheless, in arguing for the adoption of such a sweeping rule, MPD relies on two cases involving the interpretation of the federal FOIA's privacy exemptions: *Mingo v. DOJ*, 793 F. Supp. 2d 447 (D.D.C. 2011) and *N.Y. Times Co. v. NASA*, 920 F.2d 1002 (D.C. Cir. 1990). But neither case involved BWC footage and are unusual examples from which to derive a general rule—*Mingo* involved footage taken by a security camera inside a prison involving an altercation between a group of incarcerated people, 793 F. Supp. at 454–55, and *N.Y. Times Co.* concerned audio of the voices of the astronauts on the Challenger space shuttle prior to explosion "at the very moment of their deaths," 920 F.2d at 1009–10. The privacy interest of a subject who interacts with a police officer wearing a BWC, especially in public or semi-public spaces, cannot seriously be compared to the unique privacy considerations of astronauts at the moment of their deaths or of prisoners.

Moreover, while D.C. courts consider interpretations of the federal FOIA persuasive authority, they are "not bound by federal courts interpreting federal law" particularly where the D.C. FOIA's provisions differ. *Cf. Fraternal Ord. of Police v. Dist. of Columbia*, 52 A.3d 822, 829 (D.C. 2012). And there is good reason to distinguish the privacy interests in BWC footage, as local law contains specific provisions not found in the federal FOIA. In particular, D.C. Code § 2-534(a)(2A) exempts from disclosure recordings that would obviously implicate a privacy

interest, such as BWC footage taken (A) "[i]nside a personal residence" or (B) is "[r]elated to an incident involving" domestic violence, stalking, or sexual assault. D.C. Code § 2-534(a)(2A). Interpreting the more general privacy exemptions—(a)(2) and (a)(3)(C)—to apply to *any* footage that includes MPD interacting with a third-party would render the BWC-specific exemptions superfluous. Where BWC footage does not implicate those situations, "the existence of a personal privacy interest is dubious." *WP Co.*, 2019 WL 1422433, at *3.

The legislative history that resulted in D.C. Code § 2-534(a)(2A) confirms that most BWC footage should be released under FOIA. In 2015, the D.C. Council rejected proposed legislation that would have exempted all BWC footage from disclosure. *See* Committee on the Judiciary, Committee Report on Bill 21-0351, the "Body-Worn Camera Program Amendment Act of 2015," Council of the District of Columbia, at 11 (Nov. 19, 2015), https://perma.cc/925H-VF6A (discussing Mayor's initial proposal to exempt BWC footage from FOIA, which was "overwhelmingly denounced") (the "Committee Report"). As the Committee Report relays, a core purpose of the BWC program was to create "broad public access to recordings through FOIA, with recordings in public space disclosable with minimal redactions following a request." *Id.* at 16. Accordingly, D.C. Code § 2-534(a)(2A) reflects the idea that "there is little expectation of privacy in public space–anyone could witness an incident with the naked eye." *Id.* Recordings taken in public spaces "should be public in their unredacted form unless otherwise required by law (for example, a conflict with a privacy statute requiring redaction of a juvenile's face)." *Id.*

Here, contrary to these principles, MPD has produced no BWC footage, whatsoever, from *outside* the USIP headquarters building—on public streets and sidewalks—and makes no effort to explain why those persons shown interacting with MPD outside, in public, would have any privacy interest. *Cf. WP Co.*, 2019 WL 1422433, at *3 ("[T]here is no personal privacy interest in the

circumstances of a traffic stop that took place in a public space for anyone in the area to see."). That would include any footage of MPD's interactions with DOGE representatives outside the building, as well as interactions with Inter-Con or other third-parties outside the building. *See* SMF ¶ 49 (noting Inter-Con personnel agreed to leave the building before MPD arrived). Such video must be released.

For footage taken *inside* USIP's headquarters, there is also no privacy interest to be protected. An office building bears little resemblance to a private home where one might have personal documents, photographs, and private possessions of an embarrassing nature. Those who work in office buildings can regularly expect a degree of intrusion by colleagues, cleaning staff, security staff, and security cameras, and accordingly have a diminished expectation of privacy in those spaces. *Cf. Katz v. United States*, 389 U.S. 347, 351 (1967) (noting there is no Fourth Amendment protection for "[w]hat a person knowingly exposes to the public, even in his own home or office"). Those who knowingly interact with police can also reasonably expect a degree of intrusion on their privacy in light of FOIA's provisions. And a call for service for trespass or to remove professionals from a building bears none of the hallmarks of a domestic violence, stalking, sexual assault, or similar cases that might involve facts of a highly personal nature.

