GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-71

June 20, 2016

VIA ELECTRONIC MAIL

Mr. David Brooks

RE: FOIA Appeal 2016-71

Dear Mr. Brooks:

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 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly redacted records you requested under the DC FOIA.

Background

On April 20, 2016, you submitted a request to DCRA for copies of certain complaints that were filed against you. DCRA granted your request and released 23 responsive documents; however, the agency redacted portions of the documents pursuant to the privacy exemption under DC FOIA.

Subsequently you appealed DCRA's redactions, contending that the complainant is known to you, that he initiated complaints to DCRA as part of a pattern of "vexatious litigation," and that release of his name would not be an invasion of personal privacy. You further contend that you need an un-redacted copy of the complaint because "it is the only way [you] can get the court to restrain him from continuing to file these things."

In communications to this Office, DCRA reasserted its position that its redactions were proper under D.C. Official Code § 2-534(a)(2).

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 . . ." *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The crux of this matter is whether DCRA properly redacted the name of the complainant in the records you requested. 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 involves 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). Here, we find that the complainant has more than a *de minimis* privacy interest in his name and contact information.[1] *See*, e.g., *Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994); *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). A complainant does not forfeit his privacy interest if the investigation he initiated concludes, as in this case, without a finding of fault.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central 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.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

On appeal you argue that you have been harassed by the individual you believed filed the complaint against you and that DCRA should identify the complainant so that you may pursue litigation against this individual. We glean no public interest from these arguments.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id*. "This inquiry . . . should focus not on the general public interest in the

[1] The complainant's address and phone number were not redacted in the records DCRA disclosed to you. This information should not have been disclosed in accordance with Exemption 2.

subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

In this instance, there has been no claim that the complainant's identity would provide insight into the behavior or performance of DCRA or another District agency. Your view that you need this information for a personal litigation matter does not contribute significantly to public understanding of the operations or activities of the government, which is "the only relevant public interest" to be weighed. *Reporters Comm.*, 489 U.S. at 775.

When there is a *de minimis* privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993) ("In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure . . . In this case, however, where we find that the request implicates no public interest at all, 'we need not linger over the balance; something … outweighs nothing every time.'"). *See also, Bartko v. United States Dep't of Justice*, 79 F. Supp. 3d 167, 173 (D.D.C. 2015) ("In an ultimate balancing, something in the privacy bowl outweighs nothing in the public-interest bowl every time.").

Having found no public interest in disclosure of the identity of the complainant at issue here, this Office concludes that DCRA's denial of your request was proper.

Conclusion

Based on the foregoing, we affirm DCRA'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 DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Brandon Bass, FOIA Officer, DCRA (via email)