

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-059**

January 18, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Kim Parker

RE: FOIA Appeal 2022-059

Dear Ms. Parker:

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 § 2-537 (“DC FOIA”). In your appeal, you have challenged the response of the District of Columbia Office of Unified Communications (“OUC”) to your DC FOIA request.

Background

On December 16, 2021, you submitted a DC FOIA request to OUC, identified as 2022-FOIA-02088, which sought the following:

1. Radio Runs for any for calls for service at [Subway, 2001 14th Street, N.W., Washington, DC 20009]; and
2. Names of an EMT dispatched to [Subway, 2001 14th Street, N.W., Washington, DC 20009]

(Date Range for Record Search: From 10/07/2021 To 10/07/2021)

OUC responded to your request on January 4, 2022 by providing you with an event chronology report with the names of operators and responders redacted to protect personal privacy pursuant to D.C. Code § 2-534(a)(2).

In your appeal filed with this Office, you assert, “[you are] entitled to the names of public employees and redacting same violates FOIA.”

On January 24, 2022, this Office notified OUC of your appeal and requested a response. In its response, OUC reiterated that its redactions were proper pursuant to D.C. Code § 2-534(a)(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. 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). 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 information that OUC redacted raises a substantial privacy interest, as it involves personally identifiable 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.

Here you have not articulated a public interest. We fail to see how releasing redacted personal information will reveal anything about OUC’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. *Beck v. Department of Justice*, 997 F.2d at 1494. As a result, we

find that OUC has properly redacted the personal information under Exemption 2.

Conclusion

Based on the foregoing, we affirm OUC's decision and hereby deny 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 Superior Court.

Sincerely,

Mayor's Office of Legal Counsel

cc: Domingo Juan, OUC FOIA Officer (via email only)