

# **EXHIBIT I**



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February 3, 2022

Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
MS-6556 MIB  
Washington, DC 20240  
Attn: FOIA/Privacy Act Appeals Office

Re: **FREEDOM OF INFORMATION APPEAL (NPS-2021-004686)**

Dear Appeals Officer,

This letter constitutes National Public Radio's ("NPR") appeal of the United States Park Police's ("FBI") denial of NPR Reporter Eric Westervelt's June 24, 2021, Freedom of Information Act ("FOIA") request.<sup>1</sup> Ex. A. Mr. Westervelt's request sought information on the incidents in Lafayette Square, Washington, D.C., on May 30 and June 1, 2020.

The Park Police sent a response dated November 8, 2021, stating that it had released material to its reading room that "may" be responsive to NPR's request. Ex. B. The information NPR requested is not available in the reading room, therefore we write to appeal the failure to provide the requested information.

The Freedom of Information Act arose from concerns over the "mushrooming growth of Government secrecy." H.R. Rep. No. 89-1497, at 2 (1966). It "focuses on the citizens' right to be informed about 'what their government is up to,'" by requiring the release of "[o]fficial information that sheds light on an agency's performance of its statutory duties." *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989) (citation omitted).

The government "always bears the burden to show that a given document is covered by an exemption and should be withheld." *Rosenfeld v. DOJ*, 57 F.3d 803, 808 (9th Cir. 1995). This burden must be construed in light of the Act's command that its exemptions "be interpreted narrowly." *Lahr v. NTSB*, 569 F.3d 964, 973 (9th Cir. 2009). And even where agencies may withhold records, the law favors transparency: "Congress has encouraged the agencies to disclose" even "exempt material for which there is no compelling reason for withholding." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980).

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<sup>1</sup> For ease of reference, the request is attached hereto as Exhibit A.

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In 2016, Congress amended the text of the FOIA to state that an agency may only withhold information if “the agency reasonably foresees that disclosure would harm an interest protected by [a FOIA] exemption.” 5 U.S.C. § 552(a)(8)(A). The legislative history indicates that the purpose of that amendment was to “establish a ‘presumption of openness’ in FOIA.” *Rosenberg v. Dep’t of Def.*, 342 F. Supp. 3d 62, 72–73 (D.D.C. 2018) (citing H.R. Rep. No. 114-391, at 9 (2016); S. Rep. No. 114-4, at 3, 7.).

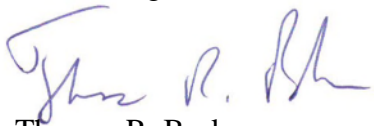
The Park Police agency has failed to identify any exemption in the Freedom of Information Act to explain its failure to provide the requested information.

Given the compelling public interest in the government’s response to a lawful protest held in a public park, we request that the Park Police release the information that has been improperly withheld. The failure to release the information is incompatible with the purpose of FOIA: to promote openness in government and ensure informed citizens.

To the extent that the Park Police agency does not release these records, NPR is prepared to fully pursue the public’s right of access to these documents through litigation. We hope that such action will not be necessary.

Please do not hesitate to contact us if you have any questions about this appeal at (415) 276-6552, or via email at [thomasburke@dwt.com](mailto:thomasburke@dwt.com).

Sincerely,  
Davis Wright Tremaine LLP



Thomas R. Burke

cc: Eric Westervelt, NPR  
Micah Ratner, Esq., NPR  
Jeff Guo, Esq., NPR

**Wang, Lorraine**

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**From:** Wang, Lorraine  
**Sent:** Thursday, February 3, 2022 10:48 AM  
**To:** 'FOIA.Appeals@sol.doi.gov'  
**Cc:** Burke, Thomas; 'Jeff Guo'; Micah Ratner; 'EWestervelt@npr.org'  
**Subject:** FREEDOM OF INFORMATION APPEAL (NPS-2021-004686)  
**Attachments:** 2022.02.03 NPR FOIA Appeal DOI.pdf

Dear Appeals Officer,

Attached please find the appeal of a Park Police FOIA decision.

Thank you,

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