

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-103**

October 27, 2022

VIA ELECTRONIC MAIL ONLY

Ms. Natalia Mittelstadt

RE: FOIA Appeal 2021-103

Dear Ms. Mittelstadt:

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 January 12, 2021 FOIA request, identified as 2021-FOIA-02353, which sought the following:

[A]n opportunity to inspect or obtain copies of public records that include notes, reports, and summaries of interviews done by the Metropolitan Police Department with the former Sergeant at Arms of the House of Representatives Paul Irving, Sergeant at Arms and Doorkeeper of the Senate Jennifer Hemingway, and the former U.S. Capitol Police Chief Steven Sund regarding January 6, 2021.

On January 13, 2021, MPD denied your request pursuant to D.C. Code § 2-534(a)(2) which exempts information "of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

In your February 24, 2021 appeal, you have asserted the following:

There is no assumption of privacy for public officials discussing public policy issues at the levels of the former Sergeant at Arms of the House of Representatives Paul Irving, Sergeant at Arms and Doorkeeper of the Senate Jennifer Hemingway, and the former U.S. Capitol Police Chief Steven Sund.

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." In aid of that policy, FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Code § 2-532(a). The right created under FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. D.C. Code § 2-534. Under FOIA,

an agency is required to disclose materials only if they were “retained by a public body.” D.C. Code § 2-502(18).

D.C. 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).

D.C. 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).

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 alleged criminal activity whether they be suspects, witnesses, or investigators. *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990).

The second part of the 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 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 Comm.*, 489 U.S. at 773.

Id. at 1492-93.

Here, we find that there is a cognizable privacy interest because individuals have a substantial interest in not being associated with a police incident. In the absence of any explanation as to how the requested records would shed light on MPD’s conduct, MPD has properly withheld any response to the request. *See, e.g. Beck*, 997 F.2d at 1494 (When there is a privacy interest

in a record and no countervailing public interest, the protected information may be withheld from disclosure).

Finally, under the applicable case law, the public nature of information does not necessitate the subsequent release of related documents. *Reporters Comm.*, 489 U.S. at 762; *Long v. United States DOJ*, 450 F. Supp. 2d 42, 68 (D.D.C. 2006) (“the fact that some of the personal information contained in these records already has been made public in some form does not eliminate the privacy interest in avoiding further disclosure by the government.”); *Edmonds v. FBI*, 272 F. Supp. 2d 35, 53 (D.D.C. 2003) (finding that media identification of persons mentioned in a law enforcement file “does not lessen their privacy interests or ‘defeat the exemption,’ for prior disclosure of personal information does not eliminate an individual’s privacy interest in avoiding subsequent disclosure by the government”).

Conclusion

Based on the foregoing, we affirm MPD’s decision and hereby dismiss your appeal.

This constitutes the final decision of 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: Brandy Reaves, MPD FOIA Officer (via email only)