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**Testimony of the**

**D.C. Open Government Coalition**

by

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Co-Chair, Coalition Legal Committee

Before the

Council of the District of Columbia

Committee on Government Operations & Facilities

FY 21-22 Performance Oversight – Office of Administrative Hearings

February 10, 2022

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Thank you for the opportunity to provide views on the performance of the Office of Administrative Hearings (OAH).

We speak today on behalf of the public, especially the users of the District’s central hearing panel, to urge you to keep them in mind as you evaluate the openness and accessibility of OAH. Ask: can users with a question about their case find information readily? Can a potential user find out about the treatment of past situations like hers? The current answer is unfortunately, no.

We have testified before about the lack of published “final orders” that are the opinions the OAH judges write deciding cases.[[1]](#endnote-1) Without publication, the office is creating a body of secret law. Publication is required by law and the Office of Open Government gave the OAH a formal opinion in 2020 saying so, following the Coalition’s complaint.[[2]](#endnote-2)

Last year’s budget report confirmed community witnesses’ analysis that the OAH case management system “continues to be outdated and inaccessible to litigants” (including electronic filing and online access to a docket and final orders).

The report found it “essential” that final orders be accessible, called on the agency to “prioritize the creation of a fully searchable public portal with all Final Orders in FY 22.” The committee report also warned that confidentiality limits (alluded to by OAH officials for years as making the project impossible) apparently need not stand in the way since others routinely publish opinions just deidentified.

The user community was pleased to see the Council direction in that FY 22 budget report filed last June. Unfortunately, we see scant signs of progress.

The chief judge reported to the OAH advisory committee in December 2021 about an anticipated statement of work and vendor contract for the publication of final orders. This schedule slipped by the time of prehearing answers to questions when the Office reported no concrete activity in FY 21 and only some planning (but apparently no expected contract or work) in FY 22.[[3]](#endnote-3) The office said:

In FY 22 agency subject matter experts will work with the Office of the Chief Technology Officer (OCTO) and Journal Technologies (JTI) to determine the level of effort and procurement statement of work (SOW) for a searchable public database with OAH Orders.

This appears to mean “we are figuring out what’s involved.”

Finally, in the advance copy of the chief judge's testimony for today’s hearing there is no reference at all to the publication of orders, now delayed for many years.

Both IT staff positions in the office are vacant, we understand, which raises questions of the effect on new systems but also the cause of the turnover. Workload and salary parameters may need review, so that enough hands are on deck for the important work remaining.

We request the Council ask the obvious questions about this modest progress.

The District, like all city and state governments, faces special challenges to adapt records systems of the past to serve the 21st Century digital age. Such adaptations will drive efficient government as well as improved public access. New systems are best built with user involvement. The Coalition repeats its past offers to help the office by connecting with others locally and nationwide familiar with challenges of greater public access to court records. We would be happy to work with the committee and the agency however we may be of assistance towards modern records management, a key foundation of public access and open government.

The Open Government Coalition is a citizens’ group established in 2009 to enhance public access to government information and ensure the transparency of D.C. government operations. 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 work to maintain the legal foundation assuring open government –- the Open Meetings Act, the Freedom of Information Act and the mayor’s Open Data Policy — through public education, legislative advocacy, and litigation. For example, the Coalition has an extensive website with practical advice for finding information and a blog on news, holds public forums such as an annual Summit during Sunshine Week in March, testifies to the D.C. Council, and files complaints and court actions to correct agency problems. The Coalition has no staff but does its work through the volunteer efforts of 16 directors, who include reporters, community activists, experts with open government institutions overseas and at the federal level, and attorneys in media law, nonprofit legal services, and criminal defense. The Coalition participates in a National Freedom of Information Coalition where advocates from dozens of states work together on common issues all are facing.

1. ENDNOTES

 See our testimony at this committee’s oversight hearing in 2021. We gave the history of the issue in full, including a 2016 D.C. Auditor [report](https://dcauditor.org/report/administrative-justice-in-the-district-of-columbia-recommendations-to-improve-dcs-office-of-administrative-hearings/) and officials’ discussions of the publication issue in recent years. Available at: <https://dcogc.org/wp-content/uploads/2021/04/OGC-statement-for-OAH-oversight-hearing-2-25-21.doc>. [↑](#endnote-ref-1)
2. The OOG opinion letter is dated January 27, 2019, but should be 2020. It is available at: <https://www.open-dc.gov/sites/default/files/FOIA%20Advisory%20Opinion%20OAH%20Final.pdf>. The OOG concluded “OAH is not fully compliant with the mandatory disclosure provisions of D.C. FOIA (D.C. Official Code §§2-536(a)(3); 2-536(b)) and must make all Final Orders created on or after November 1, 2001, that are not subject to statutory exemption, publicly available on its website.” D.C. Code § 2-1831.13 (d) from the outset required “all documents filed in any case before the Office shall be available to the public for review unless a statute, protective order, or other legal requirement prohibits disclosure.” Federal regulations also apply. See for example, Medicaid rules at 42 C.F.R. § 431.244 (g), “the public must have access to all agency hearing decisions.” [↑](#endnote-ref-2)
3. Pre-hearing Responses available at: <https://dccouncil.us/wp-content/uploads/2022/02/Pre-Hearing-Responses-OAH.pdf>. [↑](#endnote-ref-3)