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**Testimony of the**

**D.C. Open Government Coalition**

by

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Before the

Council of the District of Columbia

Committee on Housing & Executive Administration

FY 21 Performance Oversight – Office of The Secretary of the District of Columbia

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Thank you for the opportunity to provide views on the performance of the Office of the Secretary of the District of Columbia, in particular the Office of Public Records Management, Archival Administration, and Library of Governmental Information within the Office of the Secretary.

We speak today on behalf of the public, the users, to urge you to keep them in mind as you evaluate D.C. archives activity. Citizens, elected officials, and government staff can learn from the public-facing mission statement of the U.S. National Archives.[[1]](#endnote-1) It states a goal that D.C. archives can also embrace:

Our mission is to provide public access to Federal Government records in our custody and control. Public access to government records strengthens democracy by allowing Americans to claim their rights of citizenship, hold their government accountable, and understand their history so they can participate more effectively in their government.

In that spirit, public access to D.C. records for education, business, and every kind of study and inspiration, is a key part of open government, along with access to open data and open meetings. Access to records, in turn, depends on sound policies, effective leadership and adequate resources—a joint responsibility shared between executive and Council.

Unfortunately, we are not where we need to be in these areas and committee leadership is needed to stimulate the necessary progress.

**A strategic vision is needed to guide myriad decisions about a new facility**

Not only is the archives facility years away, but users of existing D.C. records tell us every week of distressing experiences in their searches, including:

* Inconsistent retention of records across time and across agencies.[[2]](#endnote-2)
* Lack of policy on retention of modern communications such as texts.[[3]](#endnote-3)
* Persistent and widespread delays in agency response to public requests for records.[[4]](#endnote-4)

More generally, how can it be, for example, that all record retention plans (available online) are a decade old? Or that, as we have been told, the archives now hold no D.C. electronic records? The point is that effective government-wide records management, together with public access, has a big agenda ahead, along with preparation for the new building and the moves it will require.

With community support, the Council enacted a broad advisory committee in 2019, tasked to develop a strategic plan and identify resources needed. The committee and the planning effort never happened, but as others’ testimony and our board president’s in the 2018 hearing record showed, the need was not a one-time talking point.[[5]](#endnote-5)

With the Council chairman’s leadership, a new Archives Advisory Group to focus on the new facility recently began work and is welcome. You will hear from it today. But the Council must understand the need is broader.

We request the committee hold one or more roundtables to develop with the community, (we hope) a new archives director, and other executive and judicial branch agencies, a vision for an effective archives program. That can then guide the necessary investments in staff, facilities, and technologies—and added legal authority where needed for the archives to do its work.

In addition, we identify two specific problems for urgent attention.

**A schedule and recruitment assistance are needed for filling the office leadership position**

It’s crucial to complete recruitment and selection of a seasoned leader for the position of D.C. archivist, known as the Public Records Administrator of the District of Columbia (D.C. Code § 2-1702). With a site chosen, planning for the new facility at the University of the District of Columbia campus on Connecticut Avenue at Van Ness can resume.

As the Archives Advisory Group I’m sure will explain, many decisions urgently will arise needing thoughtful and experienced leadership to represent the public and the government interest in the archives program in dealing with design and construction, as well as on the broader project of repairing records management across D.C. government agencies.

The committee should do everything possible to encourage the executive to promptly fill the long-vacant key post. Funds to support professional recruitment help could be what’s needed. The press recently described the Council chairman approving that, at a committee’s request, to speed up filling a child ombudsman post.[[6]](#endnote-6)

**New plans and available funds need close Council oversight so that rising costs are met for the planned program**

Building costs rise inexorably and we are concerned the $74 million set aside for the project years ago will not be enough for the plans (first published in 2015). Overall inflation since 2015 is almost 20 percent. Cutting back on building capabilities to trim costs should not be the only alternative as it shortchanges future generations.

The Council should keep close track of plans and assure funds are available so that an excellent archives facility, equipped for ambitious programming, remains the objective. The tough choices involved where goals and resources are in tension highlight the need for a deeply experienced archivist at the table along with budget and construction experts. We understand in 2017 the architects already diminished the 2015 plans; the public has never seen the result and the Council should not take it as given. Nor has the public seen the statement of work for the next stage of Hartman-Cox work, to know what parameters such as overall project cost may be considered set already.

