

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-65**

May 25, 2016

VIA ELECTRONIC MAIL

Mr. Adrian Madsen

RE: FOIA Appeal 2016-65

Dear Mr. Madsen:

This letter responds to the administrative appeal you submitted on behalf of D.C. Law Students in Court 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 District of Columbia Housing Authority ("DCHA") improperly redacted records you requested under the DC FOIA.

Background

On March 29, 2016, D.C. Law Students in Court submitted a FOIA request to DCHA for records related to barring notices issued from 2011 to the present. On April 28, 2016, DCHA responded to the request by producing all the responsive records in its possession, with redactions made to personally identifiable information, names and birthdates, pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").¹

The appeal of D.C. Law Students in Court asserts that redactions on the basis of privacy are improper because under D.C. Municipal Regulations, a list of barred individuals is required to be posted in the property management office of each public housing property. Due to the requirement to post a list of barred individuals, the appeal asserts that the information at issue is distinguishable from cases holding that individuals have a right to control dissemination of their personal information. *See, e.g., Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 769 (1989); *Havemann v. Colvin*, 537 Fed. Appx. 142, 147 (4th Cir. 2013). Additionally, the appeal asserts that there is a public interest in disclosure because the information would reveal how DCHA enforces barring notices based on alleged criminal or illegal activity and whether DCHA enforcement differs based on demographics of the individuals barred.

On May 16, 2016, DCHA provided this Office with a response to the appeal, in which it reaffirms its redactions under Exemption 2 and adds that the information is also properly

¹ Exemption 2 protects "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

redacted under the Privacy Act of 1974.² DCHA asserts that the findings in the *Havemann* and *Reporters Comm.* cases support DCHA's redactions pursuant to Exemption 2 because even if names of barred individuals are posted in property management offices, those barred individuals still have an interest in restricting access to compilations of additional personal information. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 762-65.

Discussion

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

The only issue in this appeal is whether names and birthdates in the records at issue were properly redacted. Under Exemption 2, determining whether disclosure of a record would constitute a clearly unwarranted invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 762. The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

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. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and 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). Additionally, "individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity." *Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)). As a result, individuals barred due to alleged illegal activity have a strong privacy interest in the requested records.

Here, there is a sufficient privacy interest in the names and birthdates of barred individuals. *See FLRA*, 510 U.S. at 500. We agree with DCHA's assessment that the fact that the names of barred individuals are posted in property management offices does not diminish the privacy interest of

² A copy of DCHA's response is attached.

those individuals in the requested records because the records sought connect the individuals with additional information (e.g. the reason for issuance of the barring notice).

The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. D.C. Law Students in Court argues generally that the redacted information would shed light on DCHA's enforcement of barring notices. The redacted information, however, does not contain the demographic specificity that the appeal claims would be of public benefit. Further, it is not clear from the appeal how releasing barred individuals' names and birthdates would provide insight into DCHA's performance. The Supreme Court has held that "[m]ere speculation about hypothetical public benefits cannot outweigh a demonstrably significant invasion of privacy." *Department of State v. Ray*, 502 U.S. 164, 179 (1991). As a result, we find that DCHA properly redacted the names and birthdates of barred individuals under Exemption 2.

Having found the redactions proper under Exemption 2, we need not analyze DCHA's claim that the information is also protected by 5 U.S.C. §552a. We note that the requirements of 5 U.S.C. §552a are applicable to DC FOIA under D.C. Official Code § 2-534(a)(6) ("Exemption 6"), which exempts information from disclosure that is specifically protected from disclosure by other statutes.

Conclusion

Based on the foregoing, we affirm DCHA's decision. 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 John A. Marsh

John A. Marsh
Staff Attorney

cc: Qwendolyn Brown, Associate General Counsel, DCHA (via email)