

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2021-248**

November 30, 2022

VIA ELECTRONIC MAIL

Mr. Colin A. Grigg

RE: FOIA Appeal 2021-248

Dear Mr. Grigg:

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”). In your appeal you have challenged the response of the Metropolitan Police Department (“MPD”) to your DC FOIA request.

Background

On July 23, 2021, you submitted a DC FOIA request, on behalf of your client Van-Am Inc. to MPD, identified as 2021-BWC-00365 which sought the following:

[A]ny and all documents related to: Motor vehicle accident on 09/28/2020 (“Occurrence”) that occurred at or near The Cloisters Apartments, 100 Michigan Avenue NE, Washington, DC 20017, including (1) any Incident or Traffic Crash reports; (2) 911 CAD logs, (3) any and all photographs; (4) witness statements, both audio and recorded; (5) any and all investigative notes; (6) any and all body worn camera and dashcam videos pertaining to the Occurrence.

On August 17, 2021, MPD denied your request because the release of such records would constitute a clearly unwarranted invasion of personal privacy, and as such, they are exempt from disclosure pursuant to D.C. Code §§ 2-534(a)(2) and (a)(3)(C).

In your appeal, you asserted that no privacy interest would be violated and you are authorized to obtain these records on behalf of your client, Van-Am Inc.

Discussion

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 *Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989).

D.C. Code § 2-534(a)(3)(C) (“Exemption 3”) is more expansive than Exemption 2, and protects from public disclosure information contained in an investigatory file that “would constitute an unwarranted invasion of privacy.” Exemption 3 lacks the key word “clearly” that is contained in Exemption 2, and therefore is a broader privacy privilege.

In assessing MPD’s decision to withhold the requested records, 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., *Dep't 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.C. Cir. 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; 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, although you have articulated a private interest in obtaining information “relevant and material” to a legal action in Maryland, you have not explained how releasing records for a specific accident investigation would shed light on MPD’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. *Beck*, 997 F.2d at 1494.

Conclusion

Based on the foregoing, we affirm MPD’s decision.

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)