

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-229**

January 18, 2023

VIA ELECTRONIC MAIL ONLY

Ms. Tiffani Bell

RE: FOIA Appeal 2022-229

Dear Ms. Bell:

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 September 28, 2022, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-10085, which sought the following:

[The] [e]ntire investigation related to police report no. 22-063-170. All documents, recordings, interviews, videos, reports associated with police report no. 22-063-170. All investigative files related to Joseph Rudnick and Deidra Strickland.

On September 28, 2022, MPD denied your request because, in the absence of an authorization and/or waiver, the release of the records would constitute a clearly unwarranted invasion of personal privacy and is exempt from disclosure pursuant to D.C. Code § 2-534(a)(3)(C). MPD also asserted the records were exempt from disclosure pursuant to D.C. Code §§ (a)(3)(A)(i), investigatory records compiled for law-enforcement purposes the production of such would interfere with an enforcement proceeding, and (a)(3)(B), investigatory records compiled for law-enforcement purposes the production of such would deprive a person of a right to a fair trial.

Discussion

D.C. Code § 2-534(a)(3)(C) (“Exemption 3”) protects from public disclosure information contained in an investigatory file that “would constitute an unwarranted invasion of privacy.”

In assessing MPD’s decision to withhold the requested information, the first part of the analysis is determining whether a sufficient privacy interest exists. 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). Moreover, the D.C. Circuit has held individuals have a “strong interest” in not being associated with unwarrantedly with alleged criminal activity whether they be suspects, witnesses, or investigators. *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990). 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 a privacy analysis examines whether an individual privacy interest is outweighed by the public interest. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989). 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.

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, and that when the request seeks no ‘official information’ about a government agency, but merely records that the Government happens to be storing, the invasion of privacy is ‘unwarranted’ . . .” *Reporters Comm. For Freedom of Press*, 489 U.S. at 780.

In the absence of any identified countervailing public interest, we hold that MPD may withhold the requested information

Additional information may be available, outside the context of FOIA, by satisfying MPD’s disclosure policy, *e.g.* by presenting a waiver of an authorized individual as requested, and the requestor is encouraged to initiate that process with MPD, if desired.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Sincerely,

The Mayor's Office of Legal Counsel

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