



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. *See below at 11.*
- **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. *See below at 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.

Appendix A

Expanded explanations and background which may be useful in understanding and implementing these recommendations.

I. Mayor's Transparency Initiative

Although the proposed FOIA legislation can, and should, strengthen the role of the Office of Open Government (OOG) on overseeing FOIA, the mayor can take numerous concrete, immediate steps that would demonstrate the new administration's commitment to open government:

Declare that disclosure is the default: D.C. Code § 2-531 states:

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. To that end, provisions of this subchapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

Experience at the federal and state levels, here and nationwide, demonstrates the need for a top-down approach to implement that policy and overcome a culture of non-disclosure in the District.

Including transparency metrics among criteria for assessing overall performance: The goals of the Mayor's Transparency Initiative are improved public understanding, civic engagement, and government responsiveness to community needs; and reductions in associated labor and financial burdens on public bodies. Compliance with these directives will reduce the number of information requests, processing time per request, and potential litigation costs.

Fulfills the requester's preference with regard to record format: When public bodies predominantly maintained paper record systems, the format in which they disclosed records was not a significant issue. As government increasingly collects and maintains records electronically, the format in which it discloses records grows in importance. Requesters frequently seek access to government records to analyze policy and performance issues. If a public body refuses to provide responsive records in machine-readable formats, it may thwart effective analysis or make the cost of analyzing data prohibitive.

Promotes Affirmative Disclosure: Technological innovations and new forms of electronic record-keeping and communication create opportunities for public access to governmental records but are not without challenges. When called to task for failing to comply with open government laws, agency heads often argue that they lack personnel, technical expertise and funding to comply. Working together, the OOG and OCTO can provide technical resources and training to help public bodies overcome these obstacles. The transition from paper to electronic record-keeping systems presents opportunities to further reduce the burden of complying with

open government laws. A simple good-government step is to ensure that the OOG has a seat at the table when the District considers technology upgrades that implicate public records, so that access issues can be raised at the front end, when the cost of resolving those issues is the smallest. Failure to consider these open government issues during system development can necessitate expensive remediation and prompt FOIA litigation.

Delegating Administrative Appeals authority to the OOG: The mayor should delegate her authority under FOIA “to review the public record to determine whether it may be withheld from public inspection.” D.C. Code § 2-537(a). This is permissible under the D.C. Code. “The Mayor may delegate any of his functions . . . to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such functions to subordinates under his jurisdiction.” D.C. Code § 1-204.22(6). Indeed, this authority over FOIA administrative appeals has been delegated in the past to the General Counsel. *See Mayor’s Order 2005-98*. Vesting the OOG with the authority to decide FOIA appeals would send a powerful message about the Office’s role in deciding open government issues, but also benefit the mayor’s office by shifting that at-times controversial function to an independent agency.

Directing agency compliance with OOG rulings in administrative appeals: Although by statute OOG opinions are “advisory,” D.C. Code. § 2-593, the mayor should direct government agencies to comply with OOG interpretations of FOIA issues. This would reduce disparities in FOIA results between agencies (and within the same agency) and contribute to a more uniform application of FOIA across the government. As part of the same OOG portfolio — establishing a voice on FOIA issues in the District — the Office should be encouraged in appropriate cases to file *amicus* briefs in litigated FOIA matters, either in support of requesters or in support of the District as may be appropriate.

Initiating a mediation program: This model has worked well at the federal level in the [Office of Government Information Services](#) since 2009. That office, with a small staff, provides non-binding mediation to resolve disputes between FOIA requesters and federal agencies. States, including Pennsylvania, Connecticut, Florida and Illinois, have similar mediation programs. This approach could significantly reduce the number of administrative and judicial appeals.

Directing the OOG to make recommendations regarding a fee schedule: All too often, search, duplication and review fees authorized by D.C. Code § 2-532 (b-1) are imposed in an inconsistent manner both within and among agencies. The mayor should adopt a more uniform approach to calculating fees, a broader fee-waiver provision, and allocating fees collected from requesters to offset the cost of open government training. The mayor should consider changes to existing law regarding recovery of attorney fees and imposing sanctions for non-compliance:

- To ensure greater uniformity of fees charged for processing FOIA requests, the OOG should be authorized to set a schedule of fees applicable to all agencies.
- The OOG-established fee schedule shall be posted on each agency’s website along with instructions for making FOIA requests.

