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 **Testimony of the**

 **D.C. Open Government Coalition**

by

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Co-Chair, Coalition Legal Committee

before the

District of Columbia Council

on

Performance Oversight - Office of the Chief Technology Office

February 28, 2019

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 Thank you for the opportunity to offer comments on the Office of the Chief Technology Officer (OCTO).

 The D.C. Open Government Coalition is a citizens’ group established in 2009 to enhance public access to information about actions of the government and to ensure the transparency of such activities of the District of Columbia. 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 (including data) and proceedings, and to educate the public and government officials about the principles and benefits of open government in a democratic society.

 We have worked with the interim chief usefully on open data issues.

 And the mayor’s nomination last month of a permanent head of the office is welcome. A permanent chief can lead initiatives for efficiency and effectiveness that our testimony will show are needed, especially in areas where technology is the 21st century way to deliver a needed service to thousands of citizens.

Our testimony today centers on one public-facing project—the District’s web portal used by the public to request records under the Freedom of Information Act (FOIA), adopted in 2014. We ask OCTO to review the portal in light of many problems and issues and make plans for improvement with the help of users. Our Coalition would be happy to work with OCTO in such a review, drawing on years of using the system, advising citizen users who contact us, and comparing notes with coalitions like ours nationwide who all are knowledgeable about best practices.

We describe the portal briefly, then turn to issues in its design and performance and limited systematic efforts so far to improve it.

1. **The Portal.**

The portal is called FOIAXpress, the trademarked name of the software product developed by a vendor in Maryland called AINS. It has been adopted for online records access applications in federal agencies, Canadian provinces and other governments. See: <https://www.ains.com/foiaxpress/>. The DC site is at: <https://foia-dc.gov/>. The developer says it “digitizes and automates the full lifecycle of FOIA from inquiry to delivery and archiving. That’s why it’s the leading eFOIA solution in North America.”

 The D.C. FOIA is the core open government statute. It declares a policy of openness and requires the government to provide citizens with public records of agencies upon request. (The D.C. Council must do the same but does not use the portal.) For requesters, the portal is intended to allow them to submit to a single website where they may be assigned a unique tracking number as each request is forwarded to the agency the requester identifies. Using that number, a user may later check in and find the status of the request. Appeals may be filed at the portal. An online reading room also accessed through the portal exists to hold released records of broader interest to make duplicative requests less likely. For agency staff, the software offers standardized ways to track the request from receipt to assignment for search (possibly in many different units), to collection of records and their review to identify segments to be withheld for one of a dozen or so reasons allowed in the law. Because the law includes uniform deadlines and rules all agencies must follow, such a system has obvious management advantages over individual agencies’ developing myriad different systems.

 The U.S. Government Accountability Office found FOIAXpress a useful tool when it reviewed FOIA processing at the mammoth U.S. Department of Homeland Security (the most requests in the federal government – 200,000 at the time of the review, and the biggest backlog).[[1]](#footnote-1)

1. **The problems with the portal and related system that show a review is needed.**

 The District’s experience with the software has been disappointing to a great many users. We know, because they ask our Coalition to find information, patch problems, and advocate for improvement. Ten thousand users in 2018 filed FOIA requests, and they deserve a D.C. government that cares to make that experience efficient and effective.

 We will detail specific concerns below, but our general points are simple: many problems, and no coherent management attention since the contract began a half-decade ago.

 It’s time to end this pattern, hence our request today: that the Council require OCTO to lead a top-level review of the FOIA request portal in time to affect the next contract decision, involving users, staff, and executive leadership, with close involvement of the Office of Open Government.

 Here are bullet points of problem areas (details on each are in an appendix):

* Incomplete agency coverage
* Software needlessly browser-specific
* Major functions useless (request status, reading room)
* Session on portal ends without warning or save-your-work
* Text box limits without opportunity to add page (fixed after years)
* Redaction assistance in the software appears unused by agencies
* System requires more work than needed of users filing an appeal
* Site is not readable and fully usable on mobile
* Message function not explained
* “Help” tab has only technical material about software, nothing for requesters.

Some of these are software design issues; some are D.C. government management and training issues; some we may misunderstand, and some may even be fixed. And no doubt there are more. And the fact remains: enough problems can be identified, along with history of inattention especially to the users, to support the case that serious, fresh attention is needed.

