

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-85**

August 3, 2015

Mr. Billy P. Greer, Jr.

RE: FOIA Appeal 2015-85

Dear Mr. Greer:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) (“DC FOIA”). In your appeal, you assert that the University of the District of Columbia (“UDC”) improperly withheld records you requested under the DC FOIA.

Background

On June 1, 2015, you submitted a request to UDC for a copy of all resumes of applicants who applied for the chief of police position under the same job announcement as Marieo Foster and Ron Culmer. On July 16, 2015, UDC’s FOIA officer denied your request on the grounds that resumes of applicants are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2). This statute exempts from disclosure “Information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of personal privacy.”

On appeal, you contend that the DC FOIA protects private information such as addresses, phone numbers, and social security numbers, and you have asked that such information be redacted from the responsive resumes. You further indicate that UDC provided you with a redacted resume of one applicant in response to a previous FOIA request, and you believe the remaining resumes should be similarly provided.

In response to your appeal, UDC sent this office a letter dated July 28, 2015, in which it stated that “providing the resumes of unsuccessful applicants who are non-government employees is outside of the spirit of FOIA and . . . the public interest in disclosure of resumes of non-government employees does not outweigh the privacy interest of the individuals.”

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 public records is subject to various exemptions that 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,¹ and decisions construing the federal statute may be examined to construe the local law.² District of Columbia Official Code § 2-534(a)(2) exempts from disclosure “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Conducting a privacy analysis under FOIA requires determining whether a sufficient privacy interest exists and then balancing the privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

With regard to the first step in the privacy analysis, federal courts have continuously held that there is a cognizable and sufficient privacy interest in information about an individual contained in employment applications. *See, e.g., Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984). As for the public interest analysis, it is limited to the “core purpose” of FOIA, which is to “shed . . . light on an agency’s performance of its statutory duties.” *Reporters Comm. for Freedom of Press*, 489 U.S.749 at 773. In *Core*, the court held that “the public interest in learning the qualifications of people who were not selected to conduct the public’s business is slight. Disclosure of the qualifications of people who were not appointed is unnecessary for the public to evaluate the competence of people who were appointed.” *Id.* at 949. As a result, courts have held that resumes of individuals whose applications for public employment were withdrawn or declined may be withheld because the individuals’ privacy interests outweigh the public interest in obtaining their resumes. *See Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 38 (D.D.C. 2000).

Under the FOIA, even when an agency establishes that it has properly withheld a document under an exemption, it must disclose all reasonably segregable, nonexempt portions of the requested documents. *See, e.g., Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). Here, information in resumes cannot be reasonably segregated because “[e]ven if [the names of the unsuccessful applicants] were deleted, the applications generally would provide sufficient information for interested persons to identify them with little further investigation.” *Core*, 730 F.2d at 948-49.

¹ *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987).

² *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Conclusion

Based on the foregoing, we uphold UDC's decision and hereby dismiss your appeal. 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 in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

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

cc: Stacie Y.L. Mills, Assistant General Counsel, UDC (via email)