

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2020-230**

September 7, 2022

VIA ELECTRONIC MAIL

Rend Smith

RE: FOIA Appeal 2020-230

Dear Mr. Smith:

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 Metropolitan Police Department ("MPD") to your August 13, 2020 FOIA request, identified as 2020-FOIA-07207, which sought the following:

Any and all records the Washington DC Metropolitan Police Department has on, about, or mentioning Melazon Azeze a resident of Washington DC born November 13, 1956 and deceased May 25, 1998. Please include materials that refer to her as "Melly Azeze" or "Mel Azeze" and by any other known aliases.

I am specifically seeking a missing persons report filed by Elizabeth Azeze regarding the disappearance of Melazon Azeze on November 15, 1971 as well as the sexual assault complaint submitted by Melazon in the immediate aftermath. At the time of this incident, the Azeze's resided at 4301 3rd Street SE, Washington DC.

On August 14, 2020, MPD denied your request because, in the absence of an authorization and/or waiver, the release of the records would constitute a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Code § 2-534(a)(2) and (a)(3)(C).

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."

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).

In considering the privacy rights of the deceased, courts have found that "one's own ... interest in privacy ordinarily extend beyond one's death." *Schrecker v. DOJ*, 254 F.3d 162, 166 (D.C. Cir. 2001). Rather, the privacy interest of an individual may only be diminished, not eliminated, if that individual is deceased. *Davis v. DOJ*, 460 F.3d 92, 97-98 (D.C. Cir. 2007) ("We have recognized that the privacy interest in nondisclosure of identifying information may be diminished where the individual is deceased"); *Schrecker v. DOJ*, 349 F.3d 657, 661 (D.C. Cir. 2003) ("The fact of death, therefore, while not requiring the release of identifying information, is a relevant factor to be taken into account in the balancing decision whether to release information").

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 the deceased, as contained in incarceration records and/or witness statements, it is unclear how disclosing the requested information is relevant to MPD's conduct as a whole. Further, the Supreme Court has held courts have found "as a categorical

matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no "official information" about a government agency, but merely records that the Government happens to be storing, the invasion of privacy is "unwarranted." . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780.

In the absence of any identified countervailing public interest, we hold 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)