

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-88**

August 17, 2015

Mr. Kenneth M. Schnaubelt

RE: FOIA Appeal 2015-88

Dear Mr. Schnaubelt:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you object to the response of the Department of Health (“DOH”) to a request you submitted under the DC FOIA.

On June 17, 2015, DOH received a FOIA request from you for “any and all records pertaining to the investigation of [a named individual] directly resulting from the complaint ... [that you] filed on February 11, 2015.” DOH responded to your request on June 25, 2015, by providing you with responsive documents; however, DOH redacted certain information pursuant to D.C. Official Code § 2-534(a)(2), which protects information that, if disclosed, would constitute an unwarranted invasion of personal privacy.

On August 10, 2015, this office received your correspondence to the Mayor dated August 4, 2015. Although you indicate that you are appealing the DOH’s response to your FOIA request, your letter to the Mayor does not contain objections to DOH’s FOIA response; rather, you challenge the Board of Social Work’s dismissal of a complaint you filed against a District-licensed social worker.

Pursuant to D.C. Official Code § 2-537(a), the Mayor is authorized to review whether a District agency improperly denied public records under the DC FOIA. Accordingly, our review here is limited to whether DOH complied with the DC FOIA in responding to your request.

In response to your appeal to the Mayor, DOH informed this office in a letter dated August 10, 2015,¹ that it “forward[ed] to [you] all documents within the Department of Health’s files in connection with this matter.” DOH stated that the only information that was redacted from the documents you received was the home address of the social worker against whom you filed a complaint. DOH further advises that this redaction was justified by D.C. Official Code § 2-534(a)(2).

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who

¹ A copy of this letter is attached for your review.

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 . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 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). As such, 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) (“Exemption (2)”) provides 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.” Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is to determine whether a sufficient privacy interest exists. *Id.*

Here, DOH stated that it redacted a personal address in the documents it disclosed to you, and this representation is consistent with our review of the redactions. A privacy interest is cognizable under DC 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.

Information protected under Exemption 6 [the equivalent of Exemption (2) under the federal FOIA] includes such items as a person's name, address, place of birth, employment history, and telephone number. *See Nat'l Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989); *see also Gov't Accountability Project v. U.S. Dep't of State*, 699 F.Supp.2d 97, 106 (D.D.C. 2010) (personal email addresses); *Schmidt v. Shah*, No. 08–2185, 2010 WL 1137501, at *9 (D.D.C. Mar. 18, 2010) (employees' home telephone numbers); *Schwanner v. Dep't of the Army*, 696 F.Supp.2d 77, 82 (D.D.C. 2010) (names, ranks, companies and addresses of Army personnel); *United Am. Fin., Inc. v. Potter*, 667 F.Supp.2d 49, 65–66 (D.D.C.2009) (name and cell phone number of an “unknown individual”).

Skinner v. U.S. Dep't. of Justice, 806 F. Supp. 2d 105, 113 (D.D.C. 2011).

D.C. Official Code § 2-534(a)(2) exempts the disclosure of personal information where the disclosure would constitute a clearly unwarranted invasion of privacy. 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) (“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.”). As a result, we find that there is a sufficient privacy interest in the personal address of the private citizen mentioned in the records you requested.

The second part of a privacy analysis examines whether the public interest in disclosure outweighs the individual privacy interest. The Supreme Court has stated that the analysis must be conducted with respect to 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. 352, 372 (1976).

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.

Department of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 773 (1989).

It is not entirely clear from your appeal whether you are challenging DOH's redaction of a home address from the records you receive. Further, with respect to the redactions, you do not assert a public interest that would overcome the individual privacy interests. Nevertheless, we find that revealing the personal address at issue here would not advance significantly the public understanding of the operations or activities of the government or DOH's performance.

Based on the foregoing, we affirm the DOH's decision with respect to your FOIA request and 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: Edward Rich, Senior Assistant General Counsel, DOH (via email)