

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

DISTRICT OF COLUMBIA,

Defendant.

2024-CAB-3453

Judge Veronica Sanchez

May 1, 2026 hearing is vacated

ORDER

Before the Court is the District of Columbia’s (“the District” or “the defendant”) Supplemental Briefing regarding whether personal privacy redactions of non-law enforcement personnel’s faces and voices are appropriate under D.C. Code §§ 2-534(a)(2) and 2- 534(a)(3)(C) with respect to body-worn camera (“BWC”) footage from the Metropolitan Police Department (“MPD”) officers who responded to the U.S. Capitol on January 6, 2021. Defendant no longer argues that a full exemption under D.C. Code is warranted but asserts that the District of Columbia’s Freedom of Information Act (“D.C. FOIA” of “FOIA”) statute requires a redaction of the BWC to protect the personal privacy interests of non-law enforcement individuals captured on BWC.¹ On June 1, 2025, the Court (Ross., J) ordered the parties to provide supplemental briefings on this limited issue. Having considered the briefings, oral arguments, and the applicable law, the Court finds that the personal privacy interests do not outweigh the public interest in disclosure.

¹ The District filed a *Praecipe Regarding Motion for Summary Judgment* in which it updated the Court of it’s “modified” position in the litigation “in light of recent developments relating to the United States’ investigation and prosecution of the January 6, 2021 U.S. Capitol rioters, and the pardon issued” by the President. *Praecipe* at 1 (February 28, 2025).

Relevant Factual and Procedural History

Seven months after the events of the U.S. Capitol on January 6, 2021², Plaintiff, a not-for-profit organization, made two requests under the D.C. Freedom of Information Act (“FOIA”) to MPD for all BWC footage from officers responding to the U.S. Capitol Building on January 6, 2021. Compl. at 2-4. The first request, August 5, 2021, was for the specific BWC of MPD Officer Michael Fanone. On August 6, 2021, MPD denied the request, citing D.C. Code § 2-534 (a)(2), (a)(3)(B), (a)(3)(A)(i), and (a)(3)(C), on the basis that the requested BWC had been identified as related to an ongoing criminal investigation. On August 6, 2021, plaintiff made a second request to MPD. The second request sought all BWC of MPD officers present at the U.S. Capitol Building on January 6, 2021. On August 9, 2021, MPD denied the second request for the same reasons it denied the first request. Plaintiff appealed the decision via the D.C. FOIA Portal, and the appeal was denied. Plaintiff filed a complaint seeking production of all non-exempt public records responsive to plaintiff’s FOIA requests. The District filed an Answer on September 5, 2024.

On November 5, 2024, defendant filed a *Motion for Summary Judgment*. Concurrently it filed a *Motion to Stay Discovery* arguing that, in a FOIA case, discovery is rarely appropriate. On November 19, 2024, plaintiff filed an *Opposition to Defendant’s Motion to Stay Discovery*, as well as its own *Motion to Stay the Briefing Schedule*. Plaintiff argued that the briefing schedule should be stayed until discovery was completed. The District filed a *Reply in Support of its Motion to Stay Discovery* on November 25, 2024, and an *Opposition to Plaintiff’s Motion to Stay the Briefing Schedule* on December 2, 2024. Plaintiff filed a *Reply in Support of its Motion to Stay Briefing* on December 9, 2024.

² The events of January 6, 2021, are well documented within the public domain, including in sources cited within the parties’ previous filings.

Prior to the Court issuing a ruling on either motion to stay, plaintiff filed a Notice to the Court on January 29, 2025, memorializing on the docket the change in circumstances regarding any criminal investigation regarding the events of January 6. Specifically, that President Trump had commuted the sentences of ‘certain “individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021” and granted a full, complete and unconditional pardon to all other individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021.”’ Notice at 1 (January 29, 2025). The District filed its own notice on February 28, 2025, in which it informed the Court of a change in position based on the aforementioned commutations and pardons. Notice at 3 (February 28, 2025). The District indicated in its notice that as to Plaintiff’s first request it would “produce two responsive videos [. . .] to Plaintiff after reviewing for any requisite personal privacy redactions.” *Id.* (internal citation omitted). Further, the District noted that it would withdraw its position regarding FOIA exemptions for records which may interfere with law enforcement proceedings. *Id.* However, the District maintained its position regarding individuals privacy interests and argued the burden on the government of redacting and producing such a large amount of BWC. In its *praecepe* the District indicated it did not concede that production of unaltered BWC footage in this case was proper arguing that “the BWC footage may capture certain personnel, namely third parties, who maintain cognizable privacy interests in their names, images, and likeness,” and that disclosure would not serve the public interest or shed light on MPD’s performance of its statutory duties. *Id.* at 3.

