

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-135**

January 26, 2023

**VIA ELECTRONIC MAIL ONLY**

Ms. Elvisa Copeland

RE: FOIA Appeal 2022-135

Dear Ms. Copeland:

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 April 12, 2022, you submitted three DC FOIA requests to MPD for body-worn camera footage, identified as 2022-BWC-00248, 2022-BWC-00249 and 2022-BWC-00253.

In 2022-BWC-00248, you sought:

MPD stalked and harassed me on both days all day long before illegally transporting me to CPAP[;]

In 2022-BWC-00249, you sought:

Knowing I was a victim of an assault Officer O'Connell conspired to send me to CPAP he called CPAP on me 3 different times on 8/5/2020. He also is responsible for having my dog removed[; and]

In 2022-BWC-00253, you sought:

April 4th, 2020 Badge Numbers 11485, 11409, 8757, 11531, 11379, 4967, 2831, 5554, 5601, 5640, 5515, 5040, 8208 MPD harassed me all day long. Entered my residence illegally. Transported me to CPAP illegally. Did not make police report[.]

With respect to 2022-BWC-00248 and 2022-BWC-00253, MPD advised you that it did not possess any records that were responsive to your request on April 29, 2022. With respect to 2022-BWC-00249, MPD responded to your request by providing you with access to a video and stated,

redactions have been made to visual images and portions of the video 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)

On May 3, 2022, you submitted an appeal to this Office for each of your requests which have been consolidated as FOIA Appeal 2022-135. In your appeal, you assert “[t]he released footage is incomplete and does not document the numerous times MPD harassed me after my attack. Nor does it document the initial call or report that was made.” You also challenged MPD’s determination that the retention period had passed asserting, “[the] [r]etention period is 5 years.”

We notified MPD of your appeal on May 13, 2022 and requested a response. In its response, MPD explained that it searched Evidence.com for responsive BWC footage using the information you provided and released all non-exempt portions of the responsive footage. MPD noted, “all BWC videos are automatically uploaded into Evidence.com when the cameras are charged, [and] there is no other repository to search for responsive BWC videos.” With respect to the BWC that was provided, MPD asserted the redactions were made “to protect the patients, guests, family members, doctor, nurses, and other visitors and staff of the hospital from unwarranted invasions of personal privacy under D.C. Official Code § 2 - 534(a)(2) and (a)(3)(C).”

### 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. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Code § 2-502(18).

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).

### *Adequacy of the Search*

To the extent you challenge MPD’s failure to locate any additional video and/or documents, we conclude that MPD performed an adequate search.

In determining whether an agency conducted an adequate search in response to a records request, the test is not whether documents might conceivably exist, but whether the agency’s search for responsive documents was adequate. *See Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that

records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search:

the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' (*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)) . . . The court applies a 'reasonableness' test to determine the 'adequacy' of a search methodology, (*Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983)) . . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In this instance, MPD identified Evidence.com as the only repository for BWC footage and searched it using the names, dates, and addresses you provided. The agency located footage in which you appear and provided that footage to you. As MPD correctly notes, any contention that the agency failed to provide a copy of a 911 call and police report is misplaced because your request does not include those items.

*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 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 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, MPD has represented that the redacted BWC footage depicts patients, friends and family, doctors and nurses in a hospital setting. We accept MPD’s representation that these individuals have a cognizable privacy interest in the non-disclosure of their images. Moreover, you have not articulated how releasing the unredacted BWC footage will shed light on MPD’s conduct. 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. Therefore, MPD properly redacted the BWC footage.

#### Conclusion

Based on the foregoing, we affirm MPD’s decision and we 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 Superior Court in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

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