

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-168**

January 18, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Greg Stonebarger

RE: FOIA Appeal 2022-168

Dear Mr. Stonebarger:

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 Office of Unified Communications (“OUC”) to your DC FOIA request.

Background

On June 11, 2022, you submitted a DC FOIA request to OUC, identified as 2022-FOIA-07100, which sought the following:

911 call transcripts from cell #[omitted]. Call times were 12:49 a.m., 1:03 a.m. and 1:48 a.m. (Date Range for Record Search: From 03/04/2022 To 03/05/2022). Also, any emergency calls from the same number on March 4, 2022.

OUC denied your request on May 20, 2021 pursuant to D.C. Code § 2-534(a)(2).

On June 16, 2022, you filed an appeal with this Office, asserting that as the father of the individual making the 911 calls, you are entitled to the transcripts and other information.

We notified OUC of your appeal on July 11, 2022 and requested a response. OUC responded on July 19, 2022 reiterating its position that the recordings are exempt from disclosure because they “contain voices that can be used as a means of identification, thus making voices information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

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 the 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). Additionally, vocal inflection has been found to be personal identifying information. *See N.Y. Times Co. v. NASA*, 920 F.2d 1002, 1005 (D.C. Cir. 1990) (en banc). Here, we find that the 911 caller has a sufficient privacy interest in the content of a 911 call. While certain privacy protections may be waived, this Office is not aware of you having provided proof of identity to OUC for the purpose of doing so.

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. 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 instance, you have not articulated a cognizable public interest under DC FOIA because you have not explained how releasing the 911 calls would shed light on OUC’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. *See, e.g. Beck v. Department of Justice*,

997 F.2d 1489, 1494 (D.C. Cir. 1993). As a result, we find that OUC properly withheld the 911 calls under Exemption 2.

Additional information may be available, outside the context of FOIA, by satisfying OUC's disclosure policy, *e.g.* by presenting a waiver of an authorized individual as requested, and the requestor is encouraged to initiate that discussion with OUC, if desired.

Conclusion

Based on the foregoing, we affirm OUC'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 Superior Court in accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Domingo Juan, OUC FOIA Officer (via email only)