

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-004**

October 25, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Nicholas Stamatis

RE: FOIA Appeal 2022-004

Dear Mr. Stamatis:

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 the May 21, 2021 FOIA request of Ms. Marisa Navarro, identified as 2021-BWC-00294, which sought the following:

[A]ny and all documents, photographs, and videos in regards to [CCN #21058143].

On June 29, 2021, MPD granted your request, in part, and denied it, in part. Specifically, MPD provided access to the requested body-worn camera, 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 pursuant to D.C. Official Code § 2-534(a)(2).

In your October 8, 2021 appeal, you have asserted the redacted statements would not include "information of a personal nature" and the release would not "constitute a clearly unwarranted invasion of personal privacy."

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).

An individual who is a witness has a sufficient privacy interest in his or her name and other identifying information which is in a government record. Disclosure may lead to unwanted contact and harassment. *See Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009) (privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) (“privacy interest of the witnesses [to industrial accident] and employees is substantial . . .” *Id.* at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). (“An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.”).

The public nature of information does not necessitate the subsequent release of related documents. *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762 (1989); *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”).

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 accordance with D.C. Code § 2-537.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Brandynn Reaves, MPD FOIA Officer (via email only)