

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2021-005**

February 7, 2022

VIA ELECTRONIC MAIL

Ms. Christine Fermo

RE: FOIA Appeal 2021-005

Dear Ms. Fermo:

This letter responds to an 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 assert that the District of Columbia Department of Health (“DC Health”) failed to properly respond to your DC FOIA request for public records.

Background

On May 2, 2019, you submitted a request for a copy of a contract you signed with the Humane Rescue Alliance regarding your dog and any information about your dog’s current location and owner. DC Health responded to your request on May 30, 2019, notifying you that the requested contract does not exist and providing the animal report for your dog, a case report for a specific incident and 2 impound notices. DC Health redacted portions of the documents to protect personal information pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”).<sup>1</sup>

On October 5, 2020, you appealed to this Office stating, “I am appealing their decision to withhold information about the new owner or to admit responsibility for their illegal adoption of my service dog to the new owner so that I can retrieve my dog.” This Office notified DC Health of your appeal and requested a response. DC Health responded on October 20, 2020.<sup>2</sup> In its response to your appeal, DC Health reiterates that its redactions were proper pursuant to Exemption 2.

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<sup>1</sup> Exemption 2 protects “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

<sup>2</sup> DC Health’s response is attached to this decision.

## 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 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.

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.*

Under Exemption 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). 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 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, 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). The information that DC Health redacted raises a substantial privacy interest, as it involves personally identifiable information.<sup>3</sup>

The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. The “public interest” in DC FOIA has a narrow meaning, limited to furthering the statutory purpose of DC FOIA.

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.

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<sup>3</sup> We accept DC Health’s representations that it redacted names and addresses of private individuals.

*Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

Here you have not articulated a cognizable public interest under DC FOIA. You have only asserted a personal interest in being reunited with your dog. You have not explained how releasing the redacted personal information will reveal anything about DC Health'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). As a result, we find that DC Health has properly redacted the personal information under Exemption 2.

### Conclusion

Based on the foregoing, we affirm DC Health's decision and hereby 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.

Sincerely,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel  
DC Health (via email)