

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON EXECUTIVE ADMINISTRATION AND LABOR**



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**COUNCIL OF THE DISTRICT OF COLUMBIA**

**PUBLIC HEARINGS**

**AGENCY PERFORMANCE OVERSIGHT HEARING  
MAYOR'S OFFICE OF LEGAL COUNSEL  
FISCAL YEAR 2024-2025**

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**Testimony of Niquelle M. Allen, Esq.  
Director of Open Government**

**Wednesday, January 29, 2025  
Virtual Platform  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004**

Chairperson Bonds, members of the Committee on Executive Administration and Labor (the “Committee”), and staff, I am Niquelle Allen, Director of Open Government, with the Board of Ethics and Government Accountability (“BEGA”). The Office of Open Government (the “OOG”), an office within BEGA that is responsible for ensuring that the District of Columbia Government’s (the “District”) operations are open, transparent, and accessible to the public. The OOG provides advice on compliance with the District of Columbia Freedom of Information Act of 1976 (“D.C. FOIA”).

I am providing this written testimony regarding D.C. FOIA to offer suggestions how to optimize the appeals process set forth in DC Official Code § 2-537. I hope the Committee will consider these suggestions and suggest amendments to D.C. FOIA for the District of Columbia Council (the “DC Council”) to effectuate.

### Extending the Time for FOIA Appeals to the Mayor

If a FOIA request is denied by a D.C. agency, the requester may appeal the denial of the request to the Mayor. She has delegated this responsibility to the Mayor’s Office of Legal Counsel (“MOLC”). The MOLC has historically suffered with a backlog of FOIA appeals to resolve, due to issues of time-constraints, staffing, and resources. Neighboring jurisdictions’ treatment of FOIA Appeals provide best practices for the District of Columbia government (the “District”) to implement to resolve the MOLC’s backlog.

As of the date of this testimony, the Mayor has not yet submitted the FY2024 FOIA Report to the D.C. Council. The Mayor submitted the last Annual Freedom of Information Act Report for Fiscal Year 2023 to the Council on February 27, 2024. This report included FOIA Appeal Summaries and a FOIA Appeal Log reflecting the 464 appeal decisions issued by the MOLC in FY2023. As of the MOLC’s performance oversight hearing on January 29, 2025, there were no appeals of agency FOIA decisions pending adjudication by the MOLC. As with previous years, the MOLC should not have to rush to provide a mass publication of its opinions each year before the FOIA reporting period and performance oversight. The District should reform the FOIA Appeals process to permit the Mayor to reasonably dispose of FOIA Appeals.

To that end, the D.C. Council should consider amending D.C. FOIA to permit the Mayor’s Office of Legal Counsel twenty (20) business days or more to complete the D.C. FOIA appeals process. The delay in disposing of appeals is in part due to the short statutory deadline. As a remedy, I suggest an amendment to the FOIA statute to enlarge the MOLC’s administrative review period. Maryland and the federal government have counterparts to D.C. FOIA, and all of them have longer than ten business days for administrative review. Enlarging the time in the District seems reasonable in light of these examples.

Under Maryland’s Public Information Act, there is a two-layer administrative-review procedure. An applicant can apply to the Public Access Ombudsman, and then, if the dispute remains unresolved, to the State Public Information Act Compliance Board for a binding decision (accompanied by a written opinion posted on the Compliance Board’s website). The Ombudsman’s deadline “to issue a ‘final determination’ that a dispute has been resolved or not resolved” is *90 calendar days*, which may be extended by mutual agreement of the custodian and

requester to continue the mediation. The Compliance Board's outermost deadline is *120 calendar days* from the date of the complaint, which is of course in addition to the Ombudsman's review period. Under federal FOIA, a requester may appeal from "an adverse determination . . . to the head of the agency," who has a base period of *20 business days* to decide appeals, plus the authority to extend the period under "unusual circumstances."

I recommend that the D.C. Council consider amending D.C. FOIA to permit the MOLC at least 20 business days to complete the FOIA appeals process. I have also provided a recent FOIA Advisory Opinion from the Office of Open Government for the Committee's consideration.

### Creating a FOIA Ombudsman Role and Mandatory Administrative Appeals Process

The Office of Open Government should also officially serve as the "DC FOIA Ombudsman," like the federal government's Office of Government Information Services (OGIS). OOG would provide confidential dispute resolution allowing requesters and DC public bodies to engage in candid and fruitful discussions of issues and concerns. In this process, OOG would provide a neutral referee to resolve conflicts. OOG would continue its effort to ensure fairness in DC FOIA processing by serving as an impartial ombudsman.

As part of the D.C. FOIA Ombudsman program, OOG would employ FOIA mediators to work with our existing legal team to ensure that the DC FOIA process is fair. Given the current tendency for the Mayor's Office of Legal Counsel to develop a backlog in processing D.C. FOIA appeals because of the volume of requests it receives, if instituted, this program would be designed to reduce that load. It would also be designed to avoid costly litigation for disputes concerning requesters and Mayoral agencies, independent agencies, the D.C. Council, and Advisory Neighborhood Commissions.

With respect to legislative changes, we recommend changes to BEGA's enabling statute and D.C. FOIA to implement this program. Amendment to Enabling Statute: D.C. Official Code § 1-1162.05c would be amended to add a new subsection "(a)(4)" to read "Offer mediation services as a voluntary and non-exclusive alternative to litigation for disputes concerning subchapter II of Chapter 5 of Title 2." Amendments to D.C. FOIA: D.C. Official Code § 2-537 would be amended to add a new subsection "f" to read, "The Director of Open Government shall offer mediation services to resolve disputes between persons making requests pursuant to § 2-532 and public bodies as a non-exclusive alternative to litigation and, at the discretion of the Director of Open Government, may issue advisory opinions if mediation has not resolved the dispute."

Thank you for considering this testimony and the recommended changes to the D.C. FOIA appeals process.