

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR

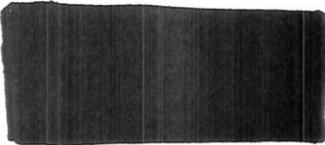


Office of the General Counsel to the Mayor



May 21, 2009

BY E-MAIL



Re: Freedom of Information Act Appeal

Dear 

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. § 2-531 *et seq.* (the “DC FOIA”), dated May 3, 2009 (the “Appeal”). We forwarded your Appeal to the Metropolitan Police Department (“MPD”) for a response. MPD responded on May 21, 2009.

Background

In your initial FOIA request dated on or about April 24, 2009, you sought the names, salaries and years of service of members of the MPD’s Executive Protection Unit. On May 1, 2009, MPD responded to your FOIA request, indicating that such information was exempt pursuant to D.C. Official Code §2-534(a)(6), which exempts “information specifically exempted from disclosure by statute.” You filed the instant Appeal, arguing that MPD failed to reference the statute it was using to exempt the requested information from disclosure. Further, you argued that the records requested could not possibly be exempt from disclosure because MPD previously released this information during MPD’s 2004 Annual Awards Ceremony. Finally, you argued that it is illegal for the District to maintain a “secret police force.”

Discussion

It is the public policy of the District government 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. Official Code, 2001 Ed. § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect ... and ...

copy any public record of a public body . . . .” *Id.* § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. D.C. Official Code, 2001 Ed. § 2-534.

Within the District of Columbia government, personnel information must be treated in a manner to afford employees a significant degree of privacy. D.C. Official Code §2-631.01, provides:

All official personnel records of the District government shall be established, maintained, and disposed of in a manner designed to ensure the greatest degree of applicant or employee privacy while providing adequate, necessary and complete information for the District to carry out its responsibilities under this chapter. Such records shall be established, maintained and disposed of in accordance with rules and regulations issued by the Mayor.

Personnel information may only be made available to appropriate personnel and law enforcement authorities in instances where such disclosure would not constitute an unwarranted invasion of personal privacy or is not prohibited under law, rules or regulations. D.C. Code § 1-631.03. Therefore, the very limited right to have access to personnel information is further restricted if the disclosure would violate an employee’s privacy and/or another existing law.

MPD is required to keep and maintain certain records relating to its employees and the activities of the department. D.C. Code § 5-113.01 lists the types of records that must be kept by MPD, including:

A personnel record of each member of the Metropolitan Police Force, which shall contain his name and residence; the date and place of his birth; his marital status; the date he became a citizen, if foreign born; his age; his former occupation; and the dates of his appointment from office, together with the cause of the latter[.]

D.C. Code § 5-113.03. D.C. Code § 5-113.06(a) describes which MPD records are open to public inspection. D.C. Code § 5-113.06(a) states:

Except as provided in subsection (c) of this section, the records to be kept by paragraphs (1), (2), and (4) of § 5-113.01 shall be open to public inspection when not in actual use[.]

It is clear that under D.C. Code § 5-113.06(a), personnel records are not one of the sets of records that are subject to public inspection. MPD argues that an MPD member’s assignment – whether it be to a particular district or specialized unit - is part of an MPD member’s personnel record and thus, should not be disclosed to the public. MPD’s argument is persuasive. Frequently, personnel records contain information regarding

whether an employee has been promoted or demoted or reasons related to an employee's hiring and separation from employment. Such information may logically also include information pertaining to where an employee is assigned to work within an agency. We find that information detailing where an employee is assigned is classified as personnel information and therefore, not subject to inspection by the public. Additionally, in light of the sensitivity of the work performed by MPD, the disclosure of such information could disrupt or interfere with the process of MPD officers performing their jobs. Thus, in this case, the disclosure of this information could potentially have greater consequences than those associated with violating an employee's privacy. Therefore, although the public is entitled to information about District employees – particularly, their titles, employing agency and salary; this entitlement does not extend to specific details related to employee assignments. See D.C. Code §2-536(a)(1).

You further argue that because MPD previously released the requested information, that it cannot now be withheld. However, MPD's previous and voluntary disclosure has no bearing on whether the agency is obligated to provide you this information under FOIA. The issue here is whether the requested information is subject to disclosure under FOIA and our office has determined that it is not. An agency may voluntarily disclose information which is protected under FOIA; however, such disclosure does not then waive the agency's right to refuse to disclose this information in the future.

Finally, you contend that MPD is illegally maintaining a "secret police force." This argument has no merit. MPD has one police force and the names, salaries, title and dates of employment of all employees and officers of MPD are subject to disclosure. D.C. Code §2-536(a)(1). Should you request such information, MPD is required to provide it to you. The fact that MPD will not disclose personnel information such as the assignments of its officers does not transform the police force or any part thereof into a "secret police force."

For these reasons, MPD's decision is UPHeld and your Appeal is DISMISSED. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Regards,



Runako Allsopp  
Deputy General Counsel to the Mayor