We know of one meeting in four years where users were asked to give feedback and help make the system better—and that session of EOM, OCTO and contractor staff last December was a first. Even then, the Office of Open Government was not present, just as we understand it had not been present during much of two years of back and forth among OCTO, the mayor’s office and others about what to do with the FOIAXpress contract.

1. **Conclusion**

The portal has been unsatisfactory within and outside D.C. government. And there has been no opportunity for the FOIA user public to be involved in proving feedback on the user experience that would have signaled the crying need for more detailed evaluation and serious improvement. As there are no forums for information sharing, we can’t say the degree of awareness in the executive branch of agencies’ problems with FOIAXpress. Major decisions (including whether or not to recompete the basic contract) have not involved all relevant sources of government expertise and also have not been transparent.

All this must end.

The FOIA request-processing system affects 10,000 users a year, and problems affect hardworking D.C. employees as well.

We request the committee ask the executive branch for a full review, with outside system design experts if needed, and timed to provide analysis and recommendations before the next contract. The review should include:

* user outreach effort to gather data,
* full review of the contract and the software use internally,
* review of the state of the art as the marketplace has no doubt expanded its offerings since FOIAXpress, especially including automated systems (machine learning) that can detect certain texts and flag for redaction.[[2]](#footnote-2)
* from all this input a plan to address all users’ concerns including evaluation of options of new inhouse development or recompeting, and the issues of transfer of existing data to any new system.

Our Coalition would be happy to assist in such a review and to draw on the expertise of our nationwide network of colleagues.

**Appendix**

**FOIAXpress Problem Area Details**

* **Incomplete agency coverage**. From the beginning there were problems when D.C. decided not to allow access to all agencies via the portal (technically, not spending the money to buy licenses for all agencies). A requester targeting an unlisted agency was on her own to find that agency web site, find the FOIA officer listing within that site and how to address that person directly (and without benefit of the request content guidelines on the portal). We understood funds were found later to purchase more licenses but still only 56 agencies are listed on the portal. Yet there are 77 in the mayor’s annual FOIA report for 2018. To be sure, some agencies receive few requests—18 with five or fewer in 2018. But why put requesters to those at a special disadvantage?
* **Software needlessly browser-specific**. Users early found the portal would not work properly with all browsers. Again, why limit access this way.
* **“Request status” is useless.** This column of the status report for a request has unhelpful information. For example, for most of the life of a request it shows only “in process,” sometimes for months as delay is common (about 40 percent took more than the 15-day statutory limit in 2018). Clearly staff are not being required to enter more frequent updates. To learn more, no link to a knowledgeable staffer is provided. Savvy requesters learned to ask the staff at Office of Open Government as they can look in the system and explain where a request may be in the queue and why. (Federal law, by contrast, requires each agency to have at least one “FOIA Requester Service Center” that must provide request status data including an estimated completion date.)
* **The “reading room” function has never been useful**. Agencies just don’t post. Two agencies with the most requests most years, MPD and DCRA, each have posted two items (total) in all the years of the portal. The FOI law requires records that are likely to become the subject of subsequent requests for substantially the same records to be posted. Yet, for example, records from the high-profile MPD officer-involved shooting of Terrence Sterling are not posted. The District’s Amazon HQ2 bid is not posted.
* **Session ends without warning or save-your-work**. The form to be completed for a request can take a while if needed text is not drafted in advance. The site has no general advice of the time needed (no “paperwork reduction” in D.C.?—which in the federal arena used to require time-burden be shown on every public form). The site has no early warning that sessions are timed and will end automatically with work unsaved. Nor is there a later warning when that point is near. All together, these mean work is often lost. Told of the problem, OCTO staff were certain the system had a warning. Then they checked with the vendor and learned it was a feature but had never been activated. And still there is today no warning on the site, so work disappears. How many other features have been inoperative and no one noticed?
* **Text box limits without opportunity to add page (fixed after years)**. Fee waivers have been often rejected by agencies for insufficient justification (the law has multiple criteria to be addressed by categories of users eligible for various types of waiver). Yet the text box for “reasons” for a waiver allows only 250 characters, with no signal one could attach a document with more. Our complaint surprised the staff who believed (incorrectly) there was such a box to check and a process to upload a text (as offered for the request description box). Now it’s been added. But no one had noticed.
* **Redaction assistance in the software appears unused**. Agency staff may use the FOIAXpress software to display scanned pages for review and redaction. A key step is automated, when the operator hits the appropriate single key or mouse-click and the program adds legal citations for the statutory exemptions being applied. Courts require this, so that requesters considering appeal may understand the government’s reasons. Yet redaction is rarely done using this system, judging from texts we have seen. These still have magic-marker edits sometimes, and never statutory citations next to them (usually just a sentence in a cover letter). Why does advanced functionality go unused? D.C. agency FOIA officers tell us “it’s cumbersome generally to do redaction in FOIAXpress – a bunch of steps where we have to create folders and stuff; we just use Adobe instead. So much easier.” Plus, in early years we were told, the software was not even fully customized for D.C. It showed next to redactions the citations to federal FOIA (5 U.S.C. § 552) instead of D.C. Code. No wonder with all these barriers instead of promised efficiencies, D.C. agency staff stopped using the system in full, just humoring the system by entering dates and data enough to track milestones and do the annual report chore. And we have at least some experience suggesting agency reporting is not monitored closely.[[3]](#footnote-3)
* **System requires more work than needed of users filing an appeal**. All appeals are filed with the mayor. But instead of having a one-click setup where, once you select “appeal” as your purpose, your remaining work is automatically sent there, portal users must scroll through a list of dozens of agencies and select the right mayoral office. Vendor programmers should have been able to arrange to “auto-populate” the single destination for appeals--if anyone asked them--in about an hour? But no one noticed.
* **Site is not fully usable on mobile devices.** “Responsive web design” is a setup where a server always sends the same code to all devices but special sensing is used to alter the rendering of the page so it displays properly on (horizontal) desktops and (vertical) mobile devices (iPhones, etc.). Without proper design, a mobile browser struggles with desktop width and scales the page to fit the screen, making the content hard to read and forms impossible. This new fact of life – that around 40 percent of U.S. internet traffic originates from mobile devices – should be reflected in D.C. site design. The reading room page, for example, is unusable (agency to be searched can’t be checked). Though in view of the small contents (see above), that is not a major loss. “Data type” is truncated and not fully legible. “Request status” is also squished and not readily usable.
* **Message function not explained.** If this is a way a requester can contact the agency about a request, it appears not to be explained. User is not told where a message goes, making follow-up impossible
* **A “Help” tab has only technical material about software, nothing for requesters.** The ultimate let-down, no help at the help tab.
1. #  *Freedom of Information Act: DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing.* GAO-15-82 (November 19, 2014).

