

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-135**

April 11, 2023

**VIA U.S. MAIL**

Mr. Byron Smith

RE: FOIA Appeal 2020-135

Dear Mr. Smith:

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 identities of witnesses and records related to several specified incidents. On February 4, 2020, MPD denied your request pursuant to D.C. Code § 2-534(a)(2) (“Exemption 2”) and stated that disclosure of the requested records would constitute an invasion of privacy. The agency indicated that the records sought by your DC FOIA request could not be produced absent record release authorizations and waivers from the specified individuals and the subjects of the requested records.

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).

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 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 your appeal, you contend that “no request by the witnesses is needed as to Public information” and “such copies of any written statements by such witnesses were previously disclosed in their incident report . . .” You have not demonstrated that the individuals specified in your DC FOIA request have consented to the disclosure of records identifying them. 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). Names, phone numbers, and home addresses are considered to be personally identifiable information and therefore exempt from disclosure. *See, e.g., Dep't of Defense v. FLRA*, 510 U.S. 487, 500 (1994).

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). MPD asserts that the records requested by your DC FOIA request are subject to protection from disclosure pursuant to Exemption 2 because “the unnamed and named witnesses” identified in your request “and the individuals depicted in the photographs shown to these witnesses, have a substantial privacy interest in the requested records.”

The second part of the Exemption 2 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.

*Id.* at 1492-93 (quotations and citations omitted). You have not identified a public interest in this appeal. It is unclear how providing incident reports and the identities of witnesses would reveal the conduct of MPD to a degree that would outweigh the relevant privacy interest. As a result, the information protected pursuant to Exemption 2 may be withheld from disclosure.

### Conclusion

Based on the foregoing, we affirm MPD's decision and deny 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: Brandy Reaves, MPD FOIA Officer (via email)