

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-184**

November 13, 2020

VIA FIRST CLASS MAIL

Ms. Hosanna Myers

RE: FOIA Appeal 2020-184

Dear Ms. Myers:

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 the Office of Unified Communications (“OUC”) to your request for public records under the DC FOIA.

Background

You submitted a FOIA request for all records associated with any emergency calls placed referencing a specified address at a specific time. On March 2, 2020, OUC granted your request in part, producing a redacted 911 call and chronology. The agency indicated that it withheld portions of the records pursuant to the personal privacy exemption to the DC FOIA. D.C. Code § 2-534(a)(2). You subsequently filed the present appeal.

OUC filed a response to your appeal on May 27, 2020. The agency indicates that only one 911 call was made from the location identified in your request during the one-hour period you specified. You were not one of the identified participants in the 911 call. Further, the caller provided personally identifiable information as well as information about another individual’s medical procedure. OUC elected to redact this information from the 911 call recording. In responding to your appeal, the agency argued that the information was also protected by the Health Insurance Portability and Accountability Act (HIPAA). D.C. Code § 2-534(a)(6).

On appeal, you argue that OUC improperly withheld portions 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 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 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. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official 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*

OUC determined that you did not participate in the 911 call that is the subject of the present appeal. The agency determined that the call participants had a sufficient privacy interest in their names and other identifying information so as to justify withholding that information from public disclosure. You argue that OUC “failed to show that the specific call [you] requested include[d] any ‘information of a personal nature’ at all, let alone whether disclosing that personal information would be ‘a clearly unwarranted invasion of personal privacy.’”

Determining whether disclosure of a record would constitute an unwarranted invasion of personal privacy requires a balancing of individual privacy interests against the public interest in disclosing the records. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). It is widely recognized that an individual has an interest in controlling the dissemination of information regarding personal matters. Such interest “does not dissolve simply because that information [is] available to the public in some form.” *Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). For this reason, information such as names, phone numbers, and home addresses may be exempt from disclosure. *Id.* The caller and other individuals identified in the responsive 911 audio and chronology have a sufficient privacy interest in the personally identifiable information redacted by OUC.

OUC indicated in its response to your appeal that it redacted both names and medical information from the 911 audio recording and chronology. This Office conducted an *in camera* review of both records. The redacted portions of the 911 audio recording contain specific details regarding an individual’s medical condition and the facts that led the caller to believe that the person needed medical treatment. The redacted portions of the chronology also consist of personally identifiable information. A sufficient privacy interest exists to withhold those portions of the record, and OUC’s redaction of the recording and chronology were permissible under Exemption 2.<sup>1</sup>

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of the 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). It is unclear how disclosing the identities and medical information of the subjects of a 911 call would reveal information about OUC’s conduct. With no countervailing public interest, the information protected pursuant to Exemption 2 may be withheld from

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<sup>1</sup> OUC indicated in response to the appeal that the redactions were also permissible under Exemption 6, pursuant to D.C. Code § 2-534(a)(6) and the HIPAA. We agree, as Exemption 6 exempts from disclosure information that is protected by other statutes.

disclosure. *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989)

### *Segregability*

The final issue to address is segregability. Under D.C. Official Code § 2-534(b), even when an agency establishes that an exemption is applicable, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). Our *in camera* review of the withheld portions of the records responsive to your DC FOIA request confirms OUC's assertion that it only withheld protected information.

### Conclusion

Based on the foregoing, we believe there was sufficient authority under the DC FOIA to support OUC's withholding of portions of the requested records. For this reason, we 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: Jared Siegel, Assistant General Counsel  
OUC (via email)