

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



Mayor's Office of Legal Counsel



January 16, 2018

VIA ELECTRONIC MAIL

Christopher Schiano

RE: FOIA Appeal 2018-063

Dear Mr. Schiano:

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 withheld records responsive to your request under the DC FOIA.

Background

On December 19, 2017, you submitted a request to the MPD for the time cards of a detective from January 21, 2017 to the present. MPD denied your request on December 27, 2017, on the basis that disclosure of the time cards would constitute an unwarranted invasion of personal privacy pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”).

You appealed MPD’s denial, arguing without citation that time sheets are public documents and not subject to exemptions. You assert further that there is public interest in the requested information because the detective worked on investigating arrests made on Inauguration Day. Finally, you assert that the requested records would reveal “how much money is the White House asking the city to spend to continue to investigate the inauguration.”

This Office notified MPD of your appeal on December 29, 2017. MPD responded to this Office on January 8, 2018, reaffirming its position that individual detective’s time sheets are personnel files protected from disclosure pursuant to Exemption 2.¹ MPD further argues that there is a sufficient privacy interest involved in the time sheets to warrant protection from disclosure. Finally, MPD asserts that there is no public interest in disclosing these records.

¹ A copy of MPD’s response is attached.

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.

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).

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.” 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). Courts have consistently held that an employee’s time sheets involve a sufficient privacy interest to warrant protection. *See e.g., Berger v. IRS*, 487 F. Supp. 2d 482, 505 (D.N.J. 2007) (finding an individual employee’s time sheets are protected from disclosure); *see also Morales v. Pension Benefit Guar. Corp.*, No. 10-1167, 2012 U.S. Dist. LEXIS 9101, at *12 (D. Md. Jan. 26, 2012). Your assertion that time sheets are public records is contrary to relevant case law. *See also* D.C. Official Code § 2-536. As a result, we agree with MPD’s assertion that the detective’s time sheets are protected under Exemption 2.

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.

You argue that the release of the requested records “does not constitute ‘a clearly unwarranted invasion of personal privacy,’” because the records are “the only avenue [you] are aware of to begin to calculate a hard figure as to how much taxpayer funds have been spent to date on the inauguration day prosecutions.” From this you conclude that the records are of “public and journalistic value” because they would allow you to compare the “cost of damages done” on Inauguration Day to the “cost of the hours the US Attorney’s Office is asking the District’s police to spend investigating the case.” Lastly, you argue, without citation, that because “the Office of Police Complaints pointed out First amendment issues with police conduct” that there is a “public interest in transparency surrounding these events.” These public interest arguments do not comport with the “public interest” as contemplated by DC FOIA.

We find that the release of an individual detective’s time sheets would not shed light on MPD’s performance of its statutory duties. *See Berger*, 487 F. Supp. 2d at 505. Further, it is unclear how a year’s worth of time sheets from an individual detective could shed light on “First amendment issues with police conduct.” Due to the absence of a relevant countervailing public interest, we find that the detective’s time sheets are protected from disclosure pursuant to Exemption 2.

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