Given the change in circumstances, the Court denied the pending motions without prejudice and directed supplemental briefings as to the limited issue of the District’s position regarding privacy redaction under D.C. Code § 2–534(a)(2), 2-534(a)(3). While the District notes

that privacy redactions are appropriate under both code sections, they primarily rely on the legal standard of D.C. Code § 2-534(a)(3), which they argue has a lower threshold to meet. *See* D.C. Supp. n.3 (“the omission of “clearly” before “unwarranted invasion of personal privacy” in the Code indicates a lower threshold to meet for exemption.”). Defendant filed its supplemental brief on June 27, 2025. Plaintiff filed their responsive supplemental brief on July 28, 2025. Defendant filed their reply on August 11, 2025. Additionally, the Court heard oral arguments from the parties on January 8, 2026.

I. Legal Standard – FOIA

The District of Columbia Freedom of Information Act, D.C. Code §§ 2-531 to 2-539, provides that any person has the right to request access to public records held by District government agencies. As stated in the statute the “public policy of the District of Columbia is 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. Code § 2-531. Because many of the District’s FOIA provisions parallel those in its federal counterpart, “except where the two acts differ, [courts] have treated case law interpreting the federal FOIA as instructive authority with respect to [the District’s] Act.” *Washington Post Co. v. Minority Business Opportunity Commission*, 560 A.2d 517, 521 n.5 (D.C. 1989) (citation omitted).³

³ The District’s argument overwhelmingly cites cases involving the federal FOIA. The Government correctly cites a 2013 D.C. Court of Appeals case, which itself cites a 2011 D.C. Court of Appeals case, stating that it will look to decisions interpreting the federal FOIA after which the D.C. FOIA is modeled. *See District of Columbia*, 75 A.3d 259 n.2. However, in 2016, after the cited cases, the District of Columbia amended section 2-534 to add paragraph 2a which specifically discusses BWC. D.C. Act 21-265 (January 12, 2016). In doing so, the Council separated D.C. FOIA from the federal FOIA which does not make any reference to BWC. The D.C. Council made special provisions regarding BWC, allowing exemptions when BWC was filmed “[i]nside a personal residence; or [r]elated to an incident involving domestic violence [. . .], stalking [. . .], or sexual assault [. . .]” D.C. Code § 2-534(a)(2a). This amendment does not impact the Court’s analysis under the balancing test articulated in *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984).

Public bodies are required to disclose records responsive to the request except those protected by one of the statutory exemptions enumerated in D.C. Code § 2-534. When an agency withholds records or portions thereof, it must specify which exemption permits the withholding and it bears the burden of justifying its decision. In *Tax Analysts v. District of Columbia*, the D.C. Court of Appeals held the “burden is on the government agency to justify its withholding.” 298 A.3d 334, 338 (D.C. 2023). Similarly, in *Fraternal Order of the Police v. District of Columbia*, the Court made clear that the District must affirmatively show that materials are not “improperly withheld.” 139 A.3d 853, 864-65 (D.C. 2016). The burden remains with the agency when it “seeks to justify the redaction of identifying information in a particular document.” *District of Columbia v. Fraternal Order of the Police*, 75 A.3d 259, 264 (D.C. 2013) (citing *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)). “Statutory exemptions ‘are to be narrowly construed with ambiguities resolved in favor of disclosure.’” *Id.* (citing *Washington Post Co. v. Minority Bus Opportunity Comm’n*, 560 A.2d 517, 521 (D.C. 1989)).

At issue in this matter are two statutory exemptions raised by the District to justify non-disclosure as they argue that disclosure would require redactions of all non-law enforcement individuals’ faces and voices in the BWC. The District relies on D.C. Code §§2-534(a)(2) and 2-534(a)(3)(c). The first provision allows exemption for “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” D.C. Code § 2-534(a)(2). The second provision permits exemption where the production of law enforcement investigatory records would “constitute an unwarranted invasion of personal privacy.” D.C. Code § 2-534(a)(3)(c).⁴ Both sections focus on protecting the “unwarranted”

⁴ The District of Columbia argues that it is not disputed that the BWC footage at issue are investigatory records compiled for law enforcement purposes and, thus, rely on section 2-534(a)(3)(c). Defendant supplemental briefing at 4, n.3. The Plaintiff did not dispute this and thus, this issue is not before the Court.

invasion of individuals' personal privacy interests within the records. Thus, the preliminary question the Court must address is whether there is a personal privacy interest within the records sought. *District of Columbia*, 75 A.3d at 265. Where there is a personal privacy interest, "greater than *de minimis*," the Court must balance the interests of public interest in disclosure with whether the invasion of privacy is unwarranted. *Id.*; *Padou v. District of Columbia*, 29 A.3d 973, 982 (D.C. 2011) (internal citations omitted). The balancing analysis for determining the public interest is "the extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to." *District of Columbia*, 75 A.3d at 266 (citing *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, *supra*, 510 U.S. 487, 497). The exemption controls if the personal privacy interest outweighs the public interest in disclosure.

