

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-045**

January 12, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Shawn R. Dagle

RE: FOIA Appeal 2022-045

Dear Mr. Dagle:

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 have challenged the response of the Metropolitan Police Department ("MPD") to your December 19, 2021 FOIA request, identified as 2022-FOIA-02124, which sought the following:

Any documents pertaining to a missing persons report for Jessica Taylor (also known as Jessica R. Taylor or Jessica Ruth Taylor)...(Date Range for Record Search: From 6/1/23 To 2/28/24).

On December 20, 2021, MPD denied your request pursuant to D.C. Code §§ 2-534(a)(2)(Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy) and (a)(3)(C)(Investigatory records compiled for law-enforcement purposes, the production of which would constitute an unwarranted invasion of personal privacy).

In your December 20, 2021 appeal, you have asserted that "Jessica Taylor herself is deceased thus the right to privacy does not apply to her...", there is already widespread national and worldwide coverage of Taylor's disappearance and death, and there is "[p]ublic interest in catching the killer."

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."

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 information, the first part of the analysis is determining whether a sufficient privacy interest exists. 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., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). Moreover, the D.C. Circuit has held individuals have a "strong interest" in not being associated with unwarrantedly with alleged criminal activity whether they be suspects, witnesses, or investigators. *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990).

In considering the privacy rights of the deceased, courts have found that "one's own ... interest in privacy ordinarily extend beyond one's death." *Schrecker v. DOJ*, 254 F.3d 162, 166 (D.C. Cir. 2001). Rather, the privacy interest of an individual may only be diminished, not eliminated, if that individual is deceased. *Davis v. DOJ*, 460 F.3d 92, 97-98 (D.C. Cir. 2007) ("We have recognized that the privacy interest in nondisclosure of identifying information may be diminished where the individual is deceased"); *Schrecker v. DOJ*, 349 F.3d 657, 661 (D.C. Cir. 2003) ("The fact of death, therefore, while not requiring the release of identifying information, is a relevant factor to be taken into account in the balancing decision whether to release information").

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 asserted privacy interest, as contained in MPD records, it is unclear how disclosing the requested information is relevant to MPD's conduct as a whole. Further, the Supreme Court has held courts have found "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no 'official information' about a government agency, but merely records that the Government happens to be storing, the invasion of privacy is 'unwarranted.' . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780.

The public nature of information does not necessitate the subsequent release of related documents. *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762 (1989); *Long v. United States DOJ*, 450 F. Supp. 2d 42, 68 (D.D.C. 2006) (“the fact that some of the personal information contained in these records already has been made public in some form does not eliminate the privacy interest in avoiding further disclosure by the government.”); *Edmonds v. FBI*, 272 F. Supp. 2d 35, 53 (D.D.C. 2003)(finding that media identification of persons mentioned in a law enforcement file “does not lessen their privacy interests or ‘defeat the exemption,’ for prior disclosure of personal information does not eliminate an individual’s privacy interest in avoiding subsequent disclosure by the government”).

In the absence of any identified countervailing public interest, we hold that MPD may withhold the responsive information.

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,

The Mayor’s Office of Legal Counsel

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