

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-228**

February 1, 2023

VIA ELECTRONIC MAIL ONLY

Mr. Joseph A.
Blaszkw

RE: FOIA Appeal 2022-228

Dear Mr. Blaszkw:

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 Mr. Joseph McMullen.

Background

On July 6, 2022, Mr. McMullen from your office submitted a DC FOIA request to MPD, which was assigned two case numbers, 2022-FOIA-07897 and 2022-BWC-00370. In the request, your office sought the following:

[A]ll documents, records, and/or evidentiary items related to the Metropolitan Police Department investigation of the above occurrence [Crash Report 22088435]. This includes, but is not limited to:

1. Photographs (digital or otherwise);
2. Videotapes/film, including traffic and/or surveillance tapes from the area of 10th Street and H Street NE) which captured the occurrence (ie speed cams, red light cameras, etc.);
3. Police video recording footage such as dash cameras, personal-mounted cameras, etc, including such cameras operational when interviewing any party to the collision (such as Ms. Culver and the driver who struck her);
4. Transcripts of witness interviews;
5. Handwritten or typed notes prepared by the investigating officers;
6. Witness statements;
7. Toxicology reports;
8. Subpoenas;
9. Accident scene diagrams;

10. Vehicle inspection reports;
11. Accident reconstruction reports;
12. Police Accident report.

MPD responded to request 2022-BWC-00370 on September 1, 2022 by providing you with a copy of the requested body worn camera (“BWC”) footage with redactions made to the visual images and portions of the audio to protect personal privacy interests pursuant to D.C. Code § 2-534(a)(2).

MPD responded to request 2022-FOIA-07897 on September 28, 2022, by providing you with the records and photos deemed responsive to your request with redactions made to “some information, including names and/or other identifying information,” pursuant to D.C. Code § 2-534(a)(2).

In your appeal, you have challenged the “non-production of items” and the validity of the redactions made to protect personal privacy 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.” In aid of that policy, 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 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. Under FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Code § 2-502(18).

D.C. 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”) applies to “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” In 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).

In assessing MPD’s decision to withhold the requested information, the first part of the analysis is determining whether a sufficient privacy interest exists. *Id.* A privacy interest is cognizable under D.C. 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, personal 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). Images are also considered to be personally identifiable information. *See, e.g., Mingo v. DOJ*, 793 F. Supp. 2d 447, 456 (D.D.C. 2011).

The second part of the analysis examines whether an individual privacy interest is outweighed by the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of D.C. 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, we find that there is a cognizable privacy interest because individuals have a substantial interest in not being associated with a police incident, whether through name, image or voice. In the absence of any explanation as to how the requested BWC footage or other redacted information would shed light on MPD’s conduct as a whole, MPD may withhold the cited information. *See, e.g. Beck*, 997 F.2d at 1494 (When there is a privacy interest in a record and no countervailing public interest, the protected information may be withheld from disclosure).

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.

Respectfully,

Mayor’s Office of Legal Counsel

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