



forth below, defendant submits that its motion for summary judgment should be granted.

### ARGUMENT

Contrary to plaintiff's representation about her request, see Plaintiff's Opp. at 2, plaintiff did not just seek crime statistics regarding prosecution rates in the District of Columbia. Instead, she sought such statistics specifically "by ward." Francis Decl., ¶ 4 and Att. A, pp. 2-3. Her request listed three categories of records she sought, and one question she wanted answered, and all four components of her request were modified by the restrictive phrase "by ward." Id. Plaintiff stated that she was filing her request on behalf of "residents who live within the boundaries of Advisory Neighborhood Commission 6B10," and that plaintiff is the Advisory Neighborhood Commissioner for 6B10. Id., Att. A, pp. 2-3. Advisory Neighborhood Commission ("ANC") 6B10 is in Ward 6 in the District of Columbia. See Complaint, ¶ 6.

After DOJ sent plaintiff a letter acknowledging receipt of her request, plaintiff wrote back and stated that she had raised money to pay for her request "so that DC residents can better understand the number and types of crimes DOJ is prosecuting "in each ward of the city." Francis Decl., Att. D. She also expressed concern about a rise in crime in her "single member district." Id.

In response to DOJ's letter stating that the USAO had no responsive records because "[t]he USA does not track this information[']", Francis Decl., Att. E, plaintiff appealed the determination. Id. at Att. G. By letter dated March 16, 2015, DOJ's Office of Information and Privacy ("OIP") affirmed DOJ's decision. Id. at Att. J. OIP concluded that DOJ had performed an adequate reasonable search for responsive documents and that none had been located. Id. OIP explained to plaintiff that the USAO tracked crime information by police district, not by ward. Id. Finally, OIP informed plaintiff that if she wanted crime statistics compiled by police

district or by type of crime, she could submit a request for that information. Id. at n.1.

Instead of following this reasonable suggestion and asking for crime statistics by type of crime or by police district, approximately two months later plaintiff filed suit, alleging that her FOIA request sought crime statistics “broken down across D.C.’s eight Wards[]” and asking the Court to order DOJ to provide “the requested documents[.]” Complaint, ¶ 3 & Prayer for Relief at A.

Plaintiff’s opposition to defendant’s motion for summary judgment ignores all of this. Instead, plaintiff essentially argues that DOJ should have ignored her request for crime statistics by ward and produced to her crime statistics by police district, as DOJ produced to Senator Charles Grassley.

In support of her claim that DOJ should have ignored her request and provided her with information other than what she requested, plaintiff argues at length that FOIA requests should be liberally construed. See Plaintiff’s Opp. at 7-8. This, however, is not a case of a failure to construe plaintiff’s request liberally. Here, DOJ declined to decide for plaintiff that she really did not want what she had specifically requested, and that DOJ would simply provide, at a possible cost to her, the information that she had not requested. This was entirely reasonable given the context of the request. An ANC Commissioner asked for crime statistics by ward, because people in her ward were concerned about a spike in crime. Tellingly, when she was informed that this information did not exist, she made no effort to broaden her request to include crime statistics in general, or by police district, or by type. Instead, she appealed to OIP again emphasizing she was seeking information “by ward.” Francis Decl., Att. E. And then when informed by OIP that the USAO did not track crime statistics by ward, but did track crime by police district, plaintiff waited two months and then just filed suit.

All of this could have been avoided had plaintiff merely submitted a broad enough request initially, so it was clear that she was willing to accept, and pay for if necessary, crime statistics by police district instead of by ward. And this lawsuit could have been avoided had plaintiff, after being informed by OIP that she could request crime statistics by police district, as they are kept, simply made such a request. Indeed, plaintiff appears now to have obtained that information from some source, given that she attached DOJ's July 15, 2016 response to Senator Grassley which includes crime statistics in D.C. sorted not by ward but by police district. Plaintiff's Ex. 1.

In that regard, plaintiff argues that DOJ has applied a double standard, producing to Senator Grassley crime statistics by police district when it refused to produce this same information to plaintiff. Plaintiff's Opp. at 12-14. But Senator Grassley's request for information was not identical to that of plaintiff's. Plaintiff asked specifically for crime statistics information "by ward." Senator Grassley requested crime statistics by year, by category of crime, and by ward. Exs. 1 & 2 attached.<sup>1</sup> On its face Senator Grassley's request for information was broader than plaintiff's request.

