

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-013**

November 22, 2019

VIA E-MAIL

Ms. Brooke M. Leonard

RE: FOIA Appeal 2020-13

Dear Ms. Leonard:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you challenge the response you received from the Office of Unified Communications (“OUC”) to your request for any and all 911 tapes, radio runs and CAD (“computer aided dispatch”) printouts (“chronology”) relating to an incident at a hotel on Connecticut Avenue, N.W., Washington, D.C.

Background

On September 30, 2019, you submitted a FOIA request to OUC on behalf of your client, Mr. Samuel J. Aquillano, for the above-referenced records and documents. On October 3, 2019, OUC initially denied the request under the personal privacy exemption in D.C. Code § 2-534(a)(2) (“Exemption 2”). This denial was based on the fact that your client was not the caller on the 911 recording and the person who had made the call provided his/her name and telephone number during the call. However, OUC reconsidered this determination and on October 25, 2019 provided you with a redacted portion of the 911 call and a redacted version of the CAD chronology. OUC still maintained that you were not entitled to get the radio run.

On appeal, you challenge OUC’s denial. Although you do not specifically indicate the basis for your appeal, this Office assumes that you are challenging OUC’s withholding of documents under Exemption 2. On October 28, 2019, OUC reaffirmed its earlier position that under Exemptions 2, the agency appropriately redacted the 911 call and the call CAD chronology and appropriately withheld the radio run for the incident.¹

Discussion

It is the public policy of the District of Columbia 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. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public

¹ A copy of OUC’s response to your appeal is attached.

body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 2

Exemption 2 prevents disclosure of “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Under Exemption 2, determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. The instant matter concerns a 911 call made by a third party. The courts have found “as a categorical matter that a third party’s request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen’s privacy. *Reporters Comm. For Freedom of Press*, 489 U.S. at 780.

In general, there is a sufficient privacy interest in personally identifiable information. *Skinner v. U.S. Dep’t. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). OUC asserts that this information is communicated in the 911 call and responder communications. And, you have not indicated that you have the consent of the caller for release of this personal identifying information. Indeed, OUC did not entirely withhold these items, but instead redacted the personal identifying information. In this situation, we find that disclosing the unredacted documents of an emergency call that your client did not make and which disclose the name and number of the caller would constitute an unwarranted invasion of that person’s personal privacy.

In addition, we also find that OUC has appropriately determined that there is a privacy interest justifying withholding the September 6, 2019 radio run. In the Vaughn Index identifying the radio run, OUC notes that the radio run is two hours in length and contains multiple different audio files. The radio runs are not call/incident specific as OUC dispatchers handle multiple call incidents at one time. Each radio run contains information from numerous calls/incidents which contain private information and law enforcement investigatory information. In this instance, OUC determined that redacting the private information from the radio run is not feasible due to the continuous overlap of different calls/incidents. As such, the technical impediments in

redacting information involving different emergency calls that overlap on the radio run adequately supports the decision not to prepare a redaction of that record.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of “public interest” if it would shed light on an agency’s conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

This statutory purpose is furthered by disclosure of official information that “sheds light on an agency’s performance of its statutory duties.” *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that “reveals little or nothing about an agency’s own conduct” does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

Id. at 1492-93.

We find that the release to a third party of unredacted emergency 911 call records and the CAD chronology where redaction is not feasible would be an unwarranted invasion of privacy and would not “contribute *significantly* to public understanding of the operations or activities of the government. *See Berger v. I.R.S.*, 487 F. Supp. 2d 482, 505; *see also Hines v. D.C. Bd. of Parole*, 567 A.2d 909, 912 (D.C. 1989) (noting that “courts are generally reluctant ‘to give third parties access to the presentence investigation report prepared for some other individual or individuals’”). As a result of the existence of a privacy interest and the lack of a relevant public interest in the records at issue, OUC properly withheld the records, pursuant to Exemption 2 of the DC FOIA.

Conclusion

Based on the forgoing, we affirm MPD’s decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Jared Siegel, Assistant General Counsel,
OUC (via email)