

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-186**

December 20, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Hameed Khan-Tareen

RE: FOIA Appeal 2022-186

Dear Mr. Khan-Tareen:

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 10, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-06282, which sought the following:

Arrest warrant from any responding officers to the below-described event, including but not limited to that of: MPD Officer Jefferson Chung #12464, Badge # 2126 and MPD Detective Ain Williams of the 7th district.

SUBJECT EVENT:

Type of Event: Hit and Run of pedestrian
Event No./Case no.: 21128047
Date of Event: 9.8.2021
Start Time – End Time: Approx. 1:29am
Location: 2402 Elvans Road SE Washington DC 20020

On June 6, 2022, MPD responded to your request by notifying you that "absent a privacy waiver and/or authorization from other involved parties of which we did not locate in our records, a release of such information would constitute as a clearly unwarranted invasion of personal privacy and are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) and (a)(3)(C)."

On July 14, 2022, you filed an appeal with this Office that appears to refer to a different FOIA request. Within the appeal, you assert "it is improbable that the contents of the whole file/report are exempted" and that your clients need certain information to "exercise their right to pursue a civil claim."

We notified MPD of your appeal and requested a response on July 20, 2022. MPD responded on September 2, 2022 reiterating that in the absence of a “privacy waiver and/or authorization from other involved parties” releasing the requested “information would constitute a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Code §§ 2-534(a)(2) and (a)(3)(C).” MPD also advised that it was unable to locate any arrest warrant for your client.

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, the 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. Under the DC FOIA, an agency is required to disclose materials if they are “retained by a public body.” D.C. Code § 2-502(18).

DC FOIA was modeled on the corresponding federal FOIA statute. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute 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”) 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 Department 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 information, 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., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). Moreover, the D.C. Circuit has held individuals have a “strong interest” in not being associated with alleged criminal activity whether they be suspects, witnesses, or investigators.

Fitzgibbon v. CIA, 911 F.2d 755, 767 (1990).

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.

Although you have articulated a private interest in obtaining information to pursue a civil claim, you have not articulated how releasing an arrest warrant for a specific individual 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 v. Department of Justice*, 997 F.2d at 1494. As a result, we find that MPD has properly withheld the requested documents.

Finally, under D.C. Code § 2-534(b), even when an agency establishes that an exemption is applicable, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). “‘Entire records are exempt from disclosure when it is shown that the exempt and nonexempt information are ‘inextricably intertwined,’ such that the excision of exempt information would impose significant costs on the agency and produce an edited document with little information value.’ *See D.C. v. Fraternal Ord. of Police Metro. Police Lab. Comm.*, 33 A.3d 332, 346 (D.C. 2011). While you have asserted MPD has an obligation disclose any non-exempt portions of the records, this is not feasible, given your request is about a specific individual; the disclosure of records as related to a specific individual would compromise the aforementioned privacy interest.

Conclusion

Based on the forgoing, we affirm MPD’s decision.

This constitutes the final decision of this Office. You may challenge any subsequent response to your request by separate appeal to 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.

Respectfully,

Mayor's Office of Legal Counsel

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