

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-160**

August 26, 2020

VIA ELECTRONIC MAIL

Mr. Michael Ayele

RE: FOIA Appeal 2020-160

Dear Mr. Ayele:

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 which provided a lengthy narrative discussing various topics and asking a series of questions. MPD denied your request on the basis that the questions posed were unrelated to its operations. You appealed this denial and requested, for the first time, records related to an arrest at Georgetown University. On April 22, 2020, MPD responded to your appeal and indicated that it had not received any waiver of privacy or authorization to release any police report pertaining to any specific individual. Further, MPD searched its records management system and was unable to locate any record related to the arrest described in your appeal.

You also requested on appeal all “non-anonymous complaints which were submitted . . . by people associated with Georgetown University.” This request was initially directed to the Office of Human Rights, but you directed it to MPD on appeal. MPD’s April 22, 2020, response to your appeal indicated that the department had not received from you a privacy waiver or authorization for release of such 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).

No Right to Personal Services

FOIA requires that requests describe the records sought with sufficient detail to allow an agency employee familiar with the subject area of the request to locate the records within a reasonable amount of time. More specifically, 1 DCMR § 402.4 states that:

A request shall reasonably describe the desired record(s). Where possible, the specific information regarding names, places, events, subjects, dates, files, titles, file designation or other identifying information shall be supplied.

In addition, under FOIA, an agency “has no duty either to answer questions unrelated to document requests or to create documents.” *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). See also *Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Your initial FOIA request consisted of a factual narrative of various topics and a series of questions. MPD properly responded by denying the request.

Exemption 2- Personal Privacy

MPD has accurately noted that the Government may decline to produce records when their disclosure would constitute an unwarranted invasion of personal privacy. 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 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.

You have not identified any public interest in the disclosure of the broad category of records you requested on appeal (non-anonymous complaints regarding Georgetown University), and thus 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)