

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR**



**Mayor's Office of Legal Counsel**



September 19, 2017

VIA ELECTRONIC MAIL

Natasha Rodriguez

RE: FOIA Appeal 2017-149

Dear Ms. Rodriguez:

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”), on the grounds that the Department of Health (“DOH”) improperly denied you access to records you requested under the DC FOIA.

Background

On August 25, 2017, you submitted a request to the DOH for all records in electronic format pertaining to the Cat Neighborhood Partnership Program (“CatNiPP”). DOH responded on July 30, 2017, denying your request. DOH’s denial indicated that it was withholding all responsive records pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”)<sup>1</sup> on the basis that disclosure would constitute a clearly unwarranted invasion of personal privacy by revealing residential addresses.

You appealed DOH’s denial, asserting that you are seeking “[a]ll information in electronic form that the Department of Health has on the release locations of cats in the District, through TNR, CatNipp, or any other program involving Animal Control Officers.”<sup>2</sup> Your appeal argues that there is no personal privacy interest involved in the release locations of feral cats because the addresses only serve as reference points for the performance of a public function.

This Office notified DOH of your appeal on September 5, 2017. DOH responded to this Office on September 13, 2017, reaffirming its position that responsive records should be withheld in

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<sup>1</sup> Exemption 2 prevents disclosure of “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

<sup>2</sup> Your appeal names additional programs that were not identified in your initial request. It is unclear if these additions were encompassed in your initial request or constitute an expansion. DOH is only obligated to respond to your request as it was initially submitted.

their entirety pursuant to Exemption 2.<sup>3</sup> DOH's response describes the process of releasing feral cats and asserts that responsive records contain residential addresses as well as personal names and phone numbers. DOH further asserts that its responsive records contain personal information pertaining to individuals who volunteer to manage cat colonies and those individuals have an expectation of privacy.

### 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. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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). 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).

Under Exemption 2, 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 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).

With regard to the records at issue, we find that individuals' names, phone numbers, and addresses are generally subject to protection under Exemption 2. Accordingly, a residential address used to identify a cat drop-off location would involve a *de minimis* privacy interest justifying redaction pursuant to Exemption 2. *See Skinner*, 806 F. Supp. 2d at 113. The address of public property, businesses, or multi-dwelling unit buildings used as a cat drop-off location would not involve sufficient privacy interests to justify redaction.

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<sup>3</sup> A copy of DOH's response is attached.

Here, DOH has withheld in their entirety all responsive records pertaining to drop-off locations. D.C. Official Code § 2-534(b) requires that an agency produce “[a]ny reasonably segregable portion of a public record . . . after deletion of those portions” that are exempt from disclosure. DOH has not explained why redaction of personally identifiable information - instead of complete withholding - cannot be used to protect the privacy interests involved in the responsive records. DOH’s records involving the release location of cats should therefore be disclosed subject to redaction for personally identifiable information of private citizens.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of “public interest” if it would shed light on an agency’s conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

This statutory purpose is furthered by disclosure of official information that “sheds light on an agency’s performance of its statutory duties.” *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that “reveals little or nothing about an agency’s own conduct” does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

*Id.* at 1492-93.

Aside from arguing that no personal privacy interest is associated with the responsive records, you have not articulated a public interest relevant to DC FOIA. It is unclear to this Office how the release of names and phone numbers of private residents would shed light on DOH’s performance of its statutory duties. However, if DOH’s statutory duties involve the management of feral cat populations pursuant to D.C. Official Code § 8-1802(c), then disclosing the drop-off locations of feral cats presumably would shed light on DOH’s performance. We are not convinced that this public interest outweighs the privacy interest associated with an individual’s residential address when the release of this information could lead to the harassment of private citizens, particularly those who volunteer to manage cat colonies. As a result of the contravening interests, DOH’s redactions to residential addresses should be minimal and limited to specific street numbers. Redactions should not remove information identifying the block, street name, quadrant, or zip code of drop-off locations.

### Conclusion

Based on the foregoing, we remand DOH’s decision. In accordance with the guidance herein, DOH shall provide you with non-exempt responsive records beginning within 10 business days from the date 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 the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)