

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-226**

February 8, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Marja Plater

RE: FOIA Appeal 2022-226

Dear Ms. Plater:

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 Office of Unified Communications (“OUC”) to your DC FOIA request for public records.

Background

On September 13, 2022, you submitted a DC FOIA request to OUC, identified as 2022-FOIA-09753, which sought the following:

[A]ny and all records and radio communications related to a call for service concerning a domestic violence assault in progress that the Metropolitan Police Department (“MPD”) responded to on the evening of September 11, 2021. The call for service was placed from approximately 4:30 to 5:30 pm on September 11, 2021. The location of the incident was near 7th and E Street, SE, Washington, D.C. This request includes, but is not limited to, all relevant written reports and records, event chronology records, and audio recordings and any transcription of audio recordings from September 11, 2021, through September 12, 2021. (Date Range for Record Search: From 09/11/2021 To 09/12/2021)

OUC denied your request in full on September 14, 2022 because “[p]ursuant to DC Code 2–534(a)(2)(B), information related to an incident involving domestic violence is exempt from disclosure.”¹

On September 27, 2022, you filed an appeal with this Office asserting,

...the cited statute does not apply to these circumstances...[because]...[the DC] FOIA request is not seeking body-worn camera footage of an incident involving domestic violence and is instead seeking the 911 call and radio

¹ It is assumed OUC is referencing D.C. Code § 2-534(a)(2A)(B).

communications related to a dispatch call to the Metropolitan Police Department (MPD) about an incident involving domestic violence and any related transcription of the call or reports generated from this call.

We notified OUC of your appeal on October 11, 2022 and requested a response. OUC responded on October 13, 2022 reiterating its position that “the files contain information related a domestic dispute. Pursuant to DC Code 2–534(a)(2)(B), the files are exempt from disclosure.” OUC also provided a copy of the withheld 911 call and CAD chronology report to this Office for *in-camera* review.

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).

DC Code § 2-534(a)(2A)(B) (“Exemption (a)(2A)(B)”)

Exemption (a)(2A)(B) exempts from disclosure, “Any body-worn camera recordings recorded by the Metropolitan Police Department . . . [r]elated to an incident involving domestic violence....” The records at issue are not body-worn camera recordings. Therefore, OUC improperly asserted Exemption (a)(2A)(B) as a basis for withholding the responsive 911 call and CAD chronology report. However, as discussed below, there is a significant privacy concern that needs addressed prior to any disclosure of the requested records.

DC Code § 2-534(a)(2) (“Exemption 2”)

D.C. Code § 2-534(a)(2) protects from disclosure “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” 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 Supreme Court has held “as a categorical matter that a third party’s request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen’s privacy . . .” *Reporters Comm. For Freedom of Press*, 489 U.S. at 780. Additionally, vocal inflection has been found to be personal identifying information. *See N.Y. Times Co. v. NASA*, 920 F.2d 1002, 1005 (D.C. Cir. 1990) (en banc).

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. 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, while Exemption (a)(2A)(B) does not apply, there is an unresolved issue as to the applicability of Exemption (a)(2) and remand is appropriate.

Conclusion

Based on the foregoing, this Office remands this matter back to OUC to address the identified records in the context of Exemption (a)(2), cite to another applicable exemption and/or produce a copy of the responsive records.

Sincerely,

Mayor’s Office of Legal Counsel

cc: Domingo Juan, OUC FOIA Officer (via email only)