

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-133**

August 12, 2020

VIA ELECTRONIC MAIL

Ms. Adrienne K. Fernandez

RE: FOIA Appeal 2020-133

Dear Ms. Fernandez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”), challenging the denial of your DC FOIA request by the Metropolitan Police Department (“MPD”).

You submitted a DC FOIA request to MPD for the major crash investigations unit report regarding a specific motor vehicle accident. On March 12, 2020, MPD denied your request pursuant to D.C. Code § 2-534(a)(2), (a)(3)(A)(i), and (a)(3)(C), as disclosure of the requested records would interfere with an ongoing law enforcement investigation and would constitute an unwarranted invasion of privacy. In particular, MPD indicated that the criminal investigation into the accident was still ongoing and explained that premature disclosure of the investigation and the evidence contained therein will interfere with possible future criminal prosecution.¹

In your appeal, you narrow your request to the portion of the withheld documents showing information regarding the contact information, insurance-policy status, and the address of a named individual. In response to your more targeted request, MPD explained that disclosing the specific information you requested about the named individual would constitute an unwarranted invasion of personal privacy because it implicates the privacy interest of the named individual and because there is no public interest in disclosure of the requested information.

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 the government and the official acts of those who represent them as public officials and employees.” In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by the public body.” D.C. Code § 2-502(18).

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

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

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 *Dep't 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 greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). With regard to the privacy interest arising from investigative records of law enforcement agencies (including incident reports), the courts have long-recognized that "individuals, whether they be suspects, witnesses, or investigators" have a "strong interest" in "not being associated unwarrantedly with alleged criminal activity." *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990) (quoting *Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984)). Without a doubt, "the mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation." *Branch v. FBI*, 658 F. Supp. 204, 209 (D.D.C. 1987). The privacy interest is similar with respect to an individual's contact information and car insurance and car ownership information.

The second part of the privacy analysis examines whether an individual privacy interest is outweighed by the public interest. See *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989). In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed light on the agency's conduct. *Beck v. Dep't 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. Information that reveals little or nothing about an agency's own conduct does not further the statutory information; thus the public has no cognizable interest in the release of such information.

The only public interest you point to is your clients' desire to pursue a civil action against a purported tortfeasor in a motor vehicle collision. However, the "possibility that information may aid an individual in the pursuit of litigation does not give rise to a public interest." *Massey v. FBI*, 3 F.3d 620, 625 (2d Cir. 1993). "Where the requestor seeks such information in furtherance of private litigation, courts typically reject such disclosure as not falling within the ambit of FOIA's goal of public disclosure of agency action." *Garcia v. United States DOJ*, 181 F. Supp. 2d 356, 372 (S.D.N.Y. 2002). So to here.

Because there is no public interest in the disclosure of the information you are requesting, the privacy interest in shielding the information is sufficient to protect it from disclosure.

Conclusion

Based on the foregoing, we affirm MPD's decision and dismiss your appeal.

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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Teresa Quon Hyden, Assistant General Counsel
MPD (via email)