

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



November 2, 2021

VIA ELECTRONIC MAIL

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**RE: UDC's Compliance with District FOIA
#OOG-002.10.18.21_AO**

Dear Mr. Redmond:

This correspondence responds to your October 18, 2021 request to the Office of Open Government, Board of Ethics and Government Accountability (“OOG”) regarding the application of the Freedom of Information Act (“D.C. FOIA”) to a request for records received by University of the District of Columbia (“UDC”). This advisory opinion discusses whether the personal privacy exemption under D.C. FOIA would apply to the request for transcripts of two UDC faculty members.

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.”¹ To support the District’s public policy, I am authorized to issue advisory opinions on the implementation of D.C. FOIA pursuant to section 205c(d) of the Board of Ethics and Government Accountability and Comprehensive Reform Amendment of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.02c(d)).

¹ D.C. Official Code § 2-531.

I. BACKGROUND

On October 2, 2021, UDC received a request via electronic mail seeking documents under D.C. FOIA for two faculty members, Amanda Huron and Michelle Chatman. The requestor sought the transcripts for both faculty members. In addition, for Amanda Huron, the request included documents reflecting the department where she was hired to teach and her age as of May 2015. For Michelle Chatman, the request included her letter of appointment for her first full-time faculty appointment as well as the department where she was first hired to teach as a full-time faculty member.

Along with filing the FOIA request, you note that the requestor is involved in litigation against UDC and suggest that they may be seeking these records in connection with the pending litigation. You sought guidance from OOG on whether the transcripts would be exempt from disclosure under D.C. Official Code § 2-534(a)(2), the personal privacy exemption. Specifically, you ask whether the privacy interest that these individuals have in their transcripts would outweigh any public interest in the disclosure of these documents. As discussed below, I find the privacy interest that an employee maintains in their transcripts and documents reflecting their age, are not outweighed by the public interest in disclosure of the information.

II. DISCUSSION

D.C. FOIA establishes a right to “to inspect, and . . . to copy any public record of a public body” unless an exemption to disclosure applies.² Relevant to your request, D.C. FOIA exempts from disclosure “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”³ At issue is whether this exemption would allow you to exclude the transcripts from production.

In construing the provisions of the D.C. FOIA, the federal Freedom of Information Act, which served as the model for the D.C. statute, is also instructive.⁴ When determining whether the exemption for personal privacy would apply to the requested records, both D.C. FOIA and federal FOIA apply the standard set forth in *Department of Justice v. Reporters Comm. for Freedom of Press*, which requires that the government balance the individual’s privacy interests against the public interest in disclosure.⁵ Thus, the initial question is whether there is a more than *de minimis* privacy interest in the records that are the subject of the FOIA request.⁶ Absent a more than *de minimis* privacy interest, the underlying principles of FOIA would require disclosure of the records.⁷

² D.C. Official Code § 2-532(a).

³ D.C. Official Code § 2-534(a)(2).

⁴ See *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987); *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521 n.5 (D.C. 1989).

⁵ See 489 U.S. 749, 762 (1989).

⁶ See *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008) (“a privacy interest must be substantial—more than *de minimis*—and yet insufficient to overcome the public interest in disclosure”).

⁷ See *id.*

An individual maintains a privacy interest in “control of information concerning his or her person.”⁸ This privacy interest applies to personally identifying information⁹ including information contained in resumes and job applications,¹⁰ as well as an individual’s employment history and “diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee’s personnel file.”¹¹ Similarly, the records at issue here, transcripts reflecting the individual’s undergraduate and graduate academic performance, contain the type of personally identifying information sufficient to establish the individual’s privacy interest in the records. Indeed, in a prior matter involving UDC, the Mayor’s Office of Legal Counsel upheld UDC’s decision to withhold a professor’s transcript under Exemption 2, noting that “purely personal details that do not shed light on agency functions are protected from disclosure.”¹²

Having established that the individuals maintain more than a *de minimis* privacy interest in their transcripts, I next turn to the question of whether there is a public interest in the disclosure that outweighs the privacy interest. To establish a FOIA public interest in disclosure, the information sought must serve the “basic purpose of the Freedom of Information Act[,] ‘to open agency action to the light of public scrutiny.’”¹³ The Court in *Reporters Comm.* noted that information that informs the public “about an agency’s performance of its statutory duties falls squarely within that statutory purpose.”¹⁴

While FOIA does not require that a requestor provide a reason for requesting information, when privacy interests are implicated, the burden is on the requestor to establish that disclosure would serve a significant public interest and that interest must be “more specific than having the information for its own sake.”¹⁵ In this instance, the request does not establish how the release of the transcripts would shed light on any functions of UDC in the performance of its statutory duties. To the extent that the records sought relate to pending litigation by the requestor against UDC, interest in a private lawsuit is not sufficient to establish a public interest in disclosure under FOIA.¹⁶ Without a countervailing public interest in disclosure of these specific documents, the balance shifts towards the individual’s recognized privacy interests.

⁸ *Reporters Comm.*, 489 U.S. at 763. Information about the person, clearly includes their age and date of birth.

⁹ See *Skinner v. U.S. Dep’t of Justice*, 806 F.Supp. 2d 105, 113 (D.D.C. 2011)

¹⁰ See *Core v. USPS*, 730 F.2d 946, 948 (finding privacy interest in information contained in job applications but concluding the weight of the public interest in disclosure differs between successful and unsuccessful applicant).

¹¹ *Stern v. FBI*, 731 F.2d 84, 91 (D.C. Cir. 1984).

¹² See FOIA Appeal 2018-139 (Jul. 16, 2018).

¹³ *Dept. of the Air Force v. Rose*, 425 U.S. 352, 372 (1976).

¹⁴ *Reporters Comm.*, 489 U.S. at 773.


¹⁵ *NARA v. Favish*, 541 U.S. 157, 172 (2004).

¹⁶ See *Carpenter v. DOJ*, 470 F.3d. 434, 441 (1st. Cir. 2006) (“no public interest in supplementing an individual’s request for discovery”); *Horowitz v. Peace Corps.*, 428 F.3d 271, 278-279 (D.C. Cir. 200) (finding that requestors “need to obtain the information for a pending civil suit is irrelevant, as the public interest weighed has nothing to do with [his] personal situation”). The requestor in FOIA Appeal 2018-139 argued UDC’s release of the transcript could reveal whether UDC officials misrepresented facts during an arbitration and that information would allow the requestor to decide whether to pursue a lawsuit.

III. CONCLUSION AND RECOMMENDATIONS

After reviewing the relevant precedents in this matter, I see no reason to depart from the 2018 analysis by the Mayor's Office of Legal Counsel which dealt with a request for transcripts from UDC under very similar factual circumstances. Accordingly, I conclude that the individual professor's privacy interest in the information in their transcripts combined with the requestor's failure to establish the requisite public interest in the disclosure would support a decision by UDC to withhold the transcripts from disclosure under Exemption 2.

Sincerely,



Niquelle Allen, Esq.
Director of Open Government
Board of Ethics and Government Accountability