

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel



October 25, 2017

VIA ELECTRONIC MAIL

Alicia Hunt

RE: FOIA Appeal 2018-007

Dear Ms. Hunt:

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 Consumer and Regulatory Affairs (“DCRA”) improperly redacted records it disclosed to you pursuant to your request under the DC FOIA.

Background

On August 9, 2017, you submitted a request to the DCRA for all applications and permits issued to a particular address. DCRA responded on October 3, 2017, providing you with 67 responsive documents. DCRA’s production contained one redaction made to an email address pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”).<sup>1</sup>

You appealed DCRA’s denial, arguing that the redacted email address belongs to a business; therefore, the email address involves no personal privacy interest. This Office notified DCRA of your appeal on October 12, 2017. DCRA responded to this Office on October 13, 2017, reaffirming its position that the email address should be redacted pursuant to Exemption 2.<sup>2</sup> DCRA’s response asserts that the redacted email address was an individual’s personal email address. DCRA further argues that the fact that the personal email address was submitted as a form of business contact does not eliminate the privacy interest associated with it. Finally, DCRA asserts that there is no public interest in disclosing the individual’s email address.

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

---

<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> A copy of DCRA’s response is attached.

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.

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). Courts have consistently held that personal email addresses involve a sufficient privacy interest to warrant protection. *See Elec. Frontier Found. v. Office of the Dir. of Nat'l Intelligence*, 639 F.3d 876, 888 (9th Cir. 2010) (finding that lobbyists' email addresses should be protected from disclosure unless they are the only way to identify the individuals in question); *see also Pinson v. Lappin*, 806 F. Supp. 2d 230, 234 (D.D.C. 2011), *Amnesty Int'l USA v. CIA*, 728 F. Supp. 2d 479, 523 (S.D.N.Y. 2010) (holding that work email addresses of low level government employees were properly withheld).

Here, we accept DCRA's representation that the email address at issue is a personal email address. The fact that it was submitted to DCRA on a business form and may be used occasionally for business purposes does not strip the personal privacy interest associated with the email address. Accordingly, there is a *de minimis* privacy interest associated with the private email address, justifying its protection pursuant to Exemption 2. *See Skinner*, 806 F. Supp. 2d at 113. Further, the documents that DCRA disclosed to you included the work address and phone number for the contractor at issue. *See Elec. Frontier Found.*, 639 F.3d at 888 (supporting the redaction of an email address when alternative methods of identification exist).

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 email address you seek, you have not articulated a public interest in favor of disclosure that is relevant to DC FOIA. It is unclear to this Office how the release of a contractor’s personal email address would shed light on DCRA’s performance of its statutory duties. In the absence of a relevant countervailing public interest, we find that the email address is protected from disclosure pursuant to Exemption 2.

### Conclusion

Based on the foregoing, we affirm DCRA’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: Genet Amare, FOIA Officer, DCRA (via email)