II. Privacy Interest

The District of Columbia contends that the individuals who appear on the BWC footage at the U.S. Capitol Complex on January 6, 2021, have a "substantial" privacy interest that must be protected by redactions to the BWC. Alternatively, the District argues that even if the Court finds that the individuals have a *de minimis* privacy interest the balancing test the Court must apply favors redactions of the BWC as the public interest is minimal and does not outweigh the privacy interests.

Plaintiff argues that individuals captured on the BWC have no privacy interest that warrants their faces and voices being redacted. *See* Opp. at 2. The plaintiff argues that the events of January 6 were a public event on public property. *Id.* at 1. They rely on *WP Co., LLC v. District of Columbia* to support their claim that an individual does not have a personal privacy interest in BWC footage that took place in a public place. *Id.* at 2; No. 2018-CA-005576-B (D.C. Super. Ct.

Jan. 7, 2019). In the alternative, plaintiff argues that even if the non-law enforcement individuals have a privacy interest the public interest outweighs their privacy interest. *Id.*

The District relies on D.C. Circuit Court of Appeals cases to support its argument that the privacy interests of the individuals are particularly strong in the BWC footage. The defendant cites to caselaw that has recognized the “strong interest” of individuals, to include suspects, witnesses, investigators, and informants, “in not being associated unwarrantedly with alleged criminal activity. *See Fitzgibbon v. C.I.A.*, 911 F.2d 755, 767 (D.C. Cir. 1990); *Schrecker v. United States*, 349 F.3d 657, 661 (D.C. Cir. 2003); *Stern v. FBI*, 737 F.2d 84, 92 (D.C. Cir. 1984). Relying on these cases, the District alleges that any non-law enforcement person captured on the BWC footage on January 6, to include “rioter, bystander, journalist, or someone else,” maintains a “cognizable privacy interests in their image and likeness, in not being associated with criminal activity.” D.C. Supp. at 6. The District argues that even if the individuals’ association with the events of January 6 will not lead to criminal prosecution, it “would likely lead to reputational harm and possibly affect employment prospects and standing in certain communities.” *Id.* Thus, the individuals privacy interest is “significant.” *Id.*

The Court disagrees that the privacy interest is significant or substantial in this matter. First, the District has amalgamated under its argument all individuals captured in the BWC footage that are not law enforcement personnel. As stated by the defendant, this group includes “rioter, bystander, journalists, or someone else.” *Id.* This group of individuals do not have the same privacy interests. *Id.* A journalist present at the events that unfolded on January 6 does not have a strong privacy interest, in fact a journalist present reporting on the events likely has no privacy interest. It is difficult for this Court to determine with any degree of precision the actual invasion of privacy that would occur from the release of BWC that would capture a reporter. The

Government argues that individuals shown on the BWC are more difficult to distinguish than bystanders at a fatal shooting. D.C. Reply at 5. However, that comparison is not analogous to the January 6 BWC when the lack of privacy redactions very well may differentiate the behavior and conduct of the non-law enforcement individuals. The Court notes that there well may be individuals captured on BWC who have a more significant privacy interest in not being associated with the events of January 6, but the Court finds that, without specificity to those people and circumstances, those interests are uncertain and speculative. Thus, the privacy interest of individuals in the BWC would be little more than *de minimis* for the reasons outlined in this order.⁵

The circumstances leading up to the events at the U.S. Capitol Complex included a large, public, televised event on the National Mall. Individuals were gathered in a public arena. The crowd then marched to the U.S. Capitol Complex where members of congress were partaking in the certification of the Presidential election results live on television. It is well established in the public domain that many participants in the January 6 events were themselves filming and posting videos online. Unlike *Showing Animals Respect & Kindness*, the individuals in this case were not on wholly private property when the images were taken. 730 F. Supp. 2d 180, 193 (D.D.C. 2010). The individuals were both inside the restricted interior of the U.S. Capitol Complex and outside on the grounds. This is different from the “public thoroughfare,” i.e. a street in the District of Columbia, described in *WP Company, LLC v. The District of Columbia*, but not as different as the District implies it is. *See* Reply at 3-4; No. 2018-CA-005576-B (D.C. Super. Ct. Jan. 7, 2019). The U.S. Capitol is a nonpublic forum, and the Supreme Court and lower courts have held that restrictions inside the Capitol grounds are permissible. *Bynum v. United States Capitol Police*

⁵ Black’s Law Dictionary defines *de minimis* as being of a trifling consequence or a matter so small, miniscule, or immaterial that the law will not consider or remedy them.

