

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-026**

June 29, 2022

VIA ELECTRONIC MAIL

Mr. Paul Strauss

RE: FOIA Appeal 2022-026

Dear Mr. Strauss:

This letter responds to an 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 assert that the District of Columbia Department of Housing and Community Development (“DHCD”) failed to properly respond to your DC FOIA request for public records.

Background

On October 22, 2021, you submitted a request to DHCD for “all documents, including but not limited to, TOPA notice, Tenant Association Registration, By-laws, Letter of Interest in Purchase, for the property located at 3132 16th Street NW, Washington DC 20010.” DHCD responded to your request on November 3, 2021 by providing you “the TOPA notice, Tenant Association Registration, By-laws, and Letter of Interest in Purchase accompanied by a letter explaining that certain documents that were requested were subject to the personal privacy exemption authorized by D.C. Official Code §2-534(2)[(“Exemption 2”)].”<sup>1</sup>

You appealed, asserting that Exemption 2 is inapplicable because “[t]his is a Tenant Association and this request is on behalf of a Tenant Association's member who, by law, should have access to this information. These documents are necessary to verify the actual members of the Tenant Association, if they comply with the statute, and public policy.”

On November 23, 2021, this Office notified DHCD of your appeal and requested a response. DHCD responded on December 2, 2021.<sup>2</sup> In its response to your appeal, DHCD reiterates that it properly withheld “a list of the tenant association members that includes personal identifiable information such as tenants’ names and apartment numbers” because releasing such information

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<sup>1</sup> Exemption 2 protects “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

<sup>2</sup> DHCD’s response is attached to this decision.

without prior authorization from the tenants would be an invasion of privacy. DHCD also reiterates that it properly redacted a tenant's name and signature on the Application for Registration Certification.

### 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. Official 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. Official 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. *See* D.C. Official 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).

### *Exemption 2*

Under Exemption 2, 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). 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 tenant names and apartment numbers that DHCD withheld and the name and signature DHCD redacted raise a substantial privacy interest, as they involve personally identifiable information.

The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. The "public interest" in DC FOIA has a narrow meaning, limited to furthering the statutory purpose of DC FOIA.

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.

*Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

Here you have not articulated a cognizable public interest under DC FOIA. Your public interest argument asserts that the "documents are necessary to verify the actual members of the Tenant Association, if they comply with the statute, and public policy." Your argument does not explain how releasing the personal information of tenants, without their authorization, will reveal anything about DHCD'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. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). As a result, we find that DHCD has properly withheld and redacted the personal information under Exemption 2.

### Conclusion

Based on the foregoing, we affirm DHCD's decision and hereby dismiss your appeal. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Tonya Condell, Assistant General Counsel/FOIA Officer  
DHCD (via email)