- The fee-waiver provision of D.C. Code § 2-532(b), which provides that public bodies may furnish documents without charge or at a reduced charge “in the public interest because furnishing the information can be considered as primarily benefiting the general public,” should be expanded to read:

Documents shall be furnished without charge or at a reduced charge where a public body, the Mayor, the Office of Open Government, or a court determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public, a community, or a neighborhood. Furnishing information pursuant to D.C. FOIA requests made by representatives of the news media shall be presumed to be in the public interest as primarily benefiting the general public.

- Adopt the definition of “representative of the news media” in 5 U.S.C. § 552(a)(4)(A)(ii), which includes:

any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

- **Revenue from FOIA compliance:** All fees collected under FOIA should be maintained in a segregated account and designated for training of FOIA officers and operation of the OOG.
- **Strengthen attorney fees:** The District asserts in litigation that plaintiffs are entitled to recover “attorney fees and other costs of litigation” under D.C. Code § 2-537(c) only if a court orders the production of withheld records. If the District releases previously withheld records after litigation commences but before a court orders disclosure, the District takes the position that the plaintiff is not entitled to fees. Section 2-537 should be amended to add language from the federal FOIA 5 U.S.C. § 552(a)(4)(E)(ii), modified to conform to the D.C. Code language as follows:

“For purposes of this subsection, a person prevails in whole or in part in such suit if the requested information has been disclosed either through a judicial order, an enforceable written agreement or consent decree, or a voluntary or unilateral change in position by the agency, if the complainant’s claim is not insubstantial.”

- **Strengthen sanctions for noncompliance:** D.C. Code § 2-537(d) provides that a “person who commits an arbitrary or capricious violation” of FOIA is guilty of a misdemeanor subject to a fine not to exceed \$100. This provision has never been enforced. A two-part sanction would likely be more effective: administrative penalties for arbitrary or capricious withholding and criminal penalties for willful withholding, with the requester able to obtain discovery in a FOIA action to determine willfulness. For example, § 2-537(d) might be replaced as follows:

(d)(i) If the court, in litigation under this subchapter seeking the release of information, or if the Office of Open Government determines that an employee of any public body has failed to comply with the provisions of the subchapter in an arbitrary or capricious manner, the matter shall be referred to the head of that public body for the initiation of an administrative sanctions proceeding that may result in reprimand, suspension, or termination of the employee based upon the degree of egregiousness of the noncompliance.

(ii) Any person who is responsible for the willful withholding of records requested under this subchapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.

(iii) In an action brought to require disclosure of information under this subchapter, the court shall, upon motion by the plaintiff based upon a reasonable showing that the person responsible for withholding acted willfully, allow discovery of facts relevant to the determination of the willfulness of such action. Should the court determine that the withholding was willful, it shall refer the matter to the D.C. Attorney General for prosecution under clause (ii) of this subsection.

II. Office of Open Government

Increased funding: The Office’s important responsibilities include education and training. Initiatives proposed above, such as directing agencies to comply with OOG interpretations of FOIA, have no direct financial cost. Others, such as including the OOG in technological decision-making, would involve current expenditures for staff time to achieve significant savings down the road in avoided remediation and litigation. Shifting the resolution of FOIA administrative appeals to OOG — a key part of empowering the OOG on open records issues — principally involves reallocating resources from the mayor’s office. The same number of administrative appeals would be decided, but the OOG, not the general counsel, would make the decisions. Development of a mediation program, requiring an up-front investment, could reduce the number of contested FOIA matters and pay dividends in the future.

When the D.C. Council enacted legislation in 2010 creating the OOG and primarily making it responsible for implementing the OMA, it anticipated an annual operating budget of \$472,000. Each year since then it has cut the Office’s appropriation — allocating only about \$300,000 in FY15. That funding is insufficient to employ even one attorney in addition to the director.

