

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-154**

January 25, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Elvisa Copeland

RE: FOIA Appeal 2022-154

Dear Ms. Copeland:

This letter responds to the administrative appeals 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 appeals, you have challenged the responses of the Metropolitan Police Department (“MPD”) to your DC FOIA requests.

Background

On June 28, 2021, you submitted a DC FOIA request to MPD, identified as 2021-BWC-00318, which sought the following:

CCN 21063205 (Date Range for Record Search: From 05/15/2021 To 05/15/2021).

On April 12, 2022, you submitted a DC FOIA request to MPD, identified as 2022-BWC-00247, which stated the following:

Body Camera Footage

After reporting that Erik Steawrt Sr. pulled a gun on me. MPD transported me to CPAP under FD12. Illegally and did not make a police report to document the domestic violence

March 16th, 2020 (Date Range for Record Search: From 03/16/2020 To 03/16/2020).

On the same day, you also submitted a DC FOIA request to MPD, identified as 2022-BWC-00252, which sought:

BWC of incident on 2/24/2021 CCN 21024359 was a lock-up for 21021761
2/18/2021 (Date Range for Record Search: From 02/24/2021 To 02/24/2021).

You filed 3 separate appeals to these DC FOIA requests on May 23, 2022, which were consolidated and docketed as FOIA Appeal 2022-154.

On September 28, 2021, MPD responded to request 2021-BWC-00318 by providing you access to video footage that had been redacted pursuant to D.C. Code §§ 2-534(a)(2) (“[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy”) and (a)(2a)(a)(body worn camera footage related to an incident of domestic violence or sexual assault).

On April 13, 2022 MPD responded to request 2022-BWC-00247 by advising you that “the BWC footage described in your request has passed its retention period and has been purged.”

On May 19, 2022, MPD responded to request 2022-BWC-00252 by providing you access to video footage that had been redacted pursuant to D.C. Code § 2-534(a)(2) (“[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”).

Discussion

2022-BWC-00247

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). An agency is only required to disclose records that are under its control at the time of the request. *DOJ v. Tax Analysts*, 492 U.S. 136, 145 (1989). Here, MPD has explained that the requested footage was purged pursuant to MPD’s retention schedule. If MPD no longer has the requested footage, MPD cannot provide it.

2022-BWC-00252 and 2021-BWC-00318

D.C. Code § 2-534(a)(2) (“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). Courts have frequently held that there is a heightened privacy interest in the names and phone numbers of law enforcement officers. *O’Keefe v. DOD*, 463 F. Supp. 2d 317, 324 (E.D.N.Y. 2006) (“Government employees, and specifically law enforcement personnel, have a significant privacy interest in their identities, as the release of their identities may subject them to embarrassment and harassment.”). 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). As such, we find that there is at least a *de minimis* privacy interest in the images and identities of the persons depicted in the requested BWC footage.

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 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.

In this case, you have not articulated an interest cognizable under FOIA because you have not explained how identifying the officers in the 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.

Based on the foregoing, we conclude that MPD properly responded to your FOIA requests and we hereby deny your appeal. Any discussion as to D.C. Code § 2-534(a)(2a)(a), with respect to 2021-BWC-00318, is reserved at this time.

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)