

Give DC Residents Full Access to Information about DC Government Operations NOW!

September 21, 2020

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.

Sincerely,

ACLU of the District of Columbia

Advocates for Justice and Education

Black House News

Children's Law Center

Council for Court Excellence

Disability Rights DC at University Legal Services

D.C. Tenants' Rights Center

DC Environmental Network

DC KinCare Alliance

DC Open Government Coalition

EmpowerEd

Legal Aid Society of the District of Columbia

Network for Victim Recovery of DC

RCM of Washington

Terris, Pravlik & Millian, LLP

TENAC (DC Tenants' Advoacay Coalition)

Washington Legal Clinic for the Homeless

Demel Baber

DC Resident

Journalist

Christopher Bangs

DC Resident

Lawyer

Elizabeth Beltran

DC Resident

Lawyer

Mikeisha Blackman
DC Resident

Dixcy Bosley
DC Resident
Jane Brown
DC Resident

Michael Byrne
DC Resident

Curt Campbell
DC Resident
Lawyer

Suzie Cambria
Advocate
Now more than ever, access to the government is essential.

Radiance Campbell
DC Resident

Dara Canchester
DC Resident

Lauren Case
DC Resident

Jason Cherkis
DC Resident
Journalist

Marie Cohen
DC Resident

Tara Dittamo
Lawyer

Aida Fitzgerald
DC Resident
Lawyer

Rebecca Flaherty
DC Resident

Philip Fornaci
DC Resident
Lawyer

Betty Gentle
DC Resident

Todd Gluckman
Lawyer

Deborah Golden
The Law Office of Deborah M. Golden
Lawyer

Donnequa Grantham
Lawyer

Christian Greene
DC Resident

Amber Harding
Lawyer

Tyler Haas
DC Resident
The DC government should not use the ongoing health crisis as an excuse to avoid accountability. Transparency is a cornerstone of a representative government, and any material that can be procured in an effective and safe manner should be done so without unnecessary delay.

Allison Hrabar
DC Resident

Thomas Healy
DC Resident
Lawyer

Aaron Hoffman
DC Resident

Kymberly Holmes
DC Resident

Valerie Jablow
DC Resident

Katharine Landfield

DC Resident

Transparency is fundamental to democracy, even - and especially - during a crisis such as the pandemic.

Mary Levy

DC Resident

DC Government agencies could save themselves a lot of FOIA requests if they just posted basic information, especially budget information, without being asked.

Matthew Levy

DC Resident

Michael Livingston

Journalist

Sean Michael Love

DC Resident

Journalist

Karen Malovrh

DC Resident

Lisa Mathews

DC Resident

Mary McCall

DC Resident

Stephanie McClellan

Lawyer

The people of the District deserve transparency and responsiveness from their government to the extent possible during the public health emergency.

Marian Messing

DC Resident

Lawyer

Government transparency is essential. The D.C. government shouldn't be shielded from disclosing its activities to the public just because of COVID.

Kathleen Millian

Lawyer

Marcia Moore

DC Resident

Sara Mosenkis
DC Resident

Fritz Mulhauser
Lawyer

Margaret O'Hora
DC Resident
Lawyer

Lauren Onkeles-Klein
DC Resident
Shrouding government in secrecy during a pandemic and in a time of extraordinary resistance to unfettered state power and the harms of structural racism erodes the public's fair in public institutions. As a long-time DC resident and a Ward five community member, I want my government to do better. I want my government to lead in transparency rather than hide from their citizens.

Demi Otukoya
Advocate

India Patrick
DC Resident

Carolyn Smith Pravlik
DC Resident
Lawyer

Marjorie Rifkin
DC Resident
Lawyer

Max Sall
DC Resident

Vanessa Simmons
DC Resident

Alayna Smith
DC Resident

Laurie Stegman
DC Resident

Beth Stekler
DC Resident

Jordan Stoner
DC Resident

Robbie Ward
DC Resident

Melody Webb
DC Resident

Joy Welan
DC Resident

Andrew Williams
DC Resident

Lior Wolf
DC Resident

Renee Wolforth
Lawyer

Michelle Young
DC Resident

Eve Zhurbinskiy
DC Resident

Not only should we restore DC's FOIA deadline to what it was before the pandemic, but we should shorten the response time. Fifteen business days is significantly longer than what most states have as their response time. Even though there is a hiring freeze, the Council and mayor should consider exempting FOIA officers from this freeze so that we can have greater accountability and residents can feel more confident in our government.