 [↑](#footnote-ref-1)
2. National Center for State Courts, *Automated Redaction Proof of Concept Report* (December 2018) (reporting on test of systems to redact court filings). Available at: <https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/804>. [↑](#footnote-ref-2)
3. Our experience in 2015 illustrates the loose review of agency data entered in the system. FOIAXpress is both a processing tool and a repository of data about the work, the major source for the annual report that D.C. FOIA requires the mayor to submit to the Council February 1 about the work of the prior year—numbers, timeliness, exemptions, etc. Lax oversight suggests the data is not in fact used for management purposes (if it were, presumably more care would be taken that the data be correct).

The true total of 2015 FOIA requests is uncertain. The Fire & EMS Department reported the unlikely number of 10,996 new requests. This was a huge and unprecedented figure—38 times more than this agency received the year before, and more than any other agency or the entire D.C. government received in any prior year. And it wasn’t a typo: both the mayor’s office and the FEMS FOIA officer confirmed the figure when we asked. The FOIA officer said she was new to the position and had used the FOIAXpress system to track “any request for agency records,” including an unknown number she acknowledged were probably not submitted under the D.C. Freedom of Information Act -- for example, from “doctors and hospitals with HIPAA releases, requests in relation to METRO mass casualties, audits, court and attorney subpoenas.”

The FEMS Department has changed, now answering hundreds of thousands of calls for emergency medical help and ambulance transport in a year, compared to only 30,000 fire runs. It is not surprising that patients and their doctors or lawyers and others need resulting medical records. Unlike typical FOIA requests, almost all were quickly granted in full. But these probably shouldn’t be included in the agency count of workload arising from the statutory obligation. To our inquiry, the mayor’s office said they planned to discuss standards for such record keeping with the agency in the following year. Those standards could usefully be shared across all agencies. For now, the uncertain number of true FOIA requests to FEMS makes the 2015 data uninterpretable, so we omitted all FEMS data in the Coalition’s analysis of the year. [↑](#footnote-ref-3)