

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-057**

January 14, 2020

VIA ELECTRONIC MAIL

Mr. Neville Daley

RE: FOIA Appeal 2020-057

Dear Mr. Daley:

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 assert that the Office of Contracting and Procurement (“OCP”) improperly withheld the resumes of individuals who had applied for a particular job position at OCP.

Background

On November 4, 2019, you submitted a FOIA request to OCP for the following records: the resume of each candidate (with name and address redacted) who was interviewed for a particular OCP position; the number of interviews conducted with each candidate; the evaluation criteria, [s]election process, and all associated scores from each interview for each candidate, as recorded by each member of the selection panel/committee. Date range: 8/2/2018 to 11/30/2018.

On December 12, 2019, OCP responded to your request. In the response to your FOIA request, OCP indicated that some records were being produced with redactions and other documents were being withheld. On December 18, 2019, you appealed OCP’s decision to withhold the resumes of the applicants for the position (supervisory contract specialist grade 14) that was the subject of the FOIA request. OCP responded to your FOIA appeal on December 30, 2019.¹ In its response to your appeal, OCP indicates that 113 pages of records were identified as responsive to your request. Of those records, 72 pages were produced with redactions and 38 pages were withheld pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”).² However, OCP also notes that it provided you with a supplemental response to the FOIA request providing you with the two redacted resumes of the successful candidates.

¹ A copy of OCP’s December 30, 2019 response to your appeal is attached to this decision.

² OCP offers no explanation of its treatment of the remaining 3 pages which were identified in its search for responsive records.

Discussion

It is the public policy of the District of Columbia government 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, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 2 – Personal Privacy

The purpose of Exemption 2 is to protect personal privacy interests. To qualify for protection under Exemption 2, the analysis turns on the existence of a sufficient privacy interest and a balancing of this individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine 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*. *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep’t. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Further, employees have a privacy interest in their employment history and the “diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee’s personnel file.” *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984). In light of applicable case law, we find that more than a *de minimis* privacy interest exists in an individual’s resume and biographical information.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is

“to open agency action to the light of public scrutiny.” *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of ‘full agency disclosure unless information is exempted under clearly delineated statutory language,’ *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens’ right to be informed about “what their government is up to.” Official information that sheds light on an agency’s performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

The public interest inquiry for the purposes of DC FOIA “should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld.” *Schrecker v. United States Dep’t of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency’s behavior or performance. *Id.* at 666.

Courts have held that the public interest in resume and background information hinges on whether or not the individual supplying the information was accepted for the position or role for which the information was provided. *Core v. United States Postal Serv.*, 730 F.2d 946, 948 (4th Cir. 1984) (finding that there is sufficient public interest in the qualifications of successful applicants to require disclosure of resume information; however, disclosing resume information of unsuccessful applicants would be a clearly unwarranted invasion of personal privacy); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1017 (D. Kan. 1996) (upholding an agency’s decision to release redacted application information of successful applicants and deny release of information of unsuccessful applicants). It has been well established that there is a public interest in the disclosure of certain information about successful government job applicants: the individual’s name, present and past job titles, present and past grades, present and past salary, present and past duty stations, and present and past salary.³

As OCP notes, in FOIA Appeal 2016-081, this Office previously determined that resumes and background information may be withheld entirely for unsuccessful applicants. However, we also determined that here is an overriding public interest in disclosure of elements of the documents that indicate the qualifications of successful applicants. Accordingly, this Office concludes that OCP’s denial of the request regarding the resumes of unsuccessful applicants was justified under DC FOIA. We also conclude that even for the resumes of successful candidates, OCP may redact from the records any background information or interests that do not relate to qualifications for the position and any personally identifiable information such as an individual’s telephone number, address, email address, and social security number. *See Barvick*, 941 F. Supp. at 1017; *see also* 2012-75. Information related to past employment and information involving relevant qualifications or the name of the applicant may not be generally redacted from the resume of the successful applicant.

Conclusion

Based on the forgoing, we conclude that OCP was justified in withholding the resumes of unsuccessful applicants and redacting personally identifying information for the successful

³ *See also Habeas Corpus Resource Ctr. v. DOJ*, No. 08-2649, 2008 WL 5000224, at *4 (N.D. Cal. Nov. 21, 2008); *Cowdery, Ecker & Murphy, LLC v. Dep’t of Interior*, 511 F. Supp. 2d 215, 219 (D. Conn. 2007); *Samble v. U.S. Dep’t of Commerce*, No. 1:92-225, slip op. at 11 (S.D. Ga. Sept. 22, 1994); *Associated Gen. Contractors, Inc. v. EPA*, 488 F. Supp. 861, 863 (D. Nev. 1980). *See also* FOIA Appeals 2011-36, 2011-56, 2012-75, 2014-06, 2014-11, 2014-27.

applicants. This shall constitute the final decision of this Office in connection with your appeal. 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Jeremiah S. Regan, Associate General Counsel
OCP (via email)