

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-218**

January 18, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Daniel Maharaj

RE: FOIA Appeal 2022-218

Dear Mr. Maharaj:

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 District of Columbia Department of Human Resources (“DCHR”) to your DC FOIA request.

Background

On August 9, 2022, you submitted a DC FOIA request to DCHR, identified as 2022-FOIA-08858, which sought the following:

1. Please provide a copy of the “Certified Internal Auditor” (CIA) certification issued by the Institute of Internal Auditors, NY 2015, included in the resume of Mr. Fekede Gindaba, Assistant Inspector General of the Office of Inspector General, as referenced in Attachment #2 of the response provided for FOIA Request # 06917, redacted of any Personally Identifiable Information (PII).
2. Please provide a copy of the MBA certificate issued by the Maharishi University of Management, Fairfield, Iowa, 2011, included in the resume of Mr. Fekede Gindaba, Assistant Inspector General of the Office of Inspector General, as referenced in Attachment #2 of the response provided for FOIA Request # 06917, redacted of any Personally Identifiable Information (PII).
3. Please provide a copy of foreign educational qualifications credentialing service reports on the foreign educational qualifications of Mr. Fekede Gindaba, Assistant Inspector General for Audits of the Office of the Inspector General, pertaining to his education in Ethiopia and the U.K., such as Baccalaureate in Accounting, University of Ethiopia, Addis Ababa (2006), and Chartered Accountant, Association of Certified Chartered Accountants, Glasgow, UK, 2006, as referenced in Attachment #2 of the response provided for FOIA Request # 06917, redacted of any Personally Identifiable Information (PII).

On August 23, 2022, DCHR responded to your request with the following:

DCHR has chosen to withhold any records related to your request for documentation signifying Mr. Fekede Gindaba's certifications and credentialing. Consistent with Chapter 31A of the District of Columbia Municipal Regulations (DCMR), "[t]he Office of Personnel or Independent Personnel Authority shall not disclose a record from a system of personnel records without obtaining the prior written consent of the data subject." 6-B DCMR § 3111.4. As the records you requested are maintained within Mr. Gindaba's Official Personnel Folder [{"OPF"}], DCHR is withholding these documents pursuant to the personal privacy exemption found in D.C. Official Code § 2-534(a)(2). Disclosure of the information contained within Mr. Gindaba's personnel folder would constitute a clearly unwarranted invasion of personal privacy.

On September 14, 2022, you filed an appeal with this Office asserting, [t]he position of Assistant Inspector General is a public office conferring a salary of \$170,000 per annum, and the public has the right to know the qualifications and certifications of officials assigned to such a high-level position within the premier oversight body reporting to the Mayor." You also stated that "[t]he respect and regard of subordinates are influenced by the professional qualifications of the audit leadership. Therefore, it is in the interest of the organization to dispel any doubt about the accuracy and truthfulness of the qualifications claimed by its professionals." Additionally, you noted that you "requested that the information in this request be redacted of any Personally Identifiable Information (PII), which further minimizes the privacy interest in the disclosure of this information."

On September 16, 2022, we notified DCHR of your appeal and requested a response. DCHR responded on September 22, 2022 stating the grant of public access to the contents of an individual's OPF file "would directly conflict with the District's obligation to maintain its employees' privacy interest in sensitive information linked to their employment status. This impact would clearly exceed the de minimis standard required to create a privacy interest." DCHR also noted that it previously provided you with "Mr. Gindaba's resume at the time of his hiring for the Assistant Inspector General of Audit position with OIG." Additionally, DCHR stated that you failed to provide support for the "assertion that Mr. Gindaba is not qualified for his position or has provided false or inaccurate information about his qualifications" and "a speculative assertion is not sufficient to overcome the individual's privacy interest in a document contained within his OPF."

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. 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). 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 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, redaction of PII will not provide sufficient privacy protection because your request identifies by name the individual whose records you are seeking. Your speculative assertion about the employee’s qualifications does not constitute a cognizable public interest. 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 DCHR may withhold the requested information under Exemption 2.

Conclusion

Based on the foregoing, we affirm DCHR'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: Andrew Addison, DCHR FOIA Officer (via email only)