

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-104**

November 30, 2022

VIA ELECTRONIC MAIL ONLY

Ms. Ivy Pendleton

RE: FOIA Appeal 2021-104

Dear Mr. Pendleton:

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 November 30, 2020 FOIA request, identified as 2021-BWC-00064, which sought the following:

I called 911 to report an incident involving two people living in a vacant unit in our building. I would like to have the Body worn camera footage. I interacted with the police officers who interviewed me. 450 Massachusetts Ave on 11/30/2020 (Date Range for Record Search: From 11/30/2020 To 11/30/2020).

On February 22, 2021, MPD granted your request, in part, and denied it, in part. Specifically, MPD provided access to the requested body-worn camera footage, but redacted images and portions of the audio as the release of such would constitute as a clearly unwarranted invasion of personal privacy and is therefore exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2).

In your March 1, 2021 appeal, you have asserted that you would like the information for a court proceeding "since I interacted with the people."

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).

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). Images are also considered to be personally identifiable information. *See, e.g., Mingo v. DOJ*, 793 F. Supp. 2d 447, 456 (D.D.C. 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; 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. *Id.*

Here, disclosing records from MPD about an individual—whether it be in the form of image, voice, or personal information—that is not yourself, and from whom you have not provided written authorization, would constitute an invasion of the individual’s personal privacy. When there is a privacy interest in a record and no countervailing public interest (i.e. it would not shed light on an agency’s conduct) it may be withheld from disclosure. *Beck*, F.2d at 1494.

Based on the foregoing, we affirm MPD’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: Brandy Reaves, MPD FOIA Officer (via email only)