

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-61**

May 15, 2015

Richard B. Martin

RE: FOIA Appeal 2015-61

Dear Mr. Martin:

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 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On April 25, 2015, you submitted a request under the DC FOIA to the MPD for several records related to your arrest on September 26, 2013, including internal police communications and the names of responding officers. On April 29, 2015, the MPD responded by granting your request in part and denying it in part. MPD provided you with a copy of your arrest report but redacted the address and telephone numbers of the complainant, contending that this information is exempt from disclosure pursuant to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C), which exempt from disclosure information that would constitute a clearly unwarranted invasion of personal privacy and information that was gathered for law enforcement purposes.

On appeal, you challenge the MPD’s decision, alleging that you were not provided with the names of all the responding officers, as only one appears in the document provided. You also challenge MPD’s redaction of the complainant’s address, which you state is required for you to pursue legal action.

The MPD sent this office a response to your appeal on May 12, 2015. Therein, MPD reasserted its position, maintaining that disclosing the redacted information would constitute an unwarranted invasion of personal privacy. MPD further argued that you have not asserted a public interest in the release of the information that would override the complainant’s privacy interest.

Discussion

It is the public policy of the District of Columbia 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, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public

body . . .” *Id.* at § 2-532(a). The right to inspect a public record, however, is subject to exemptions. *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, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Two provisions of DC FOIA provide exemptions relating to personal privacy. D.C. Official Code § 2-534(a)(3)(C) (“Exemption (3)(C)”) provides an exemption for disclosure for “[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy.” The other provision, D.C. Official 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.” While Exemption (2) requires that the invasion of privacy be “clearly unwarranted,” the word “clearly” is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). Here, the challenged redaction is contained in an arrest report, which is a record compiled for law enforcement purposes. As such, we analyze the withheld information under the broader framework of Exemption (3)(C).

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of this 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. Based on decades of precedent, we find that there is a sufficient privacy interest in the complainant’s personally identifiable information, including the complainant’s address and phone number. *See, e.g., U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994) (“An individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.”)

With regard to the second part of the privacy analysis under Exemption (3)(C), we examine whether the public interest in disclosure is outweighed by the individual privacy interest at issue. On appeal, you conclude that you are entitled to the information because “this information will benefit the general public.” The Supreme Court has held that the public interest in a record must be analyzed in the context of the purpose of FOIA, which is

‘to open agency action to the light of public scrutiny.’ *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of ‘full agency disclosure unless information is exempted under clearly delineated statutory language,’ *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens’ right to be informed about

"what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

*United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 772-73 (1989).

In the instant matter, we find that releasing the complainant's address and phone number would not shed light on MPD's performance of its statutory duties, which is the standard applied here.

Although you indicate that you seek the records to identify the individuals who allegedly perpetrated the crimes against you and pursue legal action, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *National Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004). In the instant matter, we find that the public interest in disclosing the address of the complainant listed on the arrest report you have received does not outweigh the individual privacy interest of the complainant under Exemptions (3)(C) and (2) of the DC FOIA.

Lastly, in your appeal you stated that you were not provided with the names of all of the responding officers pertaining to your arrest. The MPD has informed this office that the responding officers associated with your arrest are Christopher Beyer and Franklyn Then.

### Conclusion

Based on the forgoing we affirm the MPD's decision and dismiss your appeal.

This shall constitute 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 in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)