

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-197**

January 27, 2023

VIA ELECTRONIC MAIL ONLY

Chase Bales

RE: FOIA Appeal 2022-197

Dear Mr. Bales:

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 the DC FOIA request of your client Scott Taylor.

Background

On April 7, 2022, Mr. Taylor submitted a DC FOIA request to MPD, identified as 2022-FOIA-05240, which sought the following:

A copy of any document that shows a \$5,000 fine and payment of that fine by former 5th District MPD Commander William Fitzgerald. (Date Range for Record Search: From 03/17/2022 To 04/07/2022)

MPD denied Mr. Taylor’s request on April 8, 2022 explaining,

[u]pon review, we are unable to locate an authorization or other signed statement permitting the release of personal privacy data, if a search were to locate responsive records. As such, the release of this type of records, again if any, is or would be exempt from release under D.C. Official Code § 2-534 (a)(2) as its release under FOIA would constitute a clearly unwarranted invasion of personal privacy.

In your August 2, 2022 appeal filed with this Office, you have challenged the response of MPD, in part, because, “Commander Fitzgerald has no legitimate privacy interest in whether he was required to pay a \$5,000 for a violation of MPD policy...” and “[e]ven assuming a privacy right is found here, there is no question that the public interest outweighs that right.”

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). Government employees generally have a substantial privacy interest with respect to their disciplinary actions and performance evaluations. *See, e.g., Smith v. Dep’t of Labor*, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011); *see also Bonilla v. DOJ*, 798 F. Supp. 2d 1325, 1332 (S.D. Fla. 2011); *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984) (“[A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures.”). Therefore, we agree with MPD’s assertion that former MPD Commander William Fitzgerald has a sufficient privacy interest in his personnel records.

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 asserted there is a public interest in how MPD may discipline officers. However, in the context of a single individual, your argument does not explain how releasing the information will have any bearing on MPD’s statutory duties as a whole. Assuming arguendo,

the privacy interest in an officer's personnel file is not outweighed by the public interest in disclosure. 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 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 in Superior Court in accordance with D.C. Code § 2-537.

Sincerely,

Mayor's Office of Legal Counsel

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