

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-207**

December 20, 2022

VIA ELECTRONIC MAIL ONLY

Mr. Steve Thompson

RE: FOIA Appeal 2022-207

Dear Mr. Thompson:

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 assert the District of Columbia Housing Authority (“DCHA”) failed to respond to your DC FOIA request.

Background

On July 26, 2022, you submitted a DC FOIA request to DCHA for “all emails sent by Victor Martinez to DCHA board members between July 12 and July 25, 2022.” In response to an appeal you filed on August 18, 2022, DCHA provided you with a copy of a responsive record it had located with personal information redacted pursuant to D.C. Code § 2-534(a)(2).

You filed a supplemental appeal with this Office on August 22, 2022 challenging the response of DCHA for the following reasons:

1. It appears the email produced was a response to a prior email. Typically, that prior email would be included in the email response itself. If that is case here, the entire chain would be responsive to my request. However, only the response email was produced, while it appears the email it was responding to may have been redacted.
2. DCHA redacted a telephone number and email address from the produced document on the grounds that release of the information would be a clearly unwarranted invasion of personal privacy. If the telephone number corresponds to a phone paid for by taxpayer funds via DCHA, I don't think this redaction would be appropriate. This would also be true for the email address.

On September 16, 2022, we notified DCHA of your appeal and requested a response. DCHA responded on September 19, 2022 explaining “[t]he responsive document that DCHA identified and provided to [you] in response to [your] request was the only email sent by Victor Martinez to any DCHA commissioner” and “to see the Commissioner’s email to Mr. Martinez,

[you] can certainly initiate another FOIA request to DCHA to ask for that record.” DCHA also reiterated that its redactions of the document were proper pursuant to D.C. Code § 2-534(a)(2).

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. *See* 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 information that DCHA redacted raises a privacy interest, as it involves personally identifiable information, i.e. the cell phone number and email address, of a high ranking government official. *See generally, Seife v. United States Department of State*, 298 F.Supp.3d 592 (S.D. New York, 2018)(Privacy interest in redacted official government email addresses and official and personal cellular phone numbers of certain employees in sensitive positions within the State Department, the Department of Defense (DOD), and the National Security Council (NSC) outweighed public interest in disclosure of information and, thus, information was exempt from disclosure under Freedom of Information Act (FOIA) exemption for information from personnel, medical, or other similar files that would constitute a clearly unwarranted invasion of personal privacy...).

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 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.

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. Although you have stated “[i]f the telephone number corresponds to a phone paid for by taxpayer funds via DCHA, I don’t think this redaction would be appropriate,” you have not explained how the redacted information will reveal anything about DCHA’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 (D.C. Cir. 1993). As a result, we find that DCHA has properly redacted the personal information under Exemption 2.

Conclusion

Based on the foregoing, we affirm DCHA’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 accordance with DC FOIA.

Sincerely,

Mayor’s Office of Legal Counsel

cc: Kimberly J. August, DCHA FOIA Officer (via email only)