

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-183**

January 27, 2023

**VIA ELECTRONIC MAIL ONLY**

Ms. Anastasia Obis

RE: FOIA Appeal 2022-183

Dear Ms. Obis:

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 Department of Corrections (“DOC”) to your DC FOIA request.

Background

On July 6, 2022, you submitted a DC FOIA request to DOC, identified as 2022-07-06-2926F, which sought the following:

1. Incident report for Sean Lee, 37, who died in the D.C. Jail on May 15, 2022;
2. Special incident report for Sean Lee;
3. The intake form for Sean Lee;
4. Body receipt for Sean Lee;
5. The results of internal investigation regarding the death of Sean Lee; and
6. Disciplinary letters sent to jail staff members in connection with the death Sean Lee.

DOC denied your request in full on July 11, 2022 pursuant to D.C. Code §2-534(a)(2)(“Exemption 2”) because “the DOC recognizes the personal privacy interest of inmates in its custody and [the DOC] does [not] disclose records and information about them without their...authorization [and] you did not produce...[an] authorization.”

On July 18, 2022, you filed an appeal with this Office asserting the DOC “denied all of [your] requests, including the ones that have to do with the inner workings of the facility itself, rather than personal privacy interests of the inmates” and “disclosure of the [requested] documents will help the public to understand and bring an update to what occur[r]ed on that weekend in May and make a contribution to the public's long conversation about the conditions inside D.C. Jail.”

We notified DOC of your appeal on July 19, 2022 and requested a response. DOC responded on August 2, 2022 reiterating its position that you “did not supply...[an] authorization to obtain the requested records” and therefore your request was denied pursuant to Exemption 2.

DOC also stated that “the circumstance of Sean Lee's death is currently under investigation” and therefore “the request must be denied pursuant to DC Code §2-534 (a)(3)(A)(i) & (C).”<sup>1</sup>

### 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 Supreme Court has held “as a categorical matter that a third party’s request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen’s privacy . . .” *Reporters Comm. For Freedom of Press*, 489 U.S. at 780. Here, we find that disclosing records pertaining a named individual who is not yourself, and from whom you have not provided written authorization, would constitute an invasion of the individual’s personal privacy.

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.

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<sup>1</sup> Pursuant to D.C. Code § 2-534(a)(3)(A)(i), investigatory records compiled for law enforcement purposes are exempt from disclosure to the extent the production of the records would interfere with an enforcement proceeding. *See Rural Housing Alliance v. United States Dep’t of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974)

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, you have not articulated a cognizable public interest under DC FOIA because you have not explained how releasing records pertaining to one individual would shed significant light on the DOC’s performance of its statutory duties as a whole. 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 DOC properly withheld records under Exemption 2. A discussion of the other exemption cited by DOC, D.C. Code § (a)(3)(A)(i), is reserved at this time.

#### Conclusion

Based on the foregoing, we affirm DOC’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: Oluwasegun Obebe, DOC FOIA Officer (via email only)