Gives the OOG explicit authority over FOIA: In 2009 Pennsylvania launched the Pennsylvania Office of Open Records, with a [mission](#) “to enforce the state’s Right-to-Know law and to serve as a resource for citizens, public officials and members of the media in obtaining public records of their government.” The Pennsylvania Office has become a key voice on the state’s open records law by engaging in all the activities we recommend. About 40 years ago, Connecticut established a state [Freedom of Information Commission](#), with a staff of nine lawyers, responsible for enforcing state open government laws as they apply to state agencies and the governments of 169 municipalities. The OOG should have similar authority.

III. FOIA

The last major revision of the D.C. Freedom of Information Act was in 2000. Councilmember Cheh introduced legislation in 2010 that would have made major improvements in the statute and would have assigned the OOG responsibility for oversight and enforcement. Although she withdrew that bill in December 2010, she reintroduced it the following year. Councilmember Bowser introduced a bill in 2012 that would have made additional improvements and would have established the OOG's authority to investigate and adjudicate FOIA complaints. Many of the FOIA-related recommendations in this document are derived from those bills. To a large extent, the underlying rationales are stated above, and will not be repeated here.

IV. Open Meetings Act

Near-term changes:

Require ANC's and committees of public bodies to comply with the OMA: In the last Council period Councilmembers Cheh and Grosso sponsored legislation to make ANC's more transparent (Bill 20-471). But that bill, which would have amended the ANC enabling statute, did not go far enough. The new mayor should propose legislation to require ANC's, like all other elected and appointed bodies, to comply with the OMA. Despite the blanket exemption that the D.C. Council created in 2010, several ANC's conduct their business in accordance with the OMA and live-stream their meetings. Other ANC's have chosen not to conduct their business in the open, and have been sued over their lack of transparency or faced criticism in the communities they serve.

Other elected and appointed public bodies must comply with the OMA, but committees of those bodies do not. In large measure, the decision in 2010 to exclude committees arose from the Council's concern about having to give notice every time its members gather in small groups to discuss important issues. But the D.C. Council, using its rules, sets limits on how the Open Meetings Act applies to itself. Boards, commissions and task forces are unlike the D.C. Council. Their members do not all work in one building most business days and in many instances the real work of those public bodies is done in committee.

A large task force created in 2013 to make recommendations for redeveloping the Walter Reed site illustrates why committees should be covered. This task force has held public meetings when it convened as a whole. But committees studying specific aspects of the project often have excluded neighborhood residents from meetings with invited guests, some of whom reportedly stood to benefit from future task force recommendations. Even if committee members' intentions were honorable, the lack of transparency undoubtedly breeds suspicion in the community. Residents may never learn who was present, what was discussed, what options were on the table, or why one option was chosen over another.

Requiring committees to comply with the statute would not impose a large burden on them. On the other hand, letting the public in would result in enormous benefits in community trust.

Provide a private right of action to challenge OMA violations in Superior Court: Only the OOG can initiate litigation to enforce the OMA. But with its current funding the Office is incapable of fulfilling that role. D.C. citizens must have the right to challenge violations of the OMA. Open government and transparency advocates repeatedly stressed the importance of a private right of action to the Council during the 2010 debate over OMA amendments. Citing concerns about a proliferation of meritless lawsuits, the D.C. Council refused to create a private right of action. The majority of other jurisdictions allow such actions and, to the D.C. Council's point, courts have traditionally been sufficiently capable at weeding out meritless lawsuits for all types of claims.

Codify the OOG's authority and procedures for adjudicating OMA complaints: Legislation should give the OOG authority to investigate and hear complaints that public bodies violated the OMA. It should direct the OOG to establish a formal, binding process for reviewing and adjudicating challenges to meeting closures and other violations. The administrative appeal

process, is not a substitute for a private right of action, but should be structured to provide a relatively fast, inexpensive alternative to filing suit in the Superior Court.

