



*Enhancing access to government information
Ensuring transparency of government operations
Promoting civic engagement*

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D.C. Open Government Action Plan

November 2014

Executive Summary

This Open Government Action Plan represents a vision and a set of initiatives for the new mayor's consideration to make the District of Columbia government a model of transparency. Implementation of these carefully crafted executive, legislative, and policy priorities would greatly improve public access to government records, data, and proceedings, with improvement in public understanding and effective participation in self-government.

Outgoing Mayor Vincent Gray has taken some important steps in recent weeks that provide an opportunity for Mayor-elect Muriel Bowser to take immediate action to improve the state of open government in the District of Columbia. Mayor Gray's appointment of members to the new Open Government Advisory Group and that group's scheduling of its first two meetings is a prime example, especially as that group is poised to work on issues in many of the topic areas discussed in this Open Government Action Plan.

Recommendations fall within five areas: an initial "transparency initiative" for the new mayor; strengthening the Office of Open Government (OOG), amending the Freedom of Information Act (FOIA) and Open Meetings Act (OMA), and making the District a leader in the "open data" arena. The D.C. Open Government Coalition, with significant contributions from members of the D.C. community with expertise in and commitment to effective, open government, developed this plan.

Appendix A contains expanded explanations or background which may be useful in understanding or implementing some of these recommendations.

Appendix B lists individuals who participated in this project.

I. The Mayor's Transparency Initiative

As part of the transition, we recommend that the new mayor issue guidance to prospective agency heads emphasizing that transparency is a priority and that each is expected to play a major role in furthering the mayor's transparency initiative. When the administration takes office, the mayor should issue an Executive Order implementing the transparency initiative which:

- **Declares that *disclosure is the default*:** Any exemptions are to be interpreted narrowly when agencies respond to information requests. *Explanation.*
- **Includes transparency metrics among criteria for assessing overall performance:** The initiative should criteria the mayor will use to assess overall agency performance, including each agency's:
 - Promptness in processing FOIA requests;
 - Meaningful participation in resolving FOIA disputes promptly;
 - Accuracy of disclosure decisions, as measured by results in appeals from agency decisions; and
 - Compliance with FOIA's affirmative disclosure requirements. *See below at 11.*
- **Establishes an online reading room:** There should be a government-wide policy requiring each agency to maintain in its online reading room a searchable database of all frequently requested records as a means to reduce the number of individual requests submitted, minimize the risk that successive requests will produce disparate disclosure decisions, and ultimately reduce the government's compliance costs.
- **Fulfills the requester's preference with regard to record format:** Records should be released, at the requester's option, in electronic formats, preserving any underlying data. *Explanation 11.*
- **Promotes Affirmative Disclosure:** Legal and technical assistance should be provided through OOG to bring every agency into compliance with the affirmative disclosure requirements in D.C. Code § 2-536. *See below at 11.*
- **Delegates Administrative Appeals authority to the OOG:** Until the D.C. Council enacts legislation amending the current process for appealing an adverse FOIA determination, D.C. Code § 2-537(a), the authority vested in the mayor to adjudicate FOIA administrative appeals will be delegated to the OOG, with commensurate resources made available to the Office through reprogramming and/or temporary reassignment of staff. *See below at 12.*
- **Directs agency compliance with OOG rulings in administrative appeals:** When the OOG has issued an opinion in an administrative appeal that is adverse to the agency's position, the agency shall comply with the ruling as it would if the ruling had been issued by the mayor. *See below at 12.*
- **Requires agencies to seek counsel from OOG when withholding:** When agencies consider withholding records responsive to FOIA requests, they should be directed to seek guidance from the OOG.
- **Initiates a mediation program:** A FOIA mediation program designed to resolve disputes without resort to formal administrative or judicial process should be created. *See below at 12.*
- **Designates the OOG as a key participant records management:** The OOG should be involved in the creation and updating of records management policies, procedures and systems to ensure that they are designed to facilitate public access to information. *See below at 12.*
- **Directs the OOG to make recommendations regarding a fee schedule:** The OOG should make recommendations within 180 days concerning establishment of a government-wide fee schedule for processing FOIA requests, categories of requesters for whom fees should be waived, and categories of information for which fees should be reduced or waived because disclosure is in the public interest. *See below at 12.*
- **Commits to amending the FOIA and OMA via legislation:** There should be a mayoral commitment to submit to the D.C. Council legislation to amend and strengthen the FOIA and the OMA.

