

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-48**

April 24, 2017

VIA ELECTRONIC MAIL

Mr. Nathaniel Porter

RE: FOIA Appeal 2017-48

Dear Mr. Porter:

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 March 29, 2017, you submitted a request to MPD seeking the “radar training certificate” of an MPD employee who issued a citation on March 14, 2017. MPD denied your request, asserting privacy exemptions under DC FOIA and stating that because you did not have authorization from the MPD employee to release the certificate, doing so would constitute a “clearly unwarranted invasion of personal privacy.”

By email dated April 5, 2017, you appealed MPD’s denial, contending that you are preparing to contest a citation and that the certificate’s existence would be used as evidence in your case. You further contend that there is no privacy interest in ensuring that the MPD officer who issued your ticket has in fact been trained and certified by MPD to issue such tickets. On April 18, 2017, MPD sent its response to your appeal to this Office.¹ Therein, MPD reasserted D.C. Official Code § 2-534(a)(2), arguing that there is a privacy interest in the record and no public interest in its release.

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.

¹ MPD’s response is attached to this decision.

The crux of this matter is whether the radar certification you requested is exempt from disclosure under DC FOIA because releasing it would constitute a clearly 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.*

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). Government employees have a privacy interest in documents that the government may maintain where a government record contains purely personal details that do not shed light on agency functions. *See, e.g., DOD v. FLRA*, 510 U.S. 487, 500 (1994). In general, there is a sufficient privacy interest in personal identifying information, such as phone numbers or addresses. *Skinner v. U.S. Dep’t. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Additionally, government employees have a privacy interest in their job performance evaluations. *Smith v. Dep’t of Labor*, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011). Similarly protected are the identities of employees who provide information to investigators. *McCann v. HHS*, No. 10-1758, 2011 WL 6251090, at *3 (D.D.C. Dec. 15, 2011). Even suggestions submitted to an agency “Employee Suggestion Program” may be withheld if identification could lead to embarrassment upon disclosure. *Matthews v. USPS*, No. 92-1208-CV-W-8, slip op. at 5 (W.D. Mo. Apr. 15, 1994).

In each of the above types of cases there is a level of stigma that may attach to the employee upon release of government records identifying the employee, thereby creating a privacy interest. Here, we see no similar potential for stigma as in the above cited cases. The MPD trains and certifies its employees in the use of radar, and this certification is necessary for MPD employees to issue certain types of citations. MPD employees attest to this training and certification by signing a log that states that they have “been trained and ... [are] currently certified by the Metropolitan Police Department to operate Photo RADAR equipment. . . .” *See* Original FOIA Request at 2. This Office sees no stigma that would attach to an MPD employee through the release of MPD’s certification that the employee is in fact qualified to do his or her job.²

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. Having found no privacy interest in a radar certification, this Office need not weigh the public interest. We note, however, that the requested document, a certification of qualification for a position, appears to be similar to a type of record for which there is a well-established public interest in release: the resume of a successful applicant for a government position. *See 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

² If the certification included a score on a test, that would implicate a privacy interest, but a document that indicates only that training has been satisfactorily completed does not.

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, 2014-27, 2016-80, 2016-81.³

Conclusion

Based on the foregoing, we reverse and remand MPD’s decision. MPD shall provide you with the requested certification, subject to appropriate redaction, within 10 business days of 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 DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

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

³ 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).