Testimony of the  
D.C. Open Government Coalition 

By 

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President  

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Committee of the Whole and the 
Committee on Education 
Of the 
Council of the District of Columbia 

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Chairman Mendelson, Chairman Grosso and members of the committees. I am Thomas Susman, president of the D.C. Open Government Coalition and a resident of Ward 4. I appreciate the opportunity to testify today on behalf of the Coalition and to offer our comments and suggestions regarding charter school transparency as proposed by Councilmember Allen’s bill. 

I want to stress up front that our Coalition has great respect for charter schools and supports their independence and autonomy when it comes to education functions. We applaud the dedication of charter school teachers, administrators, and board members. However, because public funds are the foundation for charter school education, parents, teachers, taxpayers, and the media should have the same rights of access to records from charter schools as they do from public schools in D.C. 

In the June hearings on Councilmember Grosso’s bill and today, witnesses with diverse perspectives have provided compelling arguments and examples for greater transparency at the school and Local Education Agency (LEA) level, so I won’t take time here to repeat the reasons for applying the DC Freedom of Information Act (FOIA) and Open Meetings Act (OMA) to public charter schools. 

My testimony today will not focus on why FOIA should apply to charter schools. Instead, I will try to respond to arguments of those who oppose that objective and – perhaps more
important – suggest amendments to the legislation to accommodate some of their legitimate concerns. Let me run through those arguments and my responses and suggestions:

**FOIA Places Too Heavy a Burden on Staff and Diverts Resources**

I’ll start with a not-so-surprising admission: Yes, FOIA could add some work to the staff in finding and reviewing documents responsive to FOIA requests. Complying with any law almost inevitably comes with some cost. But the work load is not likely to be great, and the system can be structured to minimize the burden on individual schools. More to the point: that burden is more than offset by the benefits transparency provides.

- As to the size of the burden, experience of charter schools in other jurisdictions and of D.C. public schools suggests there will be no tidal wave of requests that will drown charters. Additionally, the bill would track the volume of FOIA requests to facilitate adjustments should predictions prove wrong.
- We all know that due process in our court system, accessibility for the disabled, assurance of equal opportunity in employment and housing, and similar protections and rights all carry costs, and sometimes not insignificant ones. But they are broadly accepted because they support values fundamental to our society.
- It is notable that every state and D.C., plus over 120 countries around the world, have enforceable access-to-information laws. This again suggests that, even recognizing the costs entailed, the benefits to the public and to society are worth it.
- The testimony by lawyers in big firms who draw on their experience in hard-fought, complex federal FOIA litigation is inapposite. D.C. has an efficient and fair administrative appeals process that has resulted in very little litigation, and the courts are well-equipped to manage disputes over large volumes of records such that agency work is not disrupted.

So we shouldn’t throw up our hands and say “no” simply because FOIA entails some additional work. We have two suggestions: First, to minimize the burdens and diversion of resources at the school level, DCOGC proposes that the legislation require that FOIA requests go initially to the Public Charter School Board. The Board and its staff will be responsible for working with the schools and LEAs for search and review procedures that ensure responsive information for requesters. This will relieve the schools of substantial administrative burdens. And the final decision, which may involve questions of law, will be made by a public body already subject to the DC FOIA, with appeals and enforcement already provided in the law.

Second, we recommend that just as resources are provided to public schools and the public school system to handle FOIA requests, and just as resources are provided to all schools in D.C. to comply with the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and similar laws, so also should some additional resources be available for charter schools to handle any new burdens imposed by FOIA. This need not be included in the legislation; only experience will tell what the additional resource needs, if any, will be.
Charter School Administrators Are Not Equipped to Implement the FOIA

As I noted above, we recommend that public charter schools provide the same level of transparency as D.C. public schools. Our proposed amendments would establish a procedure for accomplishing this goal that closely parallels procedures employed by DCPS for decades. In the public school system, a requester seeking information from or about a particular school makes the request to DCPS, which enlists personnel at the school to locate responsive records. Once the records are located, DCPS officials review the records and make disclosure decisions. We recognize that the PCSB, charter schools, and LEAs are not part of the same governmental entity, as are DCPS and public schools. But this system works in other jurisdictions where government contractors and nongovernmental entities carrying out governmental functions with public funds are subject to freedom-of-information laws, and it can work here as well.

We thus propose that the PCSB handle FOIA requests for charter school and LEA information. It would receive FOIA requests and ask the schools to provide responsive records. The Board’s expertise and experience will be brought to bear on handling of requests.

We also recommend that this legislation authorize the Office of Open Government to assist charter schools, LEAs, and the PCSB by providing training and advice on best practices for handling FOIA requests.

Confidential Commercial and Financial Information, as Well as Student Privacy, Must be Safeguarded

Confidential commercial and financial information is already specifically protected by the FOIA and would continue to be in the charter realm. The exemptions in DC’s FOIA, based on similar provisions in the federal statute, protect both the decision-making process of the institutions and the confidentiality interests of those doing business with them.

The Family Educational Rights and Privacy Act, a federal statute protecting the privacy of student education records, applies to all schools receiving funds under any U.S. Department of Education program. That statute applies equally to D.C. charter and public schools to prevent student records from being disclosed under the DC FOIA.

There Are Concerns About Disclosure of Teachers’ and Staffs’ Salaries.

The Coalition recognizes that salary information is always a sensitive topic. But across the country governments at all levels make public the salaries of employees paid by taxpayer dollars. Salary information for public school employees is public, and there’s good reason to treat charters similarly. The obvious benefits – beyond simply knowing how our public funds are spent – include promoting equity and combatting favoritism and discrimination.

Even so, it would be quite easy to accommodate the interest of charter school administrators in addressing possible disparities or inequities before public disclosure: a specific provision could be added to the legislation delaying for an additional period of time application
of the FOIA to salaries, so that the individual schools can have time to make any adjustments deemed appropriate.

Conclusion

In the end, applying the FOIA and OMA to this sector enhances charter school transparency and benefits these important schools as well. Transparency laws bring greater accountability to the institutions to which they apply, generating higher levels of public trust and enhanced public understanding of how tax dollars are used. By increasing public scrutiny, these laws reduce corruption, mismanagement, and waste. We support the legislation and the expectation it embodies that transparency will benefit students, teachers, administrators, regulators, and ultimately taxpayers.

I appreciate the opportunity to testify today on behalf of the D.C. Open Government Coalition. I urge you to apply the OMA and FOIA to public charter schools, and to adopt our proposals for amending the pending legislation. They will facilitate more efficient handling of FOIA requests, ease the potential burden on school administrators, and take advantage of the assistance that the Office of Open Government can offer. DCOGC will be pleased to work with you to develop specific language to achieve these objectives.

D.C. Open Government Coalition

The D.C. Open Government Coalition, a 501(c)(3) organization, seeks to enhance the public’s access to government information and ensure the transparency of government operations of the District of Columbia. We believe that transparency promotes civic engagement and is critical to responsive and accountable government. We strive to improve the processes by which the public gains access to government records and proceedings, and to educate the public and government officials about the principles and benefits of open government in a democratic society. Visit our website at www.dcogc.org.