

## **CM Questions – 9.23.20**

**CM Nadeau:**

- 1. Please provide the reasons, if there are any, why DC Government continues to need to have the authority to limit responses to FOIA requests and appeals, as was granted through emergency legislation at the beginning of the public health emergency.**

DC government is not “limiting responses” to FOIA requests or appeals through the emergency legislation enacted by Council in March 2020 and in subsequent emergency and temporary legislation. The legislation allowed deadlines to toll during a “COVID-19 closure” of government agencies when the Council has authorized and the Mayor has declared a public health emergency. Allowing deadlines to adjust due to the public health emergency does not limit an agency from responding to a FOIA request or appeal, it only provides leniency governing the timeline of those responses, typically due within 15 days. This adjustment is not unlike any other tolling or waivers of deadlines or reporting authorized by law during the public health emergency.

- 2. Are there any public safety or other practical limitations on FOIA compliance that differ from this time last year? Now as compared to the first few months of the public health emergency? If so, what are they?**

Yes, some agencies may have difficulty in obtaining physical records if office buildings are not yet open due to the public health emergency or may have difficulty collecting physical records from individuals who may be on telework status or detailed to another agency or the Emergency Operations Center in order to respond to the public health emergency. Additionally, agency personnel assigned to FOIA may now have additional or alternate duties during the public health emergency and District government resources are prioritized to respond to the ongoing pandemic. The Office of the Chief Technology Officer (OCTO) is responsible for executing searches for electronic mail communications at the request of agencies. OCTO continues to pull and complete these searches while also prioritizing other technology needs of the District government during the pandemic, such as supporting remote work and leading a partnership among the DC government, the non-profit community, academia and industry to bridge the digital divide.

As agencies are much more fully equipped now, technologically, to have personnel working from home than they were in the first months of the pandemic, and as

transportation options for coming into District offices to fulfill requests that cannot be handled electronically by teleworkers are safer and more numerous now, the need for not responding according to pre-pandemic statutory timelines is diminishing, but flexibility on deadlines for responses and appeals continues to be necessary for the reasons stated above. Subordinate agencies are well aware of their duties to attend to FOIA requests, regardless of the needed flexibility afforded by emergency provisions.

**3. Please provide the breakdown number of:**

**a) FOIA requests, completed responses and pending responses not completed (e.g. backlog), by agency, for FY 2020 as of today.**

Agencies will be compiling information through the Office of the Secretary for the annual Freedom of Information Act Report sent down to Council in January 2021 for FY2020. It is premature at this point to compile relevant data as agencies maintain FOIA records on a variety of platforms including Salesforce, Excel, Quickbase, and FOIA Xpress.

According to FOIA Xpress records as of September 22, over 60 District government agencies received 4,109 FOIA requests from March 11, 2020 through September 22, 2020. Over 52% of those requests (2,142) have been closed or have had documents delivered to the requestor during the pandemic.

**b) FOIA appeals, opinions issued and pending appeals not completed (e.g. backlog), by agency, for FY 2020 as of today.**

<b>Agency</b>	<b>Opinions Issued</b>	<b>Pending Appeals</b>
ABRA	1	1
ANC2E	0	1
BEGA	2	1
CFSA	1	7
CJCC	0	1
DBH	0	5
DCBOE	0	1
DCHA	1	0
DCHR	2	3
DCPC	1	0
DCPCB	1	1

Agency	Opinions Issued	Pending Appeals
DCPCSB	0	1
DCPL	1	0
DCPS	8	3
DCRA	13	2
DDOT	4	2
DFHV	1	0
DFS	1	0
DGS	4	5
DHCD	1	0
DHCF	4	0
DHS	0	1
DISB	1	1
DME	3	0
DMPED	6	1
DMPSJ	1	2
DMV	6	0
DOC	4	2
DOES	6	2
DOH	3	2
DPR	3	0
DPW	1	0
DSLBD	2	1
EOM	10	3
FEMS	0	3
HSEMA	1	0
MPD	45	21
OAH	7	1
OCFO	4	1
OCME	0	2
OCP	5	0
OHR	2	0
OIG	1	0
OOG	2	0
OP	1	0
OPC	9	1
ORM	1	0
OSSE	1	1

Agency	Opinions Issued	Pending Appeals
OUC	10	1
PERB	0	2
SBOE	1	0
UDC	2	1
<b>TOTAL</b>	<b>184</b>	<b>83</b>

- c) FOIA requests, completed responses and pending responses not completed (e.g. backlog), by agency, for FY 2020 as of March 11, 2020.

See above at 3a.

- d) FOIA appeals, opinions issued and pending appeals not completed (e.g. backlog), by agency, for FY 2020 as of March 11, 2020.

The below data demonstrates that during the COVID emergency, there are now actually fewer pending appeals than there were on March 11.

Agency	Opinions Issued	Pending Appeals
ABRA	1	1
ANC2E	1	0
BEGA	0	2
CFSA	0	1
DCHA	0	1
DCHR	1	0
DCPCB	0	1
DCPL	0	1
DCPS	6	3
DCRA	9	2
DDOT	2	1
DFHV	1	0
DFS	0	1
DGS	4	2
DHCF	2	0
DISB	1	0
DME	3	0
DMPED	4	2
DMPSJ	0	1
DMV	2	4
DOC	4	1
DOES	2	5

<b>Agency</b>	<b>Opinions Issued</b>	<b>Pending Appeals</b>
DOH	2	2
DPR	1	2
DSLBD	2	0
EOM	8	2
FEMS	0	1
HSEMA	0	1
MPD	31	17
OAH	6	1
OCFO	5	0
OCME	1	0
OCP	2	3
OHR	0	1
OIG	1	0
OOG	0	1
OP	1	0
OPC	1	3
ORM	1	0
OSSE	1	1
OUC	8	2
SBOE	0	1
UDC	0	2
<b>Total</b>	<b>114</b>	<b>69</b>