

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-060**

January 18, 2023

**VIA ELECTRONIC MAIL ONLY**

Mr. Daniel S. Shaivitz

RE: FOIA Appeal 2022-

060

Dear Mr. Shaivitz:

This letter responds to the administrative appeal 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 Metropolitan Police Department (“MPD”) to the request of Ms. Elizabeth Farley for body worn camera (“BWC”) footage.

Background

On November 19, 2021, Ms. Farley submitted a DC FOIA request to MPD, identified as 2022-BWC-00065, which sought the following:

[T]he Body Worn Camera footage of Officer Andre Reid (badge number 6890). According to the Accident Report, Office Reid had his Body Warn Camera activated when responding to the scene of the accident. (CCN # 20182008). (Date Range for Record Search: 12/24/2020 – 12/24/2020).

On December 30, 2021, MPD responded to the request by providing access to a redacted video. MPD explained that “redactions have been made to visual images and portions of the audio to protect personal privacy interests. The release of such would constitute as a clearly unwarranted invasion of personal privacy and is therefore exempt pursuant to D.C. Official Code § 2-534(a)(2) [(“Exemption 2”)].”

You filed an appeal with this Office on January 4, 2022 asserting “there is no reasonable expectation of privacy for any party, witness, or bystander who is standing on a public street or sidewalk communicating with or standing near a police officer who is investigating an auto accident” and “any privacy interests in such people that may exist are outweighed substantially by the public interest in favor of the full disclosure of witnesses and facts regarding an auto accident.”

On January 24, 2022, we notified MPD of your appeal and requested a response. MPD responded on August 29, 2022 in which it reiterated the “redactions were made to visual images of people and portions of the audio to protect personal privacy interests. The release of such would constitute a clearly unwarranted invasion of personal privacy and is therefore exempt 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.” 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 the 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 § 2-532(a) (“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 personally identifiable 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). Images are also considered to be personally identifiable information. *See, e.g., Mingo v. DOJ*, 793 F. Supp. 2d 447, 456 (D.D.C. 2011). The Supreme Court has held “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 . . .” *Reporters Comm. For Freedom of Press*, 489 U.S. at 780.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC 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, third parties have a cognizable privacy interest in the non-disclosure of the unredacted footage. Although you have clearly articulated a private interest in obtaining information for a potential personal injury claim, you have not articulated an interest cognizable under DC FOIA because you have not explained how releasing the unredacted BWC footage will shed light on MPD’s conduct as an agency. When there is a privacy interest in a record and no countervailing public interest, the protected information may be withheld from disclosure. *See, e.g. Beck*, 997 F.2d at 1494.

#### 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 government in the Superior Court.

Respectfully,

Mayor’s Office of Legal Counsel

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