

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-033**

February 22, 2022

VIA ELECTRONIC MAIL

Dr. Daryao S. Khatri

RE: FOIA Appeal 2022-033

Dear Dr. Khatri:

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 University of the District of Columbia (“UDC”) failed to properly respond to your DC FOIA request for public records.

Background

On October 13, 2021, you submitted a multi-part request in which you sought various records, including resumes and transcripts of specific faculty. UDC responded to your request on November 22, 2021. In its response, UDC notified you that the professors’ transcripts are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”).¹ UDC also provided documents, available in electronic format, responsive to other parts of your request, notified you that some responsive documents were only in hardcopy format and subject to a photocopying fee of \$.25 per page, informed you it was still gathering documents for other parts, and could not locate records for some parts.

On December 3, 2021 you appealed to this Office, challenging UDC’s refusal to provide the requested resumes and transcripts. You noted that in response to a D.C. Court of Appeals opinion, UDC provided you a certain professor’s transcripts.

On December 6, 2021, this Office notified UDC of your appeal and requested a response. UDC responded on December 13, 2021.² In its response to your appeal, UDC reiterated that it properly withheld the and transcripts pursuant to Exemption 2. UDC relied on a recently issued Office of

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

² UDC’s response is attached to this decision.

Open Government Advisory Opinion which concluded that “the individual professor’s privacy interest in the information in their transcripts combined with the requestor’s failure to establish the requisite public interest in the disclosure would support a decision by UDC to withhold the transcripts from disclosure under Exemption 2.”

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 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.

In FOIA Appeal decision 2018-139 we addressed the issue of transcripts with grades and affirmed UDC's decision to withhold a professor's transcripts under Exemption 2. However, in this case you are only seeking redacted transcripts listing courses taken. UDC has not sufficiently explained the privacy interest in a listing of undergraduate and graduate courses taken. Therefore, a remand is appropriate.

Conclusion

Based on the foregoing, we remand to UDC to provide you and this Office, within ten business days, a more detailed explanation of the privacy interest in transcripts with personal information redacted. 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: Thomas E. Redmond, Assistant General Counsel
UDC (via email)