II. The Office of Open Government

The OOG is tasked with numerous duties, including ensuring that the D.C. Council and more than 150 boards and commissions comply with the OMA. The Office needs a significant boost in resources to carry out its mission, including an enhanced role with regard to the FOIA and to provide annual public reporting.

We specifically recommend:

- **Increased funding:** Increase the FY2016 budget to employ, at a minimum, three attorneys, one paralegal and an office assistant in addition to existing staff, and to make that appropriation as a separate line item in the D.C. budget, distinct from the budget for the Board of Ethics and Government Accountability. *See below at 15.*
- **Giving the OOG explicit authority over FOIA:** To fulfill its mandate to advance government transparency, the OOG needs explicit authority with regard to FOIA, including, but not limited to, the ability to decide administrative appeals, establish an informal mediation process, issue advisory opinions, initiate or join litigation to enforce or defend its rulings, and file *amicus* briefs. *See below at 15.*
- **Annual reporting to the mayor and the D.C. Council:** The OOG should begin issuing an annual report to the mayor and the Council. The report would set forth the Office's achievements and goals; evaluate government-wide compliance with the OMA (and FOIA, when that statute is amended); assess how the new open government database (FOIAXpress) is working; and make recommendations for the coming year.
- **Expanded leadership beyond FOIA and Open Meetings:** The OOG's mandate should be expanded to encompass other aspects of open government beyond FOIA and the OMA, particularly open information initiatives, such as open data. In expanding its staff, the Office should recruit individuals who can educate government personnel and the community about open data, and facilitate implementation of open data projects under the 2014 open data directive. *See below at 19.*

III. The Freedom of Information Act

To implement the transparency initiative, we recommend that the new mayor submit legislation to the D.C. Council to amend and strengthen the District's Freedom of Information Act by including provisions which:

- **Gives the OOG explicit authority over FOIA:** Clearly establish the role of the OOG, rather than the Executive Office of the Mayor, in implementing and enforcing the statute. *See below at 15.*
- **Amend D.C. Code §§ 2-537(a) and (a-1) to give the OOG jurisdiction over administrative appeals;**
- **Strengthen attorney fees:** Clarify that a requester who challenges an agency denial in Superior Court is entitled to attorney fees if, after a lawsuit is filed, the agency has released the records or changed its position, as well as when the court has adjudicated the issue in the requester's favor, in line with the federal model. *See below at 13.*
- **Establish a government-wide FOIA fee schedule:** Amend D.C. Code §§ 2-532(b) and (b-1) to establish a government-wide FOIA fee schedule, clarifying classes of requesters to which fee waiver and benefit provisions apply. *See below at 12, 13.*
- **Broaden affirmative disclosure:** The scope of affirmative disclosure under D.C. Code § 2-536(a)(3), (4) and (5) should be expanded to automatically place in agency online reading rooms records and data that are frequently requested or otherwise in the public interest, FOIA requests and administrative rulings related to them.

- **Declare that disclosure is the default:** Strengthen the Preamble’s statement that disclosure is the default position by including language such as: “The law does not authorize withholding of information or limit the availability of records to the public, except as specifically stated within.” *See below at 11.*
- **Make reporting requirements consistent with the federal FOIA.**
- **Define and expand the OOG’s duties and authority under FOI:** OOG’s duties should be expanded to include adjudication of administrative appeals, FOIA mediation, investigation of complaints, issuance of advisory and binding opinions, and defending and enforcing OOG rulings through litigation in Superior Court.
- **Strengthen sanctions for noncompliance:** Increase the incentive for agencies and officials to comply by voiding search and duplication fees in cases of delay (as is the case under the federal FOIA), and imposing disciplinary sanctions for arbitrary, capricious non-disclosure. *See below at 14.*
- **Require fee waivers in certain situations:** Fee waivers should be required when the cost of billing and collection would exceed the applicable fee (as under the federal FOIA).
- **Direct expedited court treatment of FOIA litigation:** Expedited litigation is utilized in some states’ statutes and court rules and should be considered here.
- **Amend the Board of Ethics and Government Accountability’s enabling statute where necessary to implement these FOIA amendments.**

IV. The Open Meetings Act

The OMA is strong on paper but too often fails to deliver what is promised. There are gaps in the law’s application and shortcomings in its enforcement. We recommend that the new mayor submit legislation to the D.C. Council including the following provisions to improve implementation and transparency, and we further recommend that the Council engage in vigorous oversight of public bodies’ compliance with the law.

