

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-169**

February 1, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Shawn Musgrave

RE: FOIA Appeal 2022-169

Dear Mr. Musgrave:

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 November 10, 2021, Mr. Dhruv Mehrotra submitted a DC FOIA request to MPD, identified as 2022-FOIA-01169, which sought the following:

A list of every Adverse Action Panels from 1/1/2016 to today’s date including each Hearing Date, Charge, Officer Rank, Final Penalty, and IS#.

MPD responded to your request on March 25, 2022 stating the following:

Per a search conducted by personnel assigned to the Metropolitan Police Department (MPD), please find attached spreadsheets deemed responsive to the information contained in your request. Be advised, the IS#s were withheld, as they are personal identifiers to the MPD members who were and/or currently under investigation. 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)”)].

On June 20, 2022, you filed an appeal with this Office asserting that Exemption 3(C) is inapplicable to the requested records. To support your contention, you asserted:

The requested records are essentially the Adverse Action Panel’s docket—they merely log the fact that an MPD officer appeared for an Adverse Action hearing. Like other dockets, they are quintessential administrative records that document basic information: the date the hearing occurred, the officer before the Panel, the charges, and the penalty. They are records compiled for

administrative purposes to aid MPD in its supervisory role as an employer, not MPD's law enforcement role.

You also asserted that “[u]nder Exemption 2, the public’s interest in a transparent and accountable police disciplinary system outweighs any de minimis privacy interests.”

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). Here, we accept MPD’s representation that an IS# constitutes personal identifying information and find the MPD members have a cognizable privacy interest in not releasing them.

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 argument does not explain how releasing the redacted personal 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. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). As a result, we find that MPD has properly withheld the personal 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 government in accordance with DC FOIA.

Sincerely,

Mayor’s Office of Legal Counsel

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