

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-162**

December 20, 2022

VIA ELECTRONIC MAIL ONLY

Ms. Jessica Contrera

RE: FOIA Appeal 2022-162

Dear Ms. Contrera:

This letter responds to the administrative appeals you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”). In your appeals, you challenge the response of the Metropolitan Police Department (“MPD”) to three DC FOIA requests you made for public records.

Background

On June 1, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-06823, which sought the following:

All available Metropolitan Police Department records pertaining to DRD # 105-10 / IS # 09-003427, Officer Brett Parson in 2010. (Date Range for Record Search: From 01/01/2009 To 01/01/2014)

On June 2, 2022, your submitted a DC FOIA request to MPD, identified as 2022-FOIA-06829, which sought the following:

All available Metropolitan Police Department records, including disciplinary or adverse action records, pertaining to Sgt. Brett Parson’s involvement in an incident on June 14, 2008 at 725 Florida Avenue that resulted in Case 2009 CA 001377 B, Kevin Hostetler v. District of Columbia and Brett Parson. (Date Range for Record Search: From 06/01/2008 To 01/01/2014).

Also, on June 2, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-06833, which sought the following:

All available Metropolitan Police Department disciplinary or adverse action records pertaining to Lt. Brett Parson, 1993-2021. (Date Range for Record Search: From 01/01/1993 To 01/01/2021).

On June 2, 2022, MPD denied all of your requests explaining,

[u]pon review, we are unable to locate an authorization or other signed statement permitting the release of personal privacy data, if there are any records responsive to this FOIA request. A release of this type of records, again if any, would constitute an (a clearly) unwarranted invasion of personal privacy pursuant to D.C. Official Code § 2-534 (a)(2) and (a)(3)(C). These FOIA exemptions protect names/personal identifiers and other personal privacy information, including that which would lead to the identity of individuals.

On June 3, 2022, you appealed the denial of these requests with this Office, which have been consolidated and docketed as FOIA Appeal 2022-162. In your appeals, you requested “a line-by-line review of [the] record and release [of] all portions that are not exempt.” You also assert,

[The] release of this information is extremely important to contributing to the public understanding of the operations of the D.C. police department because the officer in question has been charged with unlawful sexual activity of a minor in the state of Florida. Given the seriousness of this charge, the public has a need to gain a comprehensive understanding of the officer’s prior conduct while he was being paid by taxpayers...[and] there are no ongoing law enforcement proceedings so [MPD’s] use of [Exemption 3(C)] may be improper.

On June 13, 2022, we notified MPD of your appeal and requested a response. MPD responded on September 24, 2022. In its response, MPD withdrew its contention that the records are exempt based on D.C. Code § 2-534(a)(3)(C) but reiterated the records are exempt from disclosure under D.C. Code § 2-534 (a)(2). MPD stated “an employee has at least a minimal privacy interest in his or her employment history and job performance evaluations.” MPD also stated that “[t]here is absolutely no nexus between the former Acting Lieutenant’s [Florida] arrest and MPD or his long past disciplinary actions.”

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). Government employees generally have a substantial privacy interest with respect to their disciplinary actions and performance evaluations. See, e.g., *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011); see also *Bonilla v. DOJ*, 798 F. Supp. 2d 1325, 1332 (S.D. Fla. 2011); *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984) (“[A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures.”). Therefore, we agree with MPD’s assertion that former Acting Lieutenant Parson has a sufficient privacy interest in his personnel records.

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 cognizable public interest under DC FOIA. Your public interest argument asserts that because a former MPD employee has been “charged with unlawful sexual activity of a minor in the state of Florida... the public has a need to gain a comprehensive understanding of the officer’s prior conduct while he was being paid by taxpayers.” Your argument does not explain how releasing the information will reveal anything about MPD’s performance of its statutory duties. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *Beck v. Department of Justice*, 997 F.2d at 1494. As a result, we find that MPD has properly withheld information under Exemption 2.

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 in Superior Court in

accordance with D.C. Code § 2-537.

Sincerely,

Mayor's Office of Legal Counsel

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