

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-119**

January 18, 2023

**VIA ELECTRONIC MAIL ONLY**

Mr. Gregory Townsend

RE: FOIA Appeal 2022-119

Dear Mr. Townsend:

This letter responds to the administrative appeal you 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 March 22, 2022, you submitted a DC FOIA request to MPD, identified as 2022-BWC-00222, which sought body worn camera (“BWC”) video footage pertaining to the arrest of a specific individual.

MPD denied your request on March 22, 2022 because BWC footage “can only be released to subjects of the footage and/or their representative” and “[a]bsent authorization and/or a waiver, a release of [third party] records 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 your April 4, 2022 appeal filed with this Office, you have asserted that your request should not have been denied in full because you stated you would accept the footage with audio and all faces redacted.

On April 5, 2022, we notified MPD of your appeal and requested a response. MPD responded on April 13, 2022 reiterating that it properly denied your request for BWC footage pursuant to D.C. Code §§ 2-534(a)(2) and (a)(3)(C), because disclosure of the BWC footage would constitute an unwarranted invasion of personal privacy. MPD emphasized that on the request form you explicitly stated that the request was “NOT on behalf of [the person arrested].” MPD also explained that redacting all audio and faces will not sufficiently protect personal privacy because your request names the individual shown being arrested.

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. *See* 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).

### *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 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). 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 second part of the 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 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.

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. Here, we find that there is a cognizable privacy interest in not being associated with a police incident and in the absence of any explanation as to how the requested BWC footage would shed light on MPD’s conduct, MPD has properly withheld any response to the request. *See, e.g. Beck*, 997 F.2d at 1494 (When there is a privacy interest in a record and no countervailing public interest, the protected information may be withheld from disclosure).

While you have asserted MPD has an obligation to segregate and release any non-exempt portions of the video, the extent to which this is possible is unlikely to be feasible given the privacy interest of all persons depicted therein.

#### Conclusion

Based on the foregoing, we affirm MPD’s decision to withhold the requested BWC footage, and we hereby dismiss your appeal. This constitutes the final decision of this Office with respect to your appeal. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

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