

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-021**

January 10, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Hailemichael Seyoum

RE: FOIA Appeal 2022-021

Dear Mr. Seyoum:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”). In your appeal, you have challenged the response of the University of the District of Columbia (“UDC”) to your DC FOIA request for public records.

Background

On October 2, 2021, you submitted a DC FOIA request to UDC which sought the following:

- (A)
 1. Transcript of Amanda Huron including her undergraduate, and graduate years;
 2. Department she was hired to teach; and
 3. Amanda Huron's age on May 2015.

- (B)
 1. Transcripts of Michelle Chatman including her undergraduate, and graduate years;
 2. Letter of appointment of Michelle Chatman when she was first hired as full-time faculty at the university; and
 3. Department she was appointed the first time as full time faculty member.

On November 3, 2021, UDC responded to your request, in part, by providing you with a copy of the responsive documents it identified. These documents included administrative forms for both Amanda Huron and Michelle Chatman from the D.C. Department of Human Resources (“DCHR”). UDC denied your request, in part, stating that it had no obligation to answer questions and by asserting the transcripts for the named individuals are exempt from disclosure pursuant to D.C. Code § 2-534(a)(2)(“[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”).

In your November 4, 2021 appeal filed with this Office, you have challenged UDC’s refusal to provide the requested transcripts noting “the University completely ignored the ruling of DC Appeals Court Case # 19-CV-662 Khatri vs Board of Trustee of the University of the District

of Columbia May 14, 2021, in which the Appeals court ordered UDC to release Undergraduate and graduate transcripts of Dr. Mohamed El-Khawas...with personal information redacted.”

On November 22, 2021, this Office notified UDC of your appeal and requested a response. UDC responded on November 30, 2021 by reiterating the transcripts were properly withheld pursuant to D.C. Code § 2-534(a)(2). UDC advised this Office that it relied on a November 2, 2021 advisory opinion it sought from the D.C. Office of Open Government (“OOG”), identified as #OOG- 002.10.21 _A0, which provided the following:

An individual maintains a privacy interest in “control of information concerning his or her person.” This privacy interest applies to personally identifying information including information contained in resumes and job applications, as well as an individual’s employment history and “diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee’s personnel file.” Similarly, the records at issue here, transcripts reflecting the individual’s undergraduate and graduate academic performance, contain the type of personally identifying information sufficient to establish the individual’s privacy interest in the records.

#OOG-002.10.21 _A0 at p. 3 (citations omitted).

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).

D.C. Code § 2-534(a)(2) (“Exemption 2”)

Under Exemption 2, determining whether the 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).

The second part of a privacy analysis examines whether an individual privacy interest is outweighed by the public interest. *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.

In FOIA Appeal decision 2018-139 the MOLC addressed the issue of whether an academic transcript is exempt from disclosure and affirmed UDC’s decision to withhold a professor’s transcripts under Exemption 2. This decision would later be the subject of a D.C. Superior Court case that was appealed to the D.C. Court of Appeals (“DCCA”). In that case, the issue was whether a UDC professor had more than a *de minimis* privacy interest in a redacted transcript that only listed the courses the professor had taken.

In remanding the case back to Superior Court for the issuance of an order requiring the disclosure of the redacted transcripts, the DCCA held:

UDC has at no point even attempted to explain in concrete terms why the UDC professor would have a more than [a] *de minimis* privacy interest in preventing the disclosure of the redacted transcripts...

Our holding is narrow. Disclosure of unredacted transcripts reflecting grades would have presented a very different issue. See *Info. Acquisition Corp. v. Dep't of Justice*, 444 F. Supp. 458, 464 (D.D.C. 1978) (disclosure of college grades would “normally constitute a clearly unwarranted invasion of privacy”). It also is quite possible that in a given case a showing could be made that disclosure of even a redacted transcript would implicate a more than [a] *de minimis* privacy interest. We hold only that UDC made no such showing in this case.

Although you have suggested, “the University completely ignored the ruling of [the DCCA]...in which the Appeals court ordered UDC to release undergraduate and graduate transcripts,” unpublished opinions, generally do not have any precedential effect. See D.C. App.R.28(g). Nonetheless, there are a number of distinguishing considerations in this matter

that support UDC's withholding. Initially, while it is not determinative and should have been a consideration in UDC's response, you have not indicated an intent to resolve your request by limiting it solely to a redacted version of the requested transcript, in any form. Moreover, UDC proactively sought to address the concerns of the DCCA—as to whether a professor has more than a *de minimis* privacy interest in a redacted transcript that only shows course listings—by way of seeking an advisory opinion from OOG. It was the opinion of OOG that there is such an interest in information contained within job applications, which is presumptively the purpose for which a prospective employee would submit their academic transcript to an employer. Finally, you have not adequately explained a countervailing public interest in disclosure. While there may be a public interest in the degree obtained by a successful applicant, i.e. an individual's qualifications as contained in a resume, the specificity of the courses taken in obtaining that degree is significantly removed so as to have any value in the context of public interest.

In balancing the privacy interest of an individual's transcript versus any public interest in disclosure, it is unclear how disclosing the requested information is relevant to UDC'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. *Beck*, 997 F.2d 1489.

Conclusion

Based on the foregoing, we affirm UDC'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,

Mayor's Office of Legal Counsel

cc: Avis Marie Russell, UDC FOIA Officer (via email only)