

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

July 25, 2017

VIA REGULAR MAIL

Victor Perry

RE: FOIA Appeal 2017-102

Dear Mr. Perry:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("D.C. FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly redacted documents it provided you in response to your D.C. FOIA request.

Background

You sent a FOIA request to MPD for records related to money that MPD confiscated or seized from you on two specific dates at two specific locations. MPD responded to your request by providing you with responsive records. Portions of the records that pertain to individuals other than yourself were redacted to protect the individuals' privacy in accordance with D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C).

Subsequently you appealed MPD's response, arguing that you are unable to view all pertinent information because it has been redacted and that you are entitled to an unredacted version of the documents as they pertain to you. You also inquire whether MPD keeps property and money separated when an individual is booked, and how money can be returned to you. Finally, you appear to challenge the adequacy of MPD's search, indicating that although both of your cases are dated, you believe that information can be researched and obtained. If other amounts are discovered beyond what is listed on the documents MPD has disclosed, you would like to be informed of such discrepancies.

Upon receipt of your appeal, this Office notified MPD and asked the agency to formally respond and to provide us with unredacted copies of the documents you received for our *in camera* review. In its response,¹ MPD asserts that it appropriately redacted the names and personal identifiers of persons listed in the property records that were not related to you, as well as the name of the person who conducted the search for responsive records. Releasing these names,

¹ A copy of MPD's response is attached.

according to MPD, would constitute an invasion of personal privacy, and you have not asserted a public interest that would overcome the privacy interests.

With respect to the questions you posed in your FOIA request, MPD advised that you should direct them to MPD's Office of Risk Management, which handles claims.

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 right to inspect a public record, however, is subject to exemptions. *Id.* at § 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).

The crux of this appeal is whether the redactions MPD made to the documents it released to you were appropriate under D.C. Official Code §§ 2-534(a)(2) ("Exemption 2") and (a)(3)(C) ("Exemption 3"). 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."

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 record. Ordinarily when a District agency withholds records under Exemptions 2 and 3 we conduct a balancing test in accordance with case law to determine if the withholding was proper. A balancing test is not necessary here. As you state in your appeal, "I feel that I am entitled to an unredacted version of my documents as it pertains to me." Since you are not challenging the redactions MPD made to information about individuals other than yourself, privacy interests are not relevant. Rather, the issue before this Office is whether MPD properly redacted information related to you.

Your FOIA request resulted in MPD producing 12 pages of documents. Eight pages are part of arrest packets in which MPD redacted only portions of your social security and driver's license numbers. MPD indicated in its response to you that it redacted part of your Social Security number for security purposes, and that if you want a copy of the records with your complete

Social Security number shown² you can obtain it from MPD's FOIA Office. We find these redactions to be reasonable in light of identity theft and other security issues.

The remaining 4 pages that MPD disclosed to you are receipt and disposition of property records. The first entry on the page dated July 10, 2009, relates to you. MPD redacted the address and the items that were received from you. MPD also redacted the written response to the phrase "If found, state by whom and address." These redactions were improper. The address and list of items pertain solely to you, as evident from the right side of the page where only your name is listed.

On the page that states "Book #1641" at the top, the first entry relates to you and is also dated July 10, 2009. MPD made one redaction to the address. It is unclear whether this is your home address or the address where an incident took place. Regardless, we see no reason for its redaction since it applies solely to you. The last entry on the page also relates only to you, and nothing was redacted.

On the page that states "Book #747" at the top, the second entry relates to you and two other individuals. MPD properly redacted the names and information pertaining to the other individuals. The fourth entry relates solely to you, and nothing was redacted.

On the last page, dated October 21, 1998, the last entry relates to you. The only thing redacted was a signature, presumably of an MPD employee who received the property. It is unclear whether you are challenging this redaction. Nevertheless, we find that there is a *de minimis* privacy interest in an individual's signature, and you have not asserted a public interest that would outweigh this privacy interest.

Conclusion

Based on the foregoing, we affirm in part and remand in part MPD's decision. Within 5 business days, MPD shall release to you portions of the redacted documents in accordance with the guidance in 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 the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

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

² MPD did not mention that it redacted your driver's license number, but we assume it did so for the same security purposes.