Explicitly permit recording of public body proceedings: Any individuals present at a meeting should be allowed to make video and/or audio recordings of the proceedings. Allowing recording can bolster transparency and accountability on the part of all present, and help ensure accuracy in recounting what happened at the meeting.

Additional changes:

Affirmatively require publication of meeting records: Public bodies should be required to post on their websites documents, including, but not limited to, meeting notices, agendas, minutes, transcripts, votes, written comments, and other submitted materials pertaining to the meeting. For example, the Board of Ethics and Government Accountability, the Zoning Commission and Board of Zoning Adjustment list upcoming meetings in a machine-readable format on the Web. The OOG should encourage other public bodies to take these steps. The OMA currently requires public bodies to publish meeting notices on their websites, D.C. Code § 2-575(2)(B), and the FOIA requires that minutes be posted. D.C. Code § 2-536(a)(7). A recent D.C. Open Government Coalition audit of 25 public bodies found that a full record (i.e. a recording or transcript) was posted online by only seven of the 25. Seven more provided access to a full record at their offices and 10 of these public bodies posted minutes that were not sufficiently detailed to constitute a full record. We recommend developing standard operating procedures to ensure that District boards and commissions maximize transparency and participation by presenting the greatest amount of information in the most accessible manner possible.

V. The Transparency and Open Data Directive

Implement the Open Government Advisory Group: Mayor Gray, in late October, appointed the Open Government Advisory Group, and the incoming administration should empower it to carry out its mission under the Open Government Directive.

Empower the Chief Data Officer and OOG: The mayor should direct open data efforts city-wide to look to the Chief Data Officer and OOG for leadership. The mayor should direct public bodies' Open Government Coordinators to coordinate with the Chief Data Officer and OOG on the future of their open data programs, and on the future of data.dc.gov. The mayor should propose legislation to institutionalize these practices.

Develop benchmarks for implementing and maintaining open data access: The specific benchmarks should be:

- **Transparency:** Information on government activities and decisions is open, comprehensive, timely, freely available, and in formats meeting basic open data standards (e.g. raw data, machine readability).
- **Citizen participation:** The degree to which open data availability mobilizes citizens to engage in public debate, provide input and make contributions that lead to more responsive, innovative and effective governance.
- **Government efficiency:** Measure cost savings, reduced error rates and improved response times for key government services as a result of open data.
- **Policy outcomes:** Measure success of the District's policy goals through application of open data programs.
- **Access:** To the degree that meaningful access to open data depends on high-speed Internet connections and data literacy skills, promote wider access to and greater competition in the broadband Internet market, additional government-owned Internet access points and backbone, and data literacy training.
- **Accountability:** Measure whether existing open data-related rules, regulations and mechanisms require government actors to comply with the law, justify their decisions, respond to criticism and meet performance objectives.

Other open data recommendations

Create an Open Data Roadmap: The Directive calls for publication of high-valued datasets. Code for D.C., an all-volunteer organization that works to solve local issues and increase civic participation, listed a number of high-valued datasets in its December 13, 2013 response to Mayor Gray's request for feedback on his open government plan:

- **District finances and spending data:** Release more and better data on contracts and procurement, the District budget and budget utilization to help the public — especially journalists — fulfill the important role of holding government accountable. Use the CSV or JSON formats for this data. By way of example, each year the District should publish aggregate data on the student population of each District school, especially home neighborhood and attrition rates, to help District parents make more informed decisions about school choice.
- **District laws:** Publish the D.C. Register in a form that can be searched easily or reused to improve access to the District’s laws, and improve LIMS, the Council’s legislative portal, to be more comprehensive, timely, and structured in machine-readable formats.

The mayor should report biennially the current status of and future plans for open data. The roadmap or action plan should be created in consultation with stakeholders inside and outside of government (see engagement recommendations below). The roadmap should address (1) the status of existing open government initiatives, (2) efforts to improve data quality (especially reducing the use of PDFs for data), (3) data lifecycle management, (4) agencies’ human resource needs, (5) reforms at the Office of Public Records and the Office of the Chief Technology Officer to harmonize the implementation of public access to public records and open data, (6) whether statutory changes are necessary to achieve open government goals, (7) access to high valued open data in the legislative and executive branches of the District government, and (8) performance metrics.