Further denigrating any semblance of a privacy interest here, the March 17 incident at USIP was a high-profile and well publicized dispute. The names, images, and videos of those involved—including members the DOGE team (Jackson, Cavanaugh, and Aimonetti)—have already been published by members of the press, and much about their involvement has become public record through the *USIP v. Jackson* litigation. *See* SMF ¶¶ 13–18, 39–41. These individuals were photographed and recorded inside and outside the USIP headquarters building. *Id.* ¶¶ 13–18. Neither USIP's nor DOGE's representatives can be said to have a reasonable expectation of

privacy in their images or voices in these circumstances. *Cf. Wolf v. Regardie*, 553 A.2d 1213, 1218 (D.C. 1989) (no claim for invasion of privacy where publication "did not actually delve into a plaintiff's *private* concerns, or where the plaintiff's activities were already known or public").

MPD speculates that the individuals featured on the BWC footage at issue might face similar threats that ICE agents in Los Angeles, Capitol Police Officers, and judges who have ruled against Trump, have reportedly encountered in recent months. *See* Def.'s Mot. at 10–11. Setting aside that MPD fails to cite any evidence of such harassment or threats specific to this incident or those involved, MPD fails to explain how the release of the BWC footage here would move the needle on those concerns where the identities and roles of those involved are already a matter of public record and their images have already been widely publicized. *See Wolf*, 553 A.2d at 1218.

Finally, as confirmation that the purported privacy interests at issue are non-existent, six USIP-affiliated persons who interacted with MPD at USIP have submitted declarations supporting Plaintiff in this case, making clear they "do not consider [themselves] to have a privacy interest in any BWC footage or audio that MPD may have captured of [them] on that day." Foote Decl. ¶ 6; Moose Decl. ¶ 5; O'Brien Decl. ¶ 17; Dean Decl. ¶ 4; Lin Decl. ¶ 5; Gallegos Decl. ¶ 4. They have also unequivocally waived any such privacy interest they might have had and requested the release of the footage. Foote Decl. ¶ 7; Moose Decl. ¶ 6; O'Brien Decl. ¶ 18; Dean Decl. ¶ 5; Lin Decl. ¶ 6; Gallegos Decl. ¶ 5. MPD is required, at a minimum, to produce all footage that includes those individuals.

B. The public interest in disclosure would outweigh any privacy interest.

Even assuming, *arguendo*, that any of the persons who might be depicted on the BWC footage at issue have more than a *de minimus* privacy interest (which as described above, they do not), it would be readily outweighed by the public interest in disclosure. FOIA's express policy 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." D.C. Code § 2-531. That includes information about how the MPD performs its functions, and "police-community relations" captured by BWC footage in particular. Committee Report, *supra*, at 16.

The USIP incident, and MPD's involvement in it, is a matter of paramount public interest. Because "[b]oth parties called the Metropolitan Police Department for help—putting law enforcement in the middle of the conflict," the incident prompted "questions for how officers arrived at the decision to side with the Trump administration." SMF ¶ 32. In its aftermath, several local government officials expressed concern about MPD's conduct that day and requested a fuller accounting of how MPD came to respond the way it did. Councilmember Parker recounted that his office "received dozens of calls and emails from concerned neighbors about MPD's involvement with removing individuals at the U.S. Institute of Peace." *Id.* ¶ 34. ANC 1E wrote that "[t]he involvement of MPD in DOGE's aggressive tactics raises serious questions about the department's independence, the decision-making process behind its participation, and the potential for future conflicts between DC's local law enforcement priorities and federal overreach." *Id.* ¶ 36. And ANC 2C expressed concern that MPD assisted DOGE "despite not having a court order, warrant, or other legal documentation," but instead "chose to cooperate with the raid ordered by the DOGE office." *Id.* ¶ 37. ANC 2C further noted that MPD's actions "constituted an invasion of private property." *Id.* ¶ 38. Questions continue to arise about what happened that day. At the temporary restraining order hearing concerning the lawfulness of what occurred, the Honorable Beryl A. Howell likewise questioned DOGE's use of "armed law enforcement from three different agencies . . . with all that targeting probably terrorizing the employees and the staff at the institute when there are so many other lawful ways to accomplish the goals of 14217." *Id*. ¶ 73.

