

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-161**

December 20, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Shawn Musgrave

RE: FOIA Appeal 2022-161

Dear Mr. Musgrave:

This letter responds to the administrative appeal you have submitted, on behalf of Dhruv Mehrotra, to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert the Metropolitan Police Department (“MPD”) has failed to properly respond to your DC FOIA request for public records.

Background

On March 2, 2022, your colleague submitted a DC FOIA request to MPD, identified as 2022-FOIA-04065, which sought the following:

Any database maintained by your department for tracking the submission and/or approval of Court Appearance Worksheets (otherwise known as P.D. 140’s) submitted by current or former officers from January 1, 2010 until today’s date, preferably in .csv or .xlsx format.

If such a database is not available, any Metropolitan Police Department Court Appearance Worksheets (otherwise known as P.D. 140’s) submitted by current or former officers from January 1, 2010 until today’s date.

On May 24, 2022, MPD responded to your request stating,

[p]er a search conducted by personnel assigned to the Metropolitan Police Department (MPD), please find attached excel spreadsheets containing information that is reflected on P.D. 140 forms that were submitted by MPD officers from January 1, 2015 through today’s date, May 24, 2022. Be advised, the name and any personal identifiers of current and/or former MPD officers 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)[(“Exemption 2”)] and (a)(3)(C)[(“Exemption 3(C)”)].

In your June 3, 2022 appeal, you assert “Exemption 3(C) is inapplicable because the requested data was compiled for an administrative purpose, rather than for a law enforcement purpose [and] Exemption 2 does not apply because there is no cognizable privacy interest in court appearance records and at the same time there is an overwhelming public interest in their disclosure.” You also point out that MPD provided the data in PDF format and “must release the data in the requested [spreadsheet] format.”

On June 13, 2022, we notified MPD of your appeal and requested a response. MPD responded on September 21, 2022. In its response, MPD stated that you “did not provide a signed waiver of personal privacy interests or signed authorization for the release of personal privacy records from any individual(s) who may be the subject of, who may otherwise be identified within, or who may have a personal privacy interest in the disposition of such records hence the redactions.” MPD also noted that although the information was initially provided in PDF format, “a subsequent disclosure provided the records in excel.”

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 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- 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 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). The information that MPD redacted raises a substantial privacy interest, as it involves personally identifiable information.

The second part of the Exemption 2 analysis examines whether the individual privacy interest is

outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. The “public interest” in DC FOIA has a narrow meaning, limited to furthering the statutory purpose of DC FOIA.

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.

Beck v. Department of Justice, et al., 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

Here you have not articulated a viable public interest under DC FOIA. Although you have presented an argument that “[i]t is vital for the public to know which officer appeared in which proceeding, particularly if an officer’s reputation for honesty later comes into question due to a finding of misconduct,” and PDF Form 140 data reveals information about “how individual police officers perform their official duties,” this does not explain how releasing *personal information about an individual officer* has any bearing on MPD’s conduct as a whole. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *Beck*, 997 F.2d at 1494. As a result, we find that MPD has properly redacted the personal information under Exemption 2, and any analysis of D.C. Code (a)(3)(C) is deferred at this time.

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 of the District of Columbia in accordance with DC FOIA.

Sincerely,

Mayor’s Office of Legal Counsel

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