The roadmap should direct creation of an “enterprise data inventory” identifying all datasets held by the District government, including those that have not yet been or cannot be released to the public. The inventory should use a common data schema across all city agencies. Where a dataset or a portion of a dataset cannot be made public, a citation to the legal basis for withholding the dataset should be included in the inventory. An enterprise data inventory will inform future open data roadmaps and create transparency by informing records requests. (See the White House’s [Project Open Data](#) and the U.S. DOT [enterprise data inventory plan](#)).

Finally, the roadmap should update the 2014 Transparency and Open Data Directive to ensure it implements well-established principles of open data. For instance, the Directive’s requirements for open licensing, attribution and terms of service are not in agreement with the community’s understanding of open data as “license-free.” We have summarized the most widely accepted principles in the list below, drawing on specific recommendations from non-government organizations, including the [Open Government Working Group](#), the [Open Knowledge Foundation](#), and the [Sunlight Foundation](#). The principles include:

- Information is not meaningfully public if it is not available on the Internet for free.
- Published data should be “primary” wherever possible. Primary data is data as collected at the source, with the finest possible level of granularity, rather than in aggregate or redacted forms.

- Data should be made available as quickly and as often as necessary to preserve its value, preferably in real time.
- Data should be available to the widest range of users for the widest range of purposes. It should be available to anyone, with no requirement of registration.
- Data should be in structured data formats to allow automated analysis and reuse.
- Data should be in open formats (formats over which no entity has exclusive control), and it should be [license-free](#), meaning there is no license, copyright, terms of use, or other restriction on use or republication.
- Data should be made available at a stable Internet location indefinitely.
- Data should be published in accordance with public input. The public is in the best position to determine what data has the highest value and how it should be published to maximize its usability.
- Not only should the data be open, but the process of creating the data should be transparent.
- Data should be accompanied by rich “metadata” describing its provenance, frequency of publication, known integrity issues and abnormalities, as well as a point of contact who understands the dataset.

Create New, Dynamic Open Data Engagement Platforms: While social media and other electronic communications, such as email listservs, have special potential to target communications to those who most need specific information, care must be taken in how technology is used to meaningfully gather public input. Code for D.C. recommended in feedback to Mayor Gray that the District create a robust new community feedback strategy, adhering to the following principles:

- Do not rely too heavily on online communications when seeking feedback and allocating resources.
- Make feedback mechanisms more transparent.
- Make engagement more timely.
- Create standardized methods and expectations for responses to community feedback.
- Provide separate “marketing” and “information” listservs.
- Reduce the use of surveys that do not have specific, measurable outcomes.

Appendix B

These recommendations are the product of the work of several hardworking people representing a cross-section of the city. In addition to DCOGC board members, we are pleased to recognize individuals from inside and outside government, with professional and personal interests ranging from transparency to technology to journalism to community engagement and beyond.

The D.C. Open Government Coalition wishes to thank all those who participated in the development of this Action Plan:

DCOGC board members

Kevin M. Goldberg, President
Corinna Zarek, Vice President
Fritz Mulhauser, Secretary
William Choyke, Treasurer
Robert Becker
Chad Bowman
Robert Vinson Brannum

James A. McLaughlin
Kathy Patterson
Thomas Susman
John C. Watson

Geralda Jean, Executive Director

Others

Martin Austermuhle
Lalita Clozel
Matthew Fraidin
David P. Frankel
Alisha Green
Emily Grannis
Justin Grimes

Traci Hughes
Laurenellen McCann
Kel McClanahan
Andrew Mirsky
Matthew Pollack
Matt Rumsey
Matthew Schafer

Ewan Simpson
Rebecca Snyder
Josh Tauberer
Adam Tope
Sean Vitka
Rebecca Williams
David Zvenyach

Special thanks to the law firm of Ropes and Gray LLP, which provides pro bono legal counsel to the DCOGC, with special appreciation to attorneys Molly Moore and David Nasse and paralegal Daisy Joo.