

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-200**

February 1, 2023

**VIA ELECTRONIC MAIL ONLY**

Mr. William F. Marshall

RE: FOIA Appeal 2022-200

Dear Mr. Marshall:

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 July 25, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-08413, which sought the following:

Please provide the following records for MPD Officer Lila Morris, who was involved in the death of Rosanne Boyland on Jan. 6, 2021:

1. All training records of PO Morris since 1/1/2012
2. All complaints against PO Morris since 1/1/2012
3. All disciplinary records involving PO Morris since 1/1/2012
4. All email and text communications sent to/from PO Morris related to events of Jan. 6, 2021 from 1/4/2021 to the present.

(Date Range for Record Search: From 01/01/2012 To 07/25/2022)

On August 11, 2022, MPD denied your request for the following reasons:

With regards to item #1 of your request, a search determined that training records are an extension of an employee’s personnel file and is therefore, exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2).

With regards to items #2 and #3 of your request, we can neither admit nor deny if such records exists. To do so, would constitute as a clearly unwarranted invasion of personal privacy of Ofc. Morris, any complainants and/or third party individuals. If such records exists, they would be exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2).

With regards to item #4 of your request, it was determined the e-mails would be exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2).

You filed an appeal with this Office on August 12, 2022 asserting, “[t]he complete denial of records sought in this request for training records, complaints, disciplinary records, and communications related to events of January 6, 2021 involving Police Officer Lila Rose is completely unjustified and an abuse of discretion by DC FOIA authorities, inconsistent with the obligations of DC government officials under DC law.”

### 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. Official 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). 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.”).

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, we find Officer Morris has a cognizable privacy interest with respect to the requested records and redaction will not provide sufficient privacy protection because your request identifies by name the individual whose records you are seeking. Moreover, you have not articulated how releasing information pertaining to a single officer is relevant to MPD’s conduct 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*, 997 F.2d at 1494. As a result, we find that MPD has properly withheld information under Exemption 2.

Finally, while not raised in the response of MPD, in concurrence with multiple decisions recently issued by this Office, records related to January 6, 2021, remain subject to an ongoing investigation, and as such are exempt from disclosure. *See* 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); *Rural Housing Alliance v. United States Dep’t of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974)(records compiled for law enforcement purposes that pertain to an investigation are exempt from disclosure if the focus of the investigation is on acts that could, if proven, result in civil or criminal sanctions).

### 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 the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

Mayor’s Office of Legal Counsel

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