

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-175**

December 20, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Matthew Dowd Macvicar

RE: FOIA Appeal 2022-175

Dear Mr. Macvicar:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code § 2-537 (“DC FOIA”). In your appeal, you have challenged the response of the Metropolitan Police Department (“MPD”) to your DC FOIA request.

Background

On May 24, 2022, you submitted a DC FOIA request to MPD, identified as 2022-BWC-00309, which sought the following:

[B]ody cam footage, cruiser cam footage for accident report # 22058770.

On June 27, 2022, MPD denied your request, in the absence of a signed waiver or authorization, because the release of such records would constitute a clearly unwarranted invasion of personal privacy, and as such, they are exempt from disclosure pursuant to D.C. Code §§ 2-534(a)(2) and (a)(3)(C).

On July 1, 2022, you filed an appeal with this Office asserting “I have enclosed the paperwork proving progressive [represents] the driver.” On July 11, 2022, we notified MPD of your appeal and requested a response. MPD responded on September 16, 2022 reiterating its position that it properly denied your request for body worn camera (“BWC”) footage pursuant to D.C. Code §§ 2-534(a)(2) and (a)(3)(C). MPD noted that although you provided a copy of the insured’s ID, you did not provide the requested documentation that your insurance company insures the individual. This Office is also unaware as to whether any authorization or waiver was ever provided.

Discussion

D.C. Code § 2-534(a)(2) (“Exemption 2”) applies to “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” In 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 Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989).

D.C. Code § 2-534(a)(3)(C) ("Exemption 3") is more expansive than Exemption 2, and protects from public disclosure information contained in an investigatory file that "would constitute an unwarranted invasion of privacy." Exemption 3 lacks the key word "clearly" that is contained in Exemption 2, and therefore is a broader privacy privilege.

In assessing MPD's decision to withhold the requested BWC footage, the first part of the analysis is determining whether a sufficient privacy interest exists. *Id.* A privacy interest is cognizable under D.C. 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, personal phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Dep't of Defense v. FLRA*, 510 U.S. 487, 500 (1994). Images are also considered to be personally identifiable information. *See, e.g., Mingo v. DOJ*, 793 F. Supp. 2d 447, 456 (D.C. Cir. 2011).

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 D.C. 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.

Here, although you have articulated a private interest in obtaining information relevant to an insurance claim, you have not explained how releasing the requested BWC footage would shed light on 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*, 997 F.2d at 1494.

Conclusion

Based on the foregoing, we affirm MPD's decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you

may commence a civil action in the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Sincerely,

The Mayor's Office of Legal Counsel

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