

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-107**

April 9, 2021

VIA ELECTRONIC MAIL

Mr. Absalom Jordan

RE: FOIA Appeal 2021-107

Dear Mr. Jordan:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the Office of Advisory Neighborhood Commissions (“OANC”) failed to timely respond to your request for public records.

Background

On February 5, 2021, you made a request to the OANC for “a document, or documents, sent to [the OANC] on January 28, 2021 at 10:01 AM” by a certain member of the Advisory Neighborhood Commission (“ANC”). When you did not receive a response from the OANC within 15 business days, you filed this appeal.

On March 18, 2021, the OANC provided this Office with a response to your appeal, in which it stated that the information appeared to be “of a personal nature where the public disclosure thereof would constitute an unwarranted invasion of personal privacy” under D.C. Official Code § 2- 534(a)(2) (“Exemption 2”) and therefore should be withheld. In its response, the OANC relayed that you were engaged in an ongoing dispute with an ANC Commissioner over whether she resides in her Single Member District or not and, in the course of the dispute, the commissioner advised you that she emailed the OANC appropriate proof of her residency. The OANC goes on to state that their office has no authority to enforce residency requirements and the commissioner’s email to their office was unsolicited. Further, the commissioner asserted her privacy privilege regarding the information contained in the email. The OANC informed this office that it previously informed you of the commissioner’s specific request that the OANC not share her information.

Discussion

It is the public policy of the District of Columbia government 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, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of

a public body . . .” *Id.* at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 2 prevents disclosure of “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” 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). (“We are reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions.”) Here, we find that disclosing records responsive to your request for the home address of an ANC commissioner would constitute an invasion of that commissioner’s personal privacy.

The second part of the Exemption 2 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 DC 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.

Your brief appeal does not present an argument that there is a countervailing public interest in the release of the records you seek. As stated in its response, the OANC has no authority to enforce residency requirements. We find that the release of the OANC’s records relating to the home address information sent to the OANC on January 28, 2021 would not shed light on the

OANC's performance of its statutory duties. *See Berger*, 487 F. Supp. 2d at 505. Due to the absence of a relevant countervailing public interest, we find that the requested records are protected from disclosure pursuant to Exemption 2.

As a result of the existence of a privacy interest and the apparent lack of a public interest in the records at issue, the OANC properly withheld the records that would reveal an ANC commissioner's personal information pursuant to Exemption 2 of the DC FOIA.

Conclusion

Because your appeal was based on the OANC's failure to respond to your request, and the agency has now provided this Office with a response regarding its reasoning to withhold the requested documents, this Office has made a decision. We agree with the agency's justification to withhold the requested documents and, therefore, 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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Gottlieb Simon, Executive Director, OANC (via email)