

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR**

Freedom of Information Act Appeal: 2012-31

March 9, 2012

Rosemary Hainey, Esq.

Dear Ms. Hainey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (“DC FOIA”), dated January 30, 2011 (the “Appeal”). You (“Appellant”) assert that the District of Columbia Water and Sewer Authority (“WASA”) improperly withheld records in response to your request for information under DC FOIA dated September 22, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought records regarding any water stoppage by WASA between August 1, 2011 and September 22, 2011 in the Southwest quadrant of the District of Columbia, but not including any water stoppage for any planned projects published on its website as of September 21, 2011. Because a notification that responsive records were ready to be picked up or delivered by mail did not reach Appellant, Appellant filed Freedom of Information Act Appeal 2012-20. Because WASA indicated that it would provide the responsive records to Appellant, the Appeal was dismissed as moot, without prejudice to challenge the response of WASA.

By letter dated January 30, 2011, WASA provided the responsive records to Appellant, with redactions for addresses and other personal identifying information pursuant to the exemption for privacy under D.C. Official Code § 2-534(a)(2).

On Appeal, Appellant challenges the denial, in part, of the FOIA Request with respect to such redactions on one of the records produced because the privacy interests are those of a legal entity and not a business. Appellant states:

In the remarks section, which is unredacted, the note indicates that the customer is a legal entity and not a person, ‘building management states that occupants were notified. Since only individuals can have privacy interest, there can be no expectation of privacy with respect to corporations or other legal entities.

In response, dated March 8, 2012, WASA reaffirms its position. It states that its policy is “to meticulously guard the privacy of its customers.” With respect to the contention of Appellant that the customer is a legal entity based on the reported statement of building management, WASA states simply: “DC Water cannot make such assumptions when protecting the privacy of its customers.” WASA contends that there is no public interest in disclosure as such disclosure would “not contribute significantly to the public’s understanding of the operations or activities of DC Water.”

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). Moreover, in his first full day in office, the District’s Mayor Vincent Gray announced his Administration’s intent to ensure that DC FOIA be “construed with the view toward ‘expansion of public access and the minimization of costs and time delays to persons requesting information.’” Mayor’s Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id.* at § 2-534.

The 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), and 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) provides for an exemption from disclosure for “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

As Appellant asserts, the privacy exemption under D.C. Official Code § 2-534(a)(2) only applies to individuals. *See, e.g., Maydak v. United States DOJ*, 362 F. Supp. 2d 316 (D.D.C. 2005); *Sims v. CIA*, 642 F.2d 562, 572, n.47 (D.C. Cir. 1980). An agency has the burden to establish the exemption which it invokes. *See, e.g., Roth v. United States DOJ*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). In this case, WASA, which is in possession of the unredacted document, knows whether or not the customer is an individual or an entity, but fails to address directly the question which is squarely at issue. Accordingly, we find that WASA has failed to establish that there is a sufficient privacy interest. “[I]f no significant privacy interest is implicated . . . FOIA demands disclosure.” *Nat’l Ass’n of Retired Fed. Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 874 (D.C. Cir. 1989).” *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008).

Conclusion

Therefore, the decision of WASA is reversed and remanded. WASA shall produce the record for G Street, S.W., without redaction.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Victoria Fleming
Katherine Cahill, Esq.