

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



Mayor's Office of Legal Counsel

October 4, 2017

VIA ELECTRONIC MAIL

Name Withheld Upon Request

RE: FOIA Appeal 2017-161

Dear Petitioner:

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 Metropolitan Police Department (“MPD”) improperly denied you access to records you requested under the DC FOIA.

Background

On July 10, 2017, you submitted a request to the MPD “for a list of all active police officers working for DC MPD,” and “all full names and badge numbers, include any pictures or recent pictures of all, in order to properly identify them.”

MPD responded by granting your request in part and denying your request in part. MPD provided to you an Excel spreadsheet with full names, ranks, and badge numbers of active MPD officers. MPD denied the portion of your request for photograph identification pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”)¹ on the basis that disclosure of photograph identification of police officers would constitute a clearly unwarranted invasion of personal privacy.

You appealed MPD’s partial denial, asserting without explanation that “I have been harassed by several of the DC MPD officers, since 2009 until present and I am trying to properly identify all. Some of these officers are involved in crimes, that were inflicted upon my mother and myself, and we would like to pursue this criminally. With that being said, we have to start with properly identifying all involved.” Your appeal does not challenge MPD’s assertion that there is a personal privacy interest in the withheld photographs. Nor does your appeal assert a public

¹ 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.”

interest in the withheld records. Instead, your appeal asserts only your personal interest in the documents.

This Office notified MPD of your appeal on September 20, 2017. MPD responded to this Office on September 28, 2017, reaffirming its position that the withheld responsive records are exempt from disclosure pursuant to Exemption 2.² MPD's response describes a safety risk to police officers if photograph identification is released. MPD's response cites to previous FOIA Appeal decisions, 2014-28 and 2012-26, in which photographs were withheld because their release would constitute an unwarranted invasion of personal privacy. Lastly, MPD asserts that there is no public interest, as contemplated by the statute, in the release of the withheld records.

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 tied to photographic images of those individuals raises a cognizable privacy interest. *See Showing Animals Respect &*

² A copy of MPD's response is attached.

Kindness v. United States DOI, 730 F. Supp. 2d 180, 197 (D.D.C. 2010) (“The fact that it may be obvious to Plaintiff whose faces or names are redacted from these records does not mean that the subjects of those redactions have no privacy interest in avoiding disclosure. . . . This Court is mindful that in the internet age, pictures and personal information can cascade through networks to millions of people based on a single disclosure.”).

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.

On appeal you allude to a personal desire for the withheld photographic records for litigation purposes. This is not a relevant consideration. *See Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005) (finding that plaintiff’s “need to obtain the information for a pending civil suit is irrelevant, as the public interest to be weighed has nothing to do with [his] personal situation”); *Carpenter v. DOJ*, 470 F.3d 434, 441 (1st Cir. 2006) (finding in a criminal trial that “There is no public interest in supplementing an individual's request for discovery.”).

You have not articulated a public interest relevant to DC FOIA. It is unclear to this Office how the release of photographs of police officers would shed light on MPD’s performance of its statutory duties. In the absence of a relevant countervailing public interest, we find that the photographs are protected from disclosure pursuant to Exemption 2.

MPD has withheld the responsive officer identifying photographs in their entirety. 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. Here, we do not believe that reasonable redaction is possible, and that withholding the records in their entirety was appropriate.

Conclusion

Based on the foregoing, we affirm MPD’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,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)