

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2017-42**

April 20, 2017

VIA E-MAIL

Mr. Christopher Peak

RE: FOIA Appeal 2017-42

Dear Mr. Peak:

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

In a letter dated August 22, 2016, you submitted a FOIA request to the MPD for records related to arrests for prostitution-related offenses. Your request sought several categories of information. On March 3, 2017, the MPD partially granted your request by providing an Excel document that included many of the fields you requested. The MPD also explained that your request was denied in part, stating that the disclosure of certain information would constitute an unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) ("Exemption 2") and D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)").

On appeal you challenge the MPD's partial denial, asserting the MPD improperly withheld: arresting officer's names, city of residence, repeat offender status, and subsequent disposition of cases.<sup>1</sup> For the disclosure of officer names, you argue that police officers have a reduced expectation of privacy in disclosure of their names and there is a significant public interest in policing prostitution. Regarding the remaining categories, you assert that the MPD failed to acknowledge their absence or provide justification for withholding the responsive information.

The MPD sent this Office a response to your appeal on April 14, 2017.<sup>2</sup> The MPD reaffirmed its position that officer names are exempt under Exemption 2 and Exemption 3(C) and cited case law in support thereof. The MPD argues that you have not identified alleged wrongdoing or reasons that releasing the names of police officers would advance the public interest as contemplated under the DC FOIA. Also under Exemption 3(C), the MPD asserts that the city of

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<sup>1</sup> In your appeal you agreed with the MPD's decision to withhold the names of victims and defendants.

<sup>2</sup> A copy of the MPD's response is attached.

residence was withheld to protect the personal privacy of victims and defendants. Regarding the withholding of repeat offender status and case dispositions, the MPD asserts that it does not maintain that information.

### Discussion

It is the public policy of the District of Columbia government 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, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

### *Officer Names*

Exemptions 2 and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Exemption 3(C) provides an exemption for disclosure for “[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy.” While Exemption 2 requires that the invasion of privacy be “clearly unwarranted,” the word “clearly” is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption 2. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Records pertaining to investigations conducted by the MPD are exempt from disclosure under Exemption 3(C) if the investigations focus on acts that could, if proven, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep’t of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States Dep’t of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption “applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well.”). Since the records you seek relate to investigations that could result in civil or criminal sanctions, Exemption 3(C) applies to your request.

Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one’s individual privacy interests against the public interest in disclosing the officer’s names. Absent substantial allegations of wrongdoing, courts generally recognize that law enforcement personnel have a privacy interest in nondisclosure of their names due to the potential for harassment or embarrassment if their identities are disclosed. *See e.g., Dorsett v.*

*United States Dep't of the Treasury*, 307 F. Supp. 2d 28, 38-39 (D.D.C. 2004); *Manna v. DOJ*, 51 F.3d 1158, 1166 (3d Cir. 1995); *see also Abraham & Rose, P.L.C. v. United States*, 138 F.3d 1075, 1083 (6th Cir. 1998) (stating that clear privacy interest exists with respect to names, addresses, and other identifying information, even if it is already available in other public filings).

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the individual privacy interest is outweighed by the public interest to require disclosure. On appeal, you assert that there is significant public interest in the policing of prostitution activity. The MPD's response to your appeal accurately summarizes the public interest that is considered for the privacy analysis under DC FOIA.<sup>3</sup> *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 772-773 (1989).

Here, disclosing individual police officers' names would not shed light on the MPD's performance of its policing of prostitution activities and would constitute an invasion of police officers' privacy interests. As a result, the MPD properly withheld this information pursuant to Exemption 3(C) of the DC FOIA.

#### *City of Residence, Offender Status, and Case Disposition*

On appeal you raised the issue that the MPD did not explain its lack of response to your request for information related to city of residence, repeat offender status, and subsequent disposition of cases. You acknowledged the possibility that the MPD may not maintain responsive records. The MPD confirmed in its response to your appeal that it does not track or maintain the status of repeat offenders or the subsequent disposition of cases. However, the MPD asserted Exemption 3(C) for withholding city of residence information. While there is protected privacy interest for individual addresses in investigatory files, this Office is unaware of a privacy interest for a city of residence. *See e.g., Schoenman v. FBI*, 575 F. Supp. 2d 136, 159 (D.D.C. 2008).

The MPD asserts that information regarding the city of residence must be withheld because, when combined with other publicly available information, individual defendants and victims may be identified. The MPD's assertion does not adequately describe how city of residence data triggers Exemption 3(C) protection whereas the other information disclosed - the incident's date and time, approximate location, and related demographic information - did not. As a result, the MPD improperly withheld data regarding the city of residence from disclosure.

#### Conclusion

Based on the foregoing, we affirm in part and remand in part the MPD's decision. The MPD shall provide you with a record that includes city of residence data within 10 business days of this decision.

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<sup>3</sup> See MPD's Response at pp. 2-3.

This shall constitute 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.

Respectfully,

Mayor's Office of Legal Counsel

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