

Dear DC Councilmembers,

We, the undersigned District of Columbia concerned citizens, community leaders, advocacy organizations, journalists, and lawyers, urge you to repeal the amendments to DC's Freedom of Information Act ("FOIA") that were adopted as part of DC's coronavirus emergency legislation. The amendments exclude each day of the Mayor's public health emergency (or any day on which a public body is "closed due to the COVID-19 coronavirus disease") from the 15-day period DC government agencies are generally required to respond to FOIA requests, the 25-day period the Metropolitan Police Department (MPD) is required to respond to requests for body-worn camera recordings (other than those involving officer-involved shootings), and the 10-day period the Mayor is required to respond to appeals of agency denials of FOIA requests. In effect, this permits a DC government agency, including MPD, to completely stop responding to FOIA requests until the public health emergency is over, even if the agency can safely process the request. This places an undue burden on the public's fundamental right to transparency and makes it harder to conduct oversight of agencies' activities at a time when government operations and services are changing drastically.

While the coronavirus pandemic may make it more difficult for the DC government to carry out its responsibilities, it has been six months since the Mayor first issued the public health emergency order, the order has been extended through October 9, 2020, and it will likely be extended further. Based on our experiences interacting with the DC government, many employees have now successfully transitioned to working remotely, and essential workers continue to perform their work in person when it is safe to do so. Moreover, it is our understanding that a considerable portion of DC government records are maintained in electronic form and can be accessed and provided via electronic means. Accordingly, agencies should generally be able to process FOIA requests (and the Mayor's office should generally be able to decide appeals) in a manner that is both safe and timely. Indeed, some DC agencies have provided timely responses to FOIA requests filed during the public health emergency, so we know that it is possible.

We recognize that DC agencies may face unique challenges in responding to FOIA requests for records that cannot be accessed remotely at a time when an on-site review of records could present a significant risk to employee health or safety. In these discrete circumstances, we urge the Council to strike a more appropriate balance between the need for the DC government to protect its employees and FOIA's purpose to ensure citizens have access 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. For example, the Council could tailor a solution for agencies in this situation by allowing them to extend the deadline for responding to a FOIA request upon written notice to the requester with the specific health or safety justification.

For all these reasons, the DC Council should act swiftly to restore the public's access to vital information about the functioning of the DC government by repealing the amendments to FOIA that were adopted as part of the emergency legislation and reinstating the established FOIA timeframes for responses by DC government agencies and for appeals decisions by the Mayor.

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