



GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

Transmitted via email

October 20, 2017

Appeals FOIA
Mayor's Office of Legal Counsel
1350 Pennsylvania Avenue, N.W.
Suite 419
Washington, D.C. 20004

Re: 2018-14 (Wagner)

Dear Sir or Madame:

This is in response to your direction to provide a response to the Freedom of Information Act (FOIA) appeal filed by Paul Wagner on behalf of Fox5 TV. He appeals the department's denial of his request for the final investigative report concerning the actions of a certain officer during an incident that occurred on September 11, 2016. The department denied the request on the basis that release of the report would constitute an invasion of personal privacy pursuant to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C).

On appeal Mr. Wagner asserts that the public has a "right to know what kind of officers are patrolling their streets." He also asserts that "[s]ince adverse action Trial Boards are open to the public why wouldn't the public also have the right to see the evidence . . ." relating to the subject officer. The department maintains its denial of the request.

The requested investigative report is exempt from disclosure under (a)(3)(C) as the officer's conduct could result in exposure to civil or criminal sanctions. A balancing test analysis is required in order to determine if an officer's privacy interest in non-disclosure of the report is outweighed by a public interest in the release of the report that is personal to him. Clearly the subject officer has a significant interest in not being identified in a law enforcement record as having engaged in unlawful or improper conduct. *Stern v. FBI*, 737 F.2d 84, 9192 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)). The fact that some facts relating to the report may have been reported in the media as referenced by Mr. Wagner, does not vitiate the officer's interest in not having the information in the report disseminated further.

Applying the balancing test in this instance the question is whether there is a public interest in the release of the report that outweighs the officer's privacy interest. The purpose of FOIA is to permit the public to obtain information about what the government is up to. See, decision in FOIA Appeal 2017-82 referencing *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). The court in *Beck* stated that "Information that "reveals little or nothing about an


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agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. Citing, *United States Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773 (1989). Mr. Wagner has not asserted any wrongdoing on the part of the department. Release of the investigative report would not shed light on the department's actions in carrying out its responsibilities. Accordingly, the officer's privacy right of non-disclosure prevails over a non-articulated public interest.

Finally, Mr. Wagner indicates in the appeal that a redacted version of the report would be acceptable. However, a redacted report in no way protects the privacy of the officer as Mr. Wagner has identified him.

For the reasons set forth above, the appeal should be denied.

Sincerely,


Ronald B. Harris
Deputy General Counsel