

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-21**

March 3, 2017

VIA ELECTRONIC MAIL

Mr. Jarrod Sharp

RE: FOIA Appeal 2017-21

Dear Mr. Sharp:

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

Background

On February 13, 2017, you submitted a FOIA request to MPD seeking “all records related to the theft of Jarrod Sharp’s Honda Civic in 2002.” On February 14, 2017, MPD contacted you requesting proof of your identity and clarification of your request to assist the MPD’s search for responsive records. On February 16, 2017, you responded to MPD to inquire about the status of your request, providing neither proof of identification nor clarification.

On February 16, 2017, MPD denied your request. In its denial, MPD explained that information about private citizens in law enforcement records involves personal privacy concerns protected by D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C). MPD asserted, as a result, that it does not disclose specific law enforcement records without authorization from the subject of the request. MPD claims that under FOIA it would not disclose records about you to a third party without authorization; therefore, MPD did not disclose records about you to you without proof of your identification. Additionally, MPD asserts that your request did not sufficiently describe the records sought because you failed to provide any of the following details: the complaint number, the date of the incident, the location of the incident, or any specific vehicle identifying information.

You appealed MPD’s denial, contending that MPD unlawfully placed your request on hold and MPD improperly denied your request because DC FOIA does not require proof of identification for FOIA requests. On February 24, 2017, MPD sent this Office its response to your appeal.¹ In its response, MPD reasserted §§ 2-534(a)(2) and (a)(3)(C) stating that, without proof of identification to show authorization for release, the disclosure of law enforcement records would

¹ A copy of MPD’s response is attached.

amount to an unwarranted invasion of privacy. Further, MPD reasserts that the request did not provide sufficiently detailed information.

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 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 crux of this appeal is whether the law enforcement records relating to the specific theft of a vehicle are exempt from disclosure under DC FOIA because releasing them, without authorization, would constitute an unwarranted 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 is determining whether a sufficient privacy interest exists. *Id.*

Similarly, D.C. Official Code § 2-534(a)(3)(C) (“Exemption 3”) exempts disclosure of information contained in “[i]nvestigatory records compiled for law-enforcement purposes” that would “[c]onstitute an unwarranted invasion of privacy.” Exemption 3 lacks the key word “clearly” that is contained in Exemption 2, and therefore is a broader privacy privilege. Here, the standard of Exemption 3 applies because MPD’s records related to stolen vehicles are compiled for law enforcement purposes.

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). Moreover, there is a sufficient privacy interest in recorded witness statements. *See Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990) (finding a “‘strong interest’ of individuals, whether they be suspects, witnesses, or investigators, ‘in not being associated unwarrantedly with alleged criminal activity.’”). As a result, this Office finds that there is a substantial privacy interest in MPD’s records pertaining to a stolen vehicle.

Further, this Office finds that redaction of personally identifiable information in the records would not sufficiently protect privacy interests due to the specificity of the request. As the subject of the requested records, you would be able to waive your privacy interest in the records, provided your ability to prove your identity. Ordinarily, proof of identity is not required to submit a FOIA request; however, in this instance MPD requested that you verify your identity to prove your ability to waive the privacy protection of Exemption 3.

The second part of a privacy analysis of Exemption 3 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.

You have not articulated any interest in favor of disclosure. As a result, there is a cognizable privacy interest and no countervailing public interest. Further, you have not provided to MPD sufficient authorization to waive the privacy interest of the records. As a result, MPD properly withheld the records pursuant to Exemption 3(C). Having determined that Exemption 3 prohibits disclosure of responsive records, we need not address whether your request reasonably described the records sought.

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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

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