

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-226**

September 7, 2022

VIA ELECTRONIC MAIL

Oleksandr
Yanevskyy Voice
of America

RE: FOIA Appeal 2020-226

Dear Mr. Yanevskyy:

This letter is in response to the administrative appeal that you have submitted to the Mayor pursuant to the District of Columbia Freedom of Information Act ("FOIA"), D.C. Code §§ 2-531, *et seq.* In your appeal, you have challenged the response of the Department of Corrections ("DOC") to your October 31, 2019 FOIA request, identified as 2020-FOIA-00779, which sought the following:

[A]ny available information about Mariia Butina (a.k.a. Maria Butina), a Russian citizen, who was arrested in July 2018 and detained at DC Central Detention Facility...[and]...all available documents including but not limited to logs of the detainee, search warrants, the detainee schedule, booking information, et cetera.

On June 27, 2020, DOC denied your request citing the personal privacy exemption to FOIA, D.C. Code § 2-534(a)(2).

Under D.C. Code § 2-534(a)(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 Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989).

In assessing DOC'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 Supreme Court has held "as a categorical matter that a third party's request for law enforcement records or information...can reasonably be expected to invade that citizen's privacy . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780; *see also Hemenway v. Hughes*, 601 F. Supp. 1002 (D.D.C. 1985)(an individual's nationality or citizenship status involve a sufficient privacy interest to warrant protection)

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.

Here, we find that disclosing records from DOC pertaining to a named individual who is not yourself, and from whom you have not provided written authorization, would constitute an invasion of the individual’s personal privacy. While the public interest you have raised in allegations made against DOC is appreciated, this forum does not have the jurisdiction to address such a formal complaint, if any, and it is unclear how the requested records (visitor logs, phone and health records, etc.), for which an individual does have a privacy interest, would shed significant light on DOC’s performance of its statutory duties. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Based on the foregoing, we affirm DOC’s decision.

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: Oluwasegun Obebe, DOC FOIA Officer (via email only)