On this issue, *Washington Post Co., LLC* is instructive. That case involved a request for BWC footage of a traffic stop of a DC Councilmember who had "shared concerns about the performance of MPD with District residents for many years." 2019 WL 1422433, at *3. In evaluating the District's withholding under FOIA's privacy exemptions, the court concluded that even if such a privacy interest existed, "the public interest in clarifying interactions between Councilmember White and MPD, as well as the propriety of police officers during the encounter weigh in favor of disclosure." *Id.* That was because the public had a "right to know, not just whether the Councilmember sought preferential treatment, but whether the complaints about MPD that he has raised over time manifested during that traffic stop." *Id.*

Similar considerations weigh in favor of disclosure here. The public has an interest in "clarifying interactions between" USIP officials, DOGE officials, and MPD, including whether any of those officials sought or were granted special treatment, to evaluate the "propriety of police officers during the encounter." *Cf. id.* True, much is already known about the USIP incident, despite MPD's refusal to provide the public with the most objective evidence that only it possesses. But the need for further clarification is underscored by the fact that members of the public, press, local representatives, and judiciary have all sought answers about MPD's involvement since that day. SMF ¶¶ 32–38, 73–76. Moreover, MPD's official statement regarding the March 17 incident makes no mention of the USIP officials' call for service, and instead asserts only that it was responding to the USAO's call. *See id*. ¶¶ 30–31. The public has a right to know how and why the MPD ultimately decided to take DOGE's side, including how it came to the decision that acting USIP President Jackson was "was lawfully in charge of the facility," *id*. ¶ 30, despite the involved persons' ongoing dispute as to that fact. The public has a right to know whether DOGE and Jackson requested or were given special treatment that day and why. And the public also has a

right to a full and accurate accounting of how MPD effected its takeover without a warrant or court order—including whether MPD engaged in impropriety while gaining access to the building and allowing DOGE to enter without giving USIP officials an opportunity to present their position.

It makes little difference to the propriety of MPD's conduct that the D.C. Circuit has now "granted a stay based in part on the United States' likelihood of success on the merits of its claim that the USIP Board's removal restrictions violate Article II of the Constitution," which MPD argues "lessen[s] the specter of any purported impropriety on MPD's part in allowing DOGE officials to access USIP's headquarters." Def.'s Mot. at 12. If it is indeed the case that MPD considered the Article II implications of USIP official's arguments as to why the installation of Jackson had no legal effect, and proceeded based on that theory of the Constitution to facilitate the transfer of a nonprofit's property to the federal government—all without a court order—that would increase, not lessen, the public interest in disclosure here. As one legal commentator put it, the events at USIP's headquarters reflect that "[f]or the first time in a very, very long time, street level police officers have to ask themselves whether they're being told to do something that is itself lawful. And that's not normally something police have to worry about." SMF ¶ 32. The public has an interest in understanding how exactly MPD determined what it did that day was lawful. The MPD's argument to the contrary should be rejected.

The USIP representatives who have filed declarations in support of Plaintiff universally agree that "it is in the public interest for there to be a full public accounting of the MPD's actions at the USIP headquarters building on March 17, 2025, and that the release of corresponding bodycam video will further that interest." Foote Decl. ¶ 8; 2d Moose Decl. ¶ 7; O'Brien Decl. ¶ 19; Dean Decl. ¶ 6; Lin Decl. ¶ 7; Gallegos Decl. ¶ 6. When weighed against the nonexistent or,

at best, exceptionally weak privacy interests in this case, the public interest readily outweighs it. Accordingly, this Court should order the District to produce the BWC footage in full.

