

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-038**

January 25, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Joseph
Schnide

RE: FOIA Appeal 2022-038

Dear Mr. Schnide:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code §§ 2-531, *et seq.* ("DC FOIA"). In your appeal, you have challenged the response of the Metropolitan Police Department ("MPD") to your DC FOIA request.

Background

On August 18, 2021, you submitted a DC FOIA request to MPD, identified as 2021-FOIA-07464, which sought the following:

1. The timesheets and overtime authorizations for the 25 MPD officers that received the highest overtime compensation in the 2020 calendar year. Please refer to Appendix A for a table of the top 25 overtime earners as previously disclosed.
2. Please supply any documents related to how overtime is calculated for MPD at each rank.
3. Please provide a breakdown of MPD overtime allocation by First Amendment protests in FY 2020. Please include this information in an electronically searchable table, and indicate whether overtime hours for each protest were classified as court, local non- court, EPSF (Emergency Planning and Security Fund) reimbursed, or grant non-EPSF reimbursed.
4. I understand that there are some events that may have initially been classified as a First Amendment Protest before escalating to a different classification (such as a "riot" or "public disturbance"). Please provide a list of all such events in FY 2020 that originated as First Amendment protests prior to escalation to a different classification, and indicate the originating First Amendment protest for each event.
 - a. Please then provide a breakdown of MPD overtime allocation by escalated event in FY 2020. Please include this information in an electronically

searchable table, and indicate whether overtime hours for each protest were classified as court, local non-court, EPSF (Emergency Planning and Security Fund) reimbursed, or grant non-EPSF reimbursed.

5. Please provide a copy of any policy or procedure limiting the amount of overtime an individual can work, requiring periods of break or rest between shifts, or otherwise governing overtime usage.
6. Please provide a copy of any policy or procedure clarifying the following “police must have the ability to shift resources and tours of duty at short notice or for a limited time to respond to emerging or serious public safety issues.” Please also provide any policy or procedure defining what constitutes an “emerging or serious public safety issue”.

On September 15, 2021, MPD granted your request, in part, and denied it, in part. Specifically, MPD explained,

With regards to item # 1, a search of our records did not locate a privacy waiver or authorization on file. Absent a privacy waiver and/ or authorization, a release of such information would constitute a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) and (a)(3)(C).

With regards to item #3, be advised, this portion of your request is still being processed and you will receive a separate response at a later date.

With regards to items #2 -6 of your request, please find attached documents located and deemed responsive to your request.

In your December 8, 2021 appeal filed with this Office, you have solely challenged MPD’s response to request #1, the timesheets and overtime authorizations for the 25 MPD officers that received the highest overtime compensation in the 2020 calendar year. It is your contention that because the names of the officers have already been released, “[t]here is no additional personal privacy concern inherent to the requested timesheets and overtime authorizations...” Further, you state, “[e]ven if the disclosure of the records constitutes some violation of the personal privacy of the officers, this violation is outweighed by the overwhelming public interest in the disclosure of these records.”

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 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). The privacy interest in the FOIA balancing analysis “encompasses the individual's control of information concerning his or her person,” including names, addresses, and other identifying information. *Padou v. District of Columbia*, 29 A.3d 973, 982 (D.C.2011). Individuals have a privacy interest in personal information even if it is not of an embarrassing or intimate nature. *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 600, 102 S.Ct. 1957, 72 L.Ed.2d 358 (1982).

Government employees generally have a substantial privacy interest with respect to their disciplinary actions and performance evaluations. *See, e.g., Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011); *see also Bonilla v. DOJ*, 798 F. Supp. 2d 1325, 1332 (S.D. Fla. 2011); *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984) (“[A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations.”). Further, courts have consistently held that an employee's time sheets involve a sufficient privacy interest to warrant protection. *See e.g., Berger v. IRS*, 487 F. Supp. 2d 482, 505 (D.N.J. 2007) (finding an individual employee's time sheets are protected from disclosure); *see also Morales v. Pension Benefit Guar. Corp.*, No. 10-1167, 2012 U.S. Dist. LEXIS 9101, at *12 (D. Md. Jan. 26, 2012).

We disagree that an individual's privacy interest is limited to his or her name and there is a sufficient privacy interest in the information requested as contained in an employee's personnel file. Timesheets reflect information of a personal nature including but not limited to sick leave, vacation time or when an employee was absent from work for various other personal reasons. Further, to the extent your request seeks overtime authorization specific to an employee, as opposed to a general mandate, this represents a privacy interest as well.

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 expressed a public interest in verifying overtime compensation was spent in a responsible manner. However, your argument does not explain how this information, with respect to an individual employee—which you have acknowledged is available—would have any bearing on MPD’s performance of its statutory duties as a whole.

When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *Beck v. Department of Justice*, 997 F.2d at 1494. As a result, we find that MPD has properly withheld information under Exemption 2.

Conclusion

Based on the foregoing, we affirm MPD’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 in Superior Court in accordance with D.C. Code § 2-537.

Sincerely,

Mayor’s Office of Legal Counsel

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