

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-171**

February 1, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Sam Knight

RE: FOIA Appeal 2022-171

Dear Mr. Knight:

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 June 10, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-07069, which sought the following:

All emails sent or received by former MPD officer Salah Czapary. (Date Range for Record Search: From 05/25/2020 To 08/31/2020).

MPD denied your request on June 10, 2022 for the following reasons:

Upon review, we are unable to locate a record of having received (a) signed waiver(s) of personal privacy interests, or signed authorization(s) 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. Absent authorization(s) and/or privacy waiver(s), a release of such records would constitute an (a clearly) unwarranted invasion of personal privacy, and is exempt from disclosure pursuant to D.C. Official Code § 2-534 (a)(2) and (a)(3)(C).

On June 11, 2022, you filed an appeal with this Office. Your appeal did not specify a basis for the appeal. *See* 1 DCMR § 412.4 (“An appeal to the Mayor shall be in writing and shall include: (a) Statement of the circumstances, reasons or arguments advanced in support of disclosure; (b) Copy of the original request, if any; (c) Copy of any written denial issued under § 407.2; and (d) Daytime telephone number, email address for the requester.”).

On July 11, 2022, we notified MPD of your appeal and requested a response. MPD responded on September 16, 2022, reiterating its position that any responsive documents were exempt for

disclosure pursuant to D.C. Code §§ 2-534 (a)(2) and (a)(3)(C). MPD also asserted your appeal failed to identify any public interest in the disclosure of the requested documents.

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 second part of a privacy analysis examines whether an 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 the absence of any explanation as to how the requested documents would shed light on MPD's conduct, this Office is inclined to accept MPD's denial on its face. *See, e.g. Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993)(When there is a privacy interest in a record and no countervailing public interest, the protected information may be withheld from disclosure). Any discussion of D.C. Code § 2-534(a)(3)(C) is reserved 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 accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

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