

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-207**

January 27, 2023

VIA ELECTRONIC MAIL

Ms. Becca Steinberg

RE: FOIA Appeal 2021-207

Dear Ms. Steinberg:

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 District of Columbia Housing Authority (“DCHA”) to your DC FOIA request.

Background

On February 8, 2021, you submitted a DC FOIA request to DCHA, which sought the following¹:

Any settlement agreements entered into by [DCHA] between December 1, 2018, and September 1, 2019, that contain a confidentiality clause.

DCHA responded to your request on June 10, 2021 by providing you with 87 pages of documents within its possession, custody or control that had been redacted pursuant to the personal privacy exemption contained in D.C. Code § 2-534(a)(2). The redactions made by DCHA consisted of names, addresses, case numbers, amounts of rent credit and settlement amounts as contained within the requested settlement agreements.

In your appeal you challenge DCHA’s redactions made to the “settlement amounts and rent credit amounts”, because “[t]hese redactions are not proper under the personal privacy exemption to FOIA.” Specifically, you state,

The amounts agreed to in settlement are not personal in nature and, as a result, are not within the scope of this exemption. *See Johnson v. Parchman School District*, 2006 U.S. Dist. LEXIS 28230 (W.D. Mich. 2006) (“[T]he settlement amount is the type of information that a citizen may obtain through the Freedom of Information Act (‘FOIA’)”); *Dayton Newspapers, Inc. v. Dept. of the Air Force*, 107 F. Supp. 2d 912, 919-20 (S.D. Ohio 1999) (settlement amounts are subject to FOIA).

¹ This Office previously addressed DCHA’s failure to respond to your February 8, 2021 request in Appeal 2021-196 (filed on June 3, 2021). Appeal 2021-196 was deemed moot following the issuance of a response by DCHA on June 10, 2021.

We notified DCHA of your appeal on July 6, 2021 and requested a response. DCHA responded on July 13, 2021 asserting:

[T]he request to release agreed-upon confidential information to third parties would expose DCHA to liabilities, which include, but are not limited to, violations of DCHA's obligation to administer the United States Department of Housing and Urban Development's (HUD) programs. In that capacity, DCHA is responsible for safeguarding families' information and may disclose that information upon written consent.

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. 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. 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. D.C. 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).

The issue raised in this appeal is DCHA's withholding of any "settlement amounts and rent credit amounts" from the settlement agreements identified as being responsive to your request. Following an *in-camera review* of the documents presented to this Office, DCHA has withheld the settlement amount from 4 agreements and the rent credit from an additional 2 agreements. Of these 6 agreements, 2 of them are unsigned.

D.C. Code § 2-534(a)(2)

D.C. Code § 2-534(a)(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 DCHA'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 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, 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).

An invasion of privacy need not occur immediately upon disclosure in order to be considered "clearly unwarranted." *See Nat'l Ass'n of Retired Fed. Emps. ("NARFE") v. Horner*, 879 F.2d 873, 878 (D.C. Cir. 1989) ("In virtually every case in which a privacy concern is implicated, someone must take steps after the initial disclosure in order to bring about the untoward effect."). Further, "[w]here there is a substantial probability that disclosure will cause an interference with personal privacy, it matters not that there may be two or three links in the causal chain." *NARFE*, 879 F.2d at 878; cf. *NARA v. Favish*, 541 U.S. 157, 167-70 (2004) (specifically taking into account "the consequences" of FOIA disclosure, including "public exploitation" of the records by either the requester or others).

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 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.

Here, while DCHA has taken the initiative to redact the names of the releasors within the settlement agreements, these agreements contain additional information such as relevant dates, facts and party, court and/or representative names that could potentially lead to the identification of individuals for which personal privacy protection is sought. Given such a correlation of information leading to identification—if it is possible—would violate a personal privacy interest in-and-of itself, the pairing of these identities with a settlement amount would be additionally intrusive. It is noted that you assert the amount of the settlement is not personal in nature. However, your request is distinguishable as it is not for documents for which nothing more can be gleaned, but for settlement agreements as a whole which may open the door to individual identification. As for DCHA's assertion that the agreements contain a confidentiality clause, the practicality and relevance of such terms would seem limited if there is no identifiable releasor.

Based on the foregoing, this Office remands this matter back to DCHA for an assessment as to whether the disclosure of the settlement amounts would violate the privacy interest of the releasors by offering additional insight as to their identities. If such a determination is made, or if the releasors are already identifiable, DCHA may withhold the requested information if the privacy interest outweighs any public interest in disclosure.

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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Kimberly August, DCHA FOIA Officer (via email only)