Board, 93 F.Supp. 2d 50, 57 (D.D.C. 2000); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 52 (1983). The surrounding grounds have less restrictive regulations for public gathering than the interior.

The privacy interest is attenuated by the extent of the dissemination of the information being sought. The individuals on the BWC could not “reasonably expect that their appearances on the [BWC] would remain private.” *Showing Animals Respect & Kindness v. United States DOI*, 730 F. Supp. 2d 180, 193 (D.D.C. 2010). A person’s privacy interest is greater in the release of images and video footage that were taken without their “knowing consent.” *Showing Animals Respect & Kindness v. United States DOI*, 730 F. Supp. 2d 180, 193 (D.D.C. 2010). Even though the individuals recorded on the subject BWCs may not have consented to their images being recorded, they certainly had reason to believe that the many law enforcement officers, as well as the surveillance cameras at the government owned property, were recording them. Additionally, during the events of January 6, simultaneous media images from both inside the U.S. Capitol and around the U.S. Capitol Complex were being broadcast, streamed, and uploaded. While the individuals may have not all “knowingly consented” to the images being recorded, they had reason to know they were. 730 F. Supp. 2d at 193.

Many of the individuals in the BWC footage have already had sentences commuted or been pardoned for those “offenses related to events that occurred at or near the United States Capitol on January 6, 2021.” Notice at 1 (January 29, 2025). The District argues that being associated with the events of January 6 could still potentially result in reputational harm and may affect individuals’ employment prospects and standing in certain communities. D.C. Supp. at 6, n. 5. The District cites to several examples of this reputational harm. The Plaintiff does not dispute this claim. Caselaw supports that there is a privacy interest for individuals “in not being associated

unwarrantedly with alleged criminal activity.” See *Fitzgibbon*, 911 F.2d at 767 (D.C. Cir. 1990); *Schrecker*, 349 F.3d at 661 (D.C. Cir. 2003); *Stern*, 737 F.2d at 92. The recognition of a privacy interest in the cases cited did not turn on whether a criminal investigation or prosecution was pending, imminent or ever materialized. The focus is on the stigma for individuals associated with law enforcement investigations and there were investigations into the conduct of individuals at the Capitol. See *Stern*, 737 F.2d at 92. The public nature of the events leading up to the presence of MPD personnel with BWC to the Capitol and the commutations and pardon have attenuated the privacy interests of the individuals present, but the Court cannot find that there is no privacy interest. The Court finds that there is a little more than *de minimis* privacy interest. This triggers a balancing analysis of the public interest in disclosure with whether the invasion of privacy is unwarranted.

III. Public Interest

In this matter, Plaintiff has argued a high public interest in the government and law enforcement response to the events on January 6. See Opp at 6 (citing to public figures and members of the judiciary discussing the events of January 6). Unlike *New York Times Co. v. NASA*, where the Court found the public interest was more speculative and subjective, and the recordings would not “significantly contribute” to the public understanding, the interest to the public in understanding what happened on the grounds of the U.S. Capitol Complex is of high interest both to citizens and residents of the District of Columbia as well as the country at large. 782 F. Supp. 628, 633 (D.D.C 1991).

The District of Columbia argues that the balancing test between privacy interests and public disclosure weighs towards privacy interests as “no allegation has been presented MPD engaged in any illegal activity in its response [. . .] [n]or would disclosure shed light on the agency’s

performance of its statutory duties more than what is already known.” D.C. Supp. at 6 (June 27, 2025).

The Court does not agree. FOIA is designed to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Washington Post Co. v. Minority Business Opportunity Commission*, 560 A.2d 517, 521 (D.C. 1989) (quoting *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1976)). The policy behind disclosure “focuses on the citizen’s right to be informed about ‘what their government is up to.’” *United States Dep’t of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). The events of January 6, 2021, have been the topic of much debate, discussion, and scrutiny in the public consciousness by not just the residents of the District of Columbia but also the nation. BWC footage of the events at the Capitol on January 6 could “contribute significantly” to the public’s understanding of the events on that day and the MPD’s actions. In balancing the privacy interests which are little more than *de minimis* with the public interest, the public interest outweighs the privacy interests.

Therefore, it is this 30th day of April, 2026, hereby

ORDERED that the faces and voices of individuals captured by MPD’s BWCs on January 6, 2021 are not exempt from disclosure.



Judge Veronica Sanchez

Copies to Parties.