

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-087**

February 1, 2023

**VIA ELECTRONIC MAIL ONLY**

Mr. Carter Deane

RE: FOIA Appeal 2022-087

Dear Mr. Deane:

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 October 13, 2021, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-00446, which sought the following:

[C]opies of homicide locations in the District of Columbia. Specifically, I seek the locations of all homicides that occurred in Ward 7/6th Police District for the following years: 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, and 1988.

You submitted a second request to MPD, identified as 2022-FOIA-00447, which sought the following:

[T]he locations of all homicides that occurred in Ward 7/6th Police District for the following years: 1989, 1990, 1991, 1992, 1993, and 1994. I also request the rate or total number of violent crimes in Ward 7, 6th Police District, or the zip code 20019 from 1979 to 1994.

On January 20, 2022 MPD responded to request 2022-FOIA-00446 by providing you with the records deemed responsive to your request. MPD further advised,

[T]he name and date of birth of defendants, as well as, other identifying information for the defendants has been withheld. A release of such information would constitute as 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). In addition, some defendants were identified as

juveniles; therefore, their names, date of birth and any other identifiers were withheld pursuant to D.C. Official Code § 2-534(a)(6), which exempts “[i]nformation specifically exempted from disclosure by statute.”

MPD issued a similar response to 2022-FOIA-00447 on February 3, 2022.

On February 15, 2022, you filed an appeal with this Office, in relevant part, challenging MPD’s redaction of “the location of the homicides”, which was the primary request, and how this could serve to identify defendants. Additionally, you noted that “[t]he government releases the locations of crimes to the public on a regular basis and in various forms” such as the Crime Cards application which contains data from 2009 to present.”

On March 8, 2022, we notified MPD of your appeal and requested a response. To date, MPD has not responded and we are now issuing a decision based on the available record.

### 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 FOIA statute. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute 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).

### *Personal Privacy*

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.” In 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).

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. *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, 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).

An invasion of privacy need not occur immediately upon disclosure in order to be considered "clearly unwarranted." *See Nat'l Ass'n of Retired Fed. Emps. ("NARFE") v. Horner*, 879 F.2d 873, 878 (D.C. Cir. 1989) ("In virtually every case in which a privacy concern is implicated, someone must take steps after the initial disclosure in order to bring about the untoward effect."). Further, "[w]here there is a substantial probability that disclosure will cause an interference with personal privacy, it matters not that there may be two or three links in the causal chain." *NARFE*, 879 F.2d at 878; cf. *NARA v. Favish*, 541 U.S. 157, 167-70 (2004) (specifically taking into account "the consequences" of FOIA disclosure, including "public exploitation" of the records by either the requester or others).

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 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, this Office is not in receipt of and has not reviewed a copy of the responsive documents provided to you by MPD, in either redacted or unredacted format. However, as contested, it is unclear how redacting the location of a homicide could lead to the identification of a defendant for the purpose of asserting a personal privacy exemption. Moreover, given the release of block-level location information for homicides in recent years, the feasibility of doing so for the historical years requested has also come into question.

### Conclusion

Based on the foregoing, this Office remands this matter back to MPD for an explanation as to the applicability of D.C. Code § 2-534(a)(2) and D.C. Code § 2-534(a)(3)(C), in the context of the redactions made (the location of the homicide, etc.), cite to another applicable exemption and/or produce a copy of the responsive records without redactions.

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.

Respectfully,

Mayor's Office of Legal Counsel

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