C. Any privacy interests can readily be accommodated by more redaction, not wholesale withholdings.

Even assuming, *arguendo*, there is more than a *de minimis* privacy interest in any of these videos that outweighs the public's interest in disclosure (neither of which are true), MPD *still* has a duty to release "[a]ny reasonably segregable portion" of the videos that are not exempt. D.C. Code § 2-534(b); *see also Minority Bus. Opportunity Com*., 560 A.2d at 522 ("The Act does not contemplate an 'all or nothing' approach[.]"). For video footage involving a claim of privacy, the appropriate redaction method is not withholding all video that might capture a third-party, as MPD has done here, but rather blurring the subjects' faces. *See, e.g.*, *Evans v. Bureau of Prisons*, 951 F.3d 578, 587 (D.C. Cir. 2020) (recognizing that "blurring out faces" may serve as a reasonable method of redaction to prevent unwarranted invasions of privacy). That conclusion flows from the fact that D.C. FOIA's segregation requirement "relates primarily to the quality of the information that is produced to the requestor," *Dist. of Columbia. v. Fraternal Ord. of Police*, 33 A.3d 332, 346 (D.C. 2011); blurring affords maximum access the content about official conduct.

The use of blurring as a redaction method is technologically feasible, and indeed, is MPD's typical approach when releasing BWC videos involving officer-involved death or serious use of force as required by D.C. Code § 5–116.33(c)(2). *See generally* Community Briefing Videos, MPD, https://mpdc.dc.gov/page/community-briefing-videos (collecting videos from 2016–2025); *see also* Metropolitan Police Dep't, *Serious Use of Force (Neck Restraint) 7/2/25, 6900 block of Willow Street, NW, Involved Ofc 1 BWC*, YouTube (July 10, 2025), https://www.youtube.com/watch?v=2VI2st3F0Sk (blurring computer screen and subject face throughout video). But here, MPD has completely failed to explain why it has withheld the vast majority of responsive BWC

footage *in toto* instead of blurring the faces of the persons it believes have an overriding privacy interest. And MPD's *Vaughn* Index makes no mention or representation as to segregability. *Cf. Tax Analysts*, 298 A.3d at 341 (District was not entitled to summary judgment based on "bare-bones *Vaughn* index [that is] purely conclusory and [does] not address . . . reasonable segregability at all"). MPD's failure to address such segregability and redaction is, in and of itself, violative of its obligations under FOIA.

To the extent the Court determines that there is any prevailing personal privacy interest in the videos at issue, notwithstanding the discussion *supra*, the Court should order MPD to produce the entirety of the BWC footage with minimal blurring as it determines to be necessary.

III. None of MPD's other newly invoked exemptions justify withholding.

MPD makes passing reference to a grab bag of other FOIA exemptions aimed at law enforcement secrecy interests, all of which it asserted for the first time on October 10, 2025. None of those exemptions are justified or apply to the BWC footage at issue.

First, Exemption (3)(F) applies to "[i]nvestigatory records compiled for law-enforcement purposes . . . but only to the extent that the production of such records would . . . [e]ndanger the life or physical safety of law-enforcement personnel." MPD claims in its brief that it is invoking this exemption because "Plaintiff . . . intends to publish any BWC recordings she obtains, which could reasonably be expected to lead to unsafe situations for the involved officers." Def.'s Mot. at 13. Setting aside the sheer speculative nature of such claims, D.C. law forecloses the MPD's argument: "When releasing body-worn camera recordings, the likenesses of any local, county, state, or federal government law enforcement officers acting in their professional capacities, other than those acting undercover, shall not be redacted or otherwise obscured." D.C. Code § 5-116.33(f). The involved MPD officers were engaged in their official duties and photographed and

captured on video tape by members of the press in public spaces throughout March 17 at USIP's headquarters. *See, e.g.*, SMF ¶ 26; Veile Decl. ¶ 22. In short, MPD officers have no interest—privacy or otherwise—under FOIA in avoiding disclosure of information about their official conduct or in suppressing BWC footage that provides an accounting of that conduct.

