

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-81**

July 6, 2016

VIA ELECTRONIC MAIL

Mr. Keith Preddie

RE: FOIA Appeal 2016-81

Dear Mr. Preddie:

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 withheld records you requested under the DC FOIA.

Background

On April 14, 2016, you submitted a request to DCRA seeking the resume and application of a named DCRA employee. DCRA denied your request, asserting privacy exemptions under DC FOIA related to personal privacy.

You appealed DCRA’s denial, contending that the employee in question told you that you were able to obtain a copy of her application and resume. On June 22, 2016, DCRA sent its response to your appeal to this Office.¹ Therein, DCRA reasserted D.C. Official Code §§ 2-534(a)(2), arguing that the presence of responsive documents in an employee’s personnel file exempts the documents from disclosure.

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 the resumes and application materials you requested are exempt from disclosure under DC FOIA because releasing them would constitute an invasion of privacy.

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 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). Further, employees have a privacy interest in their employment history and the “diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee’s personnel file.” *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984}. In light of applicable case law, we find that a successful job applicant has more than a *de minimis* privacy interest in his or her job application and resume.

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.

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 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.

It has been well established that there is a public interest in the disclosure of certain information about successful government job applicants: the individual’s name, present and past job titles,

¹ DCRA’s response is attached to this decision.

present and past grades, present and past salary, present and past duty stations, and present and past salary. *Core v. United States Postal Serv.*, 730 F.2d 946, 948 (4th Cir. 1984) (“Having balanced the privacy interests of the five successful applicants against the public's interest, we conclude that disclosure would not ‘constitute a clearly unwarranted invasion of personal privacy.’ Exemption 6, therefore, does not bar disclosure of the information Core seeks about the successful applicants.”); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1017 (D. Kan. 1996) (“[Requester] received from [Agency] a redacted . . . job application of the successful applicant for the . . . position, rating worksheets, and the selection roster. Citing Exemption 6 of the FOIA, 5 U.S.C. § 522(b)(6), [Agency] informed [Requester] that it would release redacted [applications] for successful candidates but not resumes or [applications] for unsuccessful applicants.”); FOIA Appeals 2011-36, 2011-56, 2012-75, 2014-06, 2014-11, 2014-27².

Although we find that a successful District government job applicant has a privacy interest in his or her resume and job application, we also find that there is an overriding public interest in disclosure of many elements of these documents. Accordingly, this Office concludes that DCRA’s denial of your request was improper. As held in FOIA Appeal 2012-75, the only items that may be permissibly redacted from a resume are an individual’s home telephone number, address, and email address. Information related to past employment may not be redacted from the resume. A job application submitted by a successful applicant must also be released; the only portions of an application that may be redacted are section 2 (Personal Data), section 10 (Background Information) (and only to the extent that it does not relate to qualifications for the position), and an applicant’s signature.

² See also *Habeas Corpus Resource Ctr. v. DOJ*, No. 08-2649, 2008 WL 5000224, at *4 (N.D. Cal. Nov. 21, 2008); *Cowdery, Ecker & Murphy, LLC v. Dep’t of Interior*, 511 F. Supp. 2d 215, 219 (D. Conn. 2007); *Samble v. U.S. Dep’t of Commerce*, No. 1:92-225, slip op. at 11 (S.D. Ga. Sept. 22, 1994); *Associated Gen. Contractors, Inc. v. EPA*, 488 F. Supp. 861, 863 (D. Nev. 1980).

Conclusion

Based on the foregoing, we reverse and remand DCRA's decision. DCRA shall provide you with the requested application and resume, subject to appropriate redaction, within 10 business days of this 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)