

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-009**

February 2, 2023

**VIA ELECTRONIC MAIL ONLY**

Mr. Rahul Jindal

RE: FOIA Appeal 2022-009

Dear Mr. Jindal:

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 challenged the lack of response of the Metropolitan Police Department ("MPD") to your April 1, 2021 FOIA request, identified as 2021-BWC-00228, which sought body-worn camera footage related to a specific incident (CCN# 20165226).

This Office asked MPD to provide the justification for the decision not to grant a review of the records requested, a *Vaughn* index of the documents withheld, and a copy of any public record(s) in dispute. On September 30, 2022, MPD advised this Office that on April 1, 2021 and April 12, 2021, it contacted you for a description of yourself and a copy of your government issued identification. The satisfaction of this request would determine whether you were able to review the body-worn camera ("BWC") footage pursuant to 24 DCMR § 3902.5 (authorizing "any subject of a BWC recording, the subject's legal representative, and the subject's parent or legal guardian if the subject is a minor, to view the BWC recording at the police station..."), or your request would be treated as one received from a third-party requester. *See* 24 DCMR § 3902.6 ("An individual seeking to obtain a copy of a BWC recording not covered by § 3902.5 may submit a FOIA request to the Department for a copy of the BWC recording.")

In the absence of receiving a copy of your identification or an applicable authorization, MPD has denied your request because the release of such records would constitute a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Code §§ 2-534(a)(2) and (a)(3)(C). Further, MPD asserts the requested BWC footage was recorded inside a personal residence and is exempt from disclosure pursuant to D.C. Code § 2534(a)(2A)(A).

*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). 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).

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 BWC footage, 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).

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.

In balancing the privacy interest of an individual involved in an incident that has been captured by a BWC and any public interest in disclosure, it is unclear how disclosing the requested material is relevant to MPD’s conduct as an agency. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Finally, D.C. Code § 2-534(a)(2A)(A) exempts from disclosure:

Any body-worn camera recordings recorded by the Metropolitan Police Department . . .

(A) Inside a personal residence.

As represented by MPD, since the BWC was taken inside a personal resident, it would be exempt from disclosure under D.C. Code § 2-534(a)(2A)(A).

*Conclusion*

As detailed in the foregoing, MPD has identified substantiated reasons for withholding the requested BWC from disclosure in response to your FOIA request. However, because you only challenged MPD's failure to respond and it appears MPD has now responded to your request, we dismiss this appeal as moot.

This constitutes the final decision of this Office. Also, if you are dissatisfied with this decision, you may commence a civil action against 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)