Second, MPD invokes Exemption (3)(E), which applies to "records compiled for law-enforcement purposes" that "disclose investigative techniques and procedures not generally known outside the government." MPD argues that the videos "depict[] MPD officers being briefed about the situation, gaining access to the building, and identifying the ingress and egress points of the facility, the security measures the building has in place, the vulnerabilities of the security measures, and the manner in which these security measures may be overcome." Def.'s Mot. at 13–14. That description is boilerplate—and here, obscures the reality that the security measures MPD purports to have overcome at USIP's headquarters were minimal at best. USIP's headquarters is not a high-security building and was regularly opened to the public. SMF ¶¶ 106–07. MPD's initial entry was not a product of secret police techniques but of being let in by O'Brien and then refusing to close the door when he requested they do so. *Id*. ¶¶ 56–62. USIP's internal doors used magnetic, electrical, and mechanical locks, which can be opened by force with tools such as a "Halligan" tool or a car lockout kit, both of which MPD officers were observed from public vantage points carrying outside the building that day. *Id.* ¶ 110–12; *see also* Veile Decl. ¶¶ 22–23. MPD officers can be heard on one of the produced BWC video clips discussing tools like simple electrical tape, SMF ¶ 113, which officers presumably were using to tape door latches open once broken through, *id.* ¶¶ 114–115, a method that is hardly top-secret. Thus, O'Brien confirms that disclosure of any videos taken inside USIP's headquarters would not "create a security concern for personnel inside or law enforcement responding to incidents in the future." O'Brien Decl. ¶ 20.

Third, while MPD's *Vaughn* Index also references D.C. Code § 2-534(a)(4), MPD's brief does not invoke that exemption or explain how it applies. In failing to do so, MPD has waived that exemption. But in any event, D.C. Code § 2-534(a)(4) exempts "[i]nter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." This case does not involve a request for memorandums or letters and accordingly that exemption has no application here. To the extent MPD seeks to otherwise rely on a freestanding "law enforcement privilege," that privilege is "designed to protect ongoing investigations from premature disclosure, disruption, and compromise," *Kay v. Pick*, 711 A.2d 1251, 1256 (D.C. 1998), not to shield MPD from embarrassment for its official conduct in response to a call for service that produced no arrests and no ongoing criminal investigation.

Finally, to the extent that any portions of the footage at issue would implicate any law enforcement secrecy interest—which MPD has utterly failed to demonstrate where, as here, the "techniques" were walking into an open door and overcoming magnetic locks—the appropriate course would not be withholding the entirety of responsive BWC footage. While MPD has not specified the portions of the footage that it contends are exempt with any particularity, it is reasonable to assume that the BWC footage includes substantial information about MPD's interactions with DOGE and USIP officials and instructions from senior MPD leadership about whether to take DOGE or USIP's side, rather than any clandestine police operations. Accordingly, the appropriate course here would be to adopt a minimally intrusive redaction method that would preserve the informational content of the video. As explained in Section II.C., *supra*, MPD could blur particular techniques, or segregate the moments of the BWC footage in which it is actually engaged in those methods, rather than outright withholding nearly 98.5% of responsive video.

In light of the foregoing, Defendant's request that the Court review the BWC footage at issue *in camera* to avoid explaining why it actually thinks the footage would implicate a law enforcement interest is unavailing. "The decision to conduct *in camera* review is discretionary," *Fraternal Ord. of Police v. Dist. of Columbia*, 79 A.3d 347, 359 (D.C. 2013), and is "not a substitute for the government's obligation to provide detailed public indexes and justifications whenever possible." *Am. Immigr. Council v. Dep't of Homeland Sec.*, 950 F. Supp. 2d 221, 235 (D.D.C. 2013). Where, as here, the District has failed at the threshold to identify any cognizable law enforcement—or privacy—interest to justify its withholding, summary judgment is appropriately granted to Plaintiff. *See, e.g.*, *Duda v. DOJ*, No. CV CV2-1048 (LLA), 2025 WL 2418404, at *12 (D.D.C. Aug. 21, 2025) (granting partial summary judgment to the plaintiff where agency failed to meet its burden); *see also Khatchadourian v. FBI*, No. CV 22-03734 (AHA), 2025 WL 2761891, at *5–9 (D.D.C. Sept. 29, 2025) (same).

CONCLUSION

Defendant's Motion for Summary Judgment should be denied, Plaintiff's Cross-Motion for Summary Judgment should be granted, and this Court should order MPD to produce the remaining responsive BWC footage in its entirety or, in the alternative, with minimal redactions.

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Respectfully submitted,

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