

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2020-216**

September 12, 2022

**VIA ELECTRONIC MAIL ONLY**

Hazel Johnson

RE: FOIA Appeal 2020-216

Dear Ms. Johnson:

This letter is in response to the administrative appeal that you have submitted to the Mayor pursuant to D.C. Code § 2-537 of the District of Columbia Freedom of Information Act (“FOIA”). In your appeal, you have challenged the response of the Metropolitan Police Department (“MPD”) to your February 19, 2020 FOIA request, identified as 2020-FOIA-03489, which sought documents associated with “Arrest Citation# 011746909.”

On June 26, 2020, MPD provided you with a copy of the responsive documents it located that had been redacted pursuant to D.C. Code § 2-534(a)(2) and (a)(3)(C) “to protect names and other identifying information of witnesses, some MPD personnel and third-party individuals.”

In your appeal you challenge MPD’s withholding because “the documents relate to me.” MPD did not provide this Office with a copy of the responsive records for an *in camera* review; therefore, we cannot fully verify MPD’s assertions made in response to your appeal. As a result, this Office will provide a general analysis of the exemptions asserted based on MPD’s representations.

D.C. Official Code § 2-534(a)(2) (“Exemption 2”) applies to “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” In 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 Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989).

D.C. Official Code § 2-534(a)(3)(C) (“Exemption 3”) is more expansive than Exemption 2, and protects from public disclosure information contained in an investigatory file that “would constitute an unwarranted invasion of privacy.” Exemption 3 lacks the key word “clearly” that is contained in Exemption 2, and therefore is a broader privacy privilege.

In assessing MPD’s decision to withhold the requested information, the first part of the analysis is determining whether a sufficient privacy interest exists. *Id.* A privacy interest is cognizable under D.C. 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). Information such as names, personal phone numbers, and

home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). Moreover, the D.C. Circuit has held individuals have a “strong interest” in not being associated with unwarrantedly with alleged criminal activity whether they be suspects, witnesses, or investigators. *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990). The identities of witnesses providing information to investigators are generally protected due to the potential of harassment or retaliation. *See, e.g., McCann v. HHS*, No. 10-1758, 2011 WL 6251090, at \*3 (D.D.C. Dec. 15, 2011).

The second part of a privacy analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of D.C. 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). 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.” *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that “reveals little or nothing about an agency’s own conduct” does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

*Id.* at 1492-93.

In balancing the privacy interest of individuals contained in an incident report versus the public interest in disclosure, it is unclear how disclosing the information would be relevant to MPD’s conduct as an agency. Without any identified countervailing public interest, we find that MPD may withhold the identified information.

Additional information may be available, outside the context of FOIA, by satisfying MPD’s disclosure policy, *e.g.* by presenting a waiver of an authorized individual as requested, and the requestor is encouraged to initiate that process with MPD, if desired.

This constitutes the final decision of this Office. You may challenge any subsequent response to your request by separate appeal to this Office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Sincerely,

The Mayor’s Office of Legal Counsel

cc: Brandynn Reaves, MPD FOIA Officer (via email only)