Near-term action

- **Require ANCs and committees of public bodies to comply with the OMA:** Include Advisory Neighborhood Commissions (ANCs) among public bodies covered by the OMA and consider whether to require compliance by committees and special task forces of covered bodies. *See below at 17.*
- **Provide a private right of action:** This will allow D.C. residents to challenge OMA violations in Superior Court to augment the OOG’s enforcement power. *See below at 17.*
- **Codify the OOG’s authority and procedures for adjudicating complaints that public bodies violated the OMA.** *See below at 17.*
- **Explicitly permit recording of public body proceedings:** Individuals present should be allowed to make video and/or audio recordings of all meetings. *See below at 18.*

Additional steps to strengthen Open Meetings Act compliance

In addition to legislation to strengthen the OMA, the new mayor should work with leaders of public bodies, Councilmembers and the community to develop resources and procedures that improve implementation of open meetings provisions. This includes harnessing technology to facilitate transparency and participation.

- **Meeting records:** All public records related to open meetings, such as meeting notices, agendas, minutes, transcripts, votes taken and submitted materials should be posted online in human- and machine-readable formats where the public can easily access them. *See below at 18.*

- **Streaming:** The mayor should provide funding and technical resources to livestream/webcast meetings of boards and commission to facilitate real-time public participation in government and searching archived meeting records.
- **ANC portal:** Launch a single portal for ANC documents, such as minutes, votes and financial reports, to help citizens engage with the ANC system and help ANC commissioners reach their constituents.
- **Unified calendar:** Publish a single, unified calendar for public government meetings and events.

V. Open Data

Earlier this year Mayor Vincent Gray issued the 2014 Transparency and Open Data Directive directing the Chief Technology Officer to serve as, or designate, the District's first Chief Data Officer, and creating the Open Government Advisory Group. We recommend that the new mayor move forward on elements of that Directive and build in performance indicators as a necessary part of developing capacity to implement technology policy and identify opportunities for improved data management. We have several suggestions for improvements in other areas related to open data.

Transparency and Open Data Directive

We recommend that the new mayor prioritize implementation of the following:

- **Implement the Open Government Advisory Group:** The Open Data Directive created this group and Mayor Gray appointed it in late October. The new mayor should adopt this initiative. *See below at 19.*
- **Empower the Chief Data Officer:** The new position of Chief Data Officer must have the mayor's backing to achieve the goals outlined here and in the Directive. *See below at 19.*
- **Develop benchmarks on open data for the Office of the Chief Technology Officer:** The Office of the Chief Technology Officer's (OCTO) FY2015 Performance Plan and Report should include a section dedicated to the District's open data initiative that measures OCTO's performance of the following open government and open data objectives: transparency, government efficiency, civic participation, policy outcomes, access, technology and innovation, and accountability. *See below at 19.*

Other open data recommendations

- **Create an Open Innovation Fund:** The District should reserve funding for civic-oriented open data technology projects and engage in public/private, regional, academic, philanthropic, non-profit, and community organization partnerships to implement them.
- **Seek community views when evaluating open data tech projects:** To ensure the success of data-driven city services the mayor should work with the Advisory Group and public stakeholders to identify and prioritize access to high-value datasets.
- **Create an Open Data Roadmap:** Transparency and open government is an ongoing process. The new practices established by the Open Data Directive should be continued through regular review and updates in consultation with the Advisory Group and with the community. *See below at 19.*

- *Create new, dynamic open data engagement platforms: A robust technology ecosystem requires feedback and collaboration between constituents and their government. Agencies should proactively facilitate programming, platforms, and strategies for engaging the public writ large, and relevant stakeholders in ongoing and emerging open data and open government efforts. The District can learn from best practice examples from around the country for a variety of vital, community-driven initiatives. See below at 21.*

VI. Closing

We look forward to working collaboratively with your Administration in the coming years to ensure that open government remains a priority and a central component of the D.C government.