DOJ's initial July 1, 2016 response to Senator Grassley, when he sought information concerning this case, explained that the USAO did not compile and maintain crime statistics by ward as requested by plaintiff. This response also made clear that DOJ understood that plaintiff wanted crime statistics only if they were sorted by ward. Ex. 3, attached. Had plaintiff made clear to DOJ that she was willing to accept crime statistics sorted in a manner other than by ward, DOJ could have produced to her the same information provided to Senator Grassley. Plaintiff's filing of this lawsuit, however, belies her claim that she would have accepted crime

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<sup>1</sup> Because Senator Grassley's letters also address issues not relevant to this case, that information has been redacted from the letters.

statistics in the manner provided to Senator Grassley, given that a simple request for the information by police district (as suggested by OIP) would have been honored.

Plaintiff argues that the case on which DOJ has relied, Wilson v. U.S. Dep't of Transportation, 730 F. Supp.2d 140 (D.D.C. 2010), is distinguishable, because in Wilson the FOIA request sought information specific to a particular office, and the agency had no way to provide this data from a larger set of data. Plaintiff's Opp. at 6. Plaintiff argues that, by contrast, she sought crime statistics which the USAO maintains, and the "format" of the data was "secondary to her request." Plaintiff's Opp. at 6.

On the contrary, nothing in plaintiff's FOIA request, or administrative appeal, indicates that her request for information by ward was merely a format issue that was not an integral part of her request. If plaintiff had wanted to convey that idea, all she had to do was request crime statistics for D.C. and then state that if they were compiled and maintained by ward that would be her preferred way in which to receive the information. The fact that she steadfastly maintained that she wanted the crime statistics by ward, both in her initial request, on appeal to OIP, and in her Complaint, lends itself to the entirely reasonable conclusion that the format of the information was an important, integral element of her request.

Plaintiff's reliance on Edelman v. SEC, 2016 WL 1170927 (D.D.C. Mar. 24, 2016), is misplaced. Plaintiff's Opp. at 9. In Edelman, the Court concluded that a request for responses to consumer complaints logically included the complaints as well so that the requester would be able to better understand the responses requested. Id. at 15. Significantly, the SEC initially understood the request to include the complaints. Id.

The same is not true here. Unlike Edelman, this is not a case where the government interpreted a FOIA request too narrowly and produced an incomplete set of responsive

documents. Here, DOJ interpreted plaintiff's request as seeking records the USAO indisputably does not have -- crime statistics sorted on a ward-by-ward basis. The facts and decision in Edelman have no bearing on the request at issue here.

Plaintiff's reliance on Nation Magazine v. U.S. Customs Service, 71 F.3d 885 (D.C. Cir. 1995), is similarly flawed. Plaintiff's Opp. at 9-10. In that case the Customs Service received a FOIA request asking for records and documents indexed or cross-indexed under the name H. Ross Perot but also, significantly, explained that the request included all records "pertaining to" Mr. Perot as well as to any of his employees, consultants or advisors. Id. at 888. The Customs Service only searched for records that were indexed or cross-indexed under Perot's name. This Circuit held that the words "'pertaining to'" made it clear that the request sought documents beyond those simply "indexed under Perot's name or personal identifier." Id. at 890.

Here, by contrast, plaintiff's request does not make clear that she was seeking information other than crime statistics sorted by ward, which indisputably the USAO does not have. And once plaintiff knew such records did not exist, she never attempted to let defendant know that she would be satisfied with crime statistics compiled by police district, even after OIP informed her that records compiled in that manner were available for her to request. Her actions administratively, and in filing this litigation and seeking relief in her Complaint for "the requested information" demonstrate that she would not be satisfied with crime statistics that were not organized by ward. Since the USAO does not maintain this information, it properly informed her that there were no records responsive to her request.

Plaintiff's attempt to now recast her FOIA request as something it was not should be rejected.

CONCLUSION

As demonstrated above, and in defendant's prior memorandum, defendant has met all of its obligations under the FOIA. Therefore, defendant respectfully requests that its Motion for Summary Judgment be granted.

Respectfully submitted,

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