We ask the committee to monitor the archives design and costs so that the result is, adapting the words of the U.S. National Archives, “**cutting-edge access to extraordinary volumes of government informa­tion and unprecedented engagement to bring greater meaning to the District of Columbia experience.”**

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. The Coalition looks forward to working with advocates for the improvement of planning, policymaking, leadership development and funding – in short, all aspects of records management, as the 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

   Available at: <https://www.archives.gov/about/plans-reports/strategic-plan/strategic-plan-2018-2022#toc-mission-statement->. [↑](#endnote-ref-1)
2. For one example, the D.C. Police Reform Commission last year was unable, for lack of access to records, to fully examine the full trajectory of official investigation and adjudication of citizen complaints and internal allegations of officers’ misconduct. Some access was prohibited (and the legal issues never clarified); some access was just complicated by scattered files across multiple agencies and record systems. For another, treatment of email is a perennial, and technology is a fickle partner, sometimes helping and sometimes not. In 2007 Mayor Adrian Fenty’s counsel, Peter Nickles, citing alleged backbreaking costs of storage, pushed two versions of a controversial policy of keeping only six months of mail. Two mayoral orders were eventually rescinded, and an angry Council took the issue away from the executive. *See* Act 17-359; D.C. Code § 2-1706 (a-1) (prohibiting change in retention without rulemaking submitted for Council approval). Contested technical issues of storage limits and costs continue to play a role. Since 2019 OCTO has advocated for a schedule for destruction, saying excessive retention (back to 1998) now requires multiple servers that slows down searches and delays FOIA responses. *Chief Data Officer Annual Report* *– 2019*. Available at: <https://tinyurl.com/yc7vp2uh>. Adequate technology is crucial, no doubt. The D.C. Council [informs requesters](https://dcogc.org/wp-content/uploads/2020/12/Council-FOIA-reply.pdf) that owing to a change in email systems it “no longer has access to any emails that were archived, deleted, or sent or received by an employee who left Council service before 2012.” [↑](#endnote-ref-2)
3. Mayor Vincent Gray in Order 2012-102 set a policy discouraging District employees from using private email accounts for any public business, but we have never heard of any enforcement in the executive. In the legislature, the Coalition a decade ago won a court case when the D.C. Council agreed to roll back their refusal to search for records requested under FOIA on private accounts that members used widely for emails on official business. Though text messaging grew exponentially (by 2007 more texts than calls), the 2012 order omitted them. Guidance is appropriately broader from the Librarian of Virginia, *Statement on the use of text messaging and private e-mail* (“strongly encourag[ing] all public officials to use official government e-mail accounts for public business and refrain from conducting government business by text messaging”). Available at: <https://tinyurl.com/2p8yu3h9>. The Coalition has advocated unsuccessfully for guidance in D.C. on employee use of text and other messaging services (now even [used by the mayor](https://dcogc.org/blog/disappearing-message-apps-d-c-mayor-acknowledges-using-whatsapp-and-maryland-governor-seems-to-be-doing-state-business-on-wickr/)). The District has lost court cases for lack of effective policy and enforcement, costing tens of thousands of dollars in legal fees when the public wins court-mandated access. The Council of State Archivists made the same point in a policy statement in 2015, updated in 2019, explaining that “Use of either unofficial, non-government email accounts or other forms of electronic messaging applications and services, rather than official government accounts, violates the transparency and openness that the public requires from its government; makes it difficult to hold public officials accountable; unnecessarily mixes government and personal records; and ultimately jeopardizes the accessibility of the archival record to the American people.” Available at: <https://tinyurl.com/ycxhduyh>. [↑](#endnote-ref-3)
4. In 2019, almost 3,000 FOIA records requests, or over a quarter of the total, were delayed beyond the legal deadline of 15 days. Almost 5,000 (half the total) were late in 2020, though it was a unique year as the government declared the pandemic emergency on March 20 with staff working remotely deadline enforcement suspended. Data are not reported yet on 2021. [↑](#endnote-ref-4)
5. The hearing on B22-842, the “Commission on Archives and Record Management Act of 2018,” surfaced many issues that remain years later. Trudy Peterson, an experienced archivist now chair of the new Advisory Group, testified that “DC records need to be managed under a public, coherent, effective regime. Such a regulatory framework does not at present exist. This bill provides for a Commission to consider the preservation, protection, and public availability of the records of the District of Columbia. Now, 45 years after Home Rule, the District needs to put its records in order, acting like the records-rich world capitol it is and not like an archivally-blighted community. Now, more than ever.” Open Government Coalition president Thomas Susman for the record sent a statement urging that D.C. adopt a target again from the National Archives, that “**We will be known for cutting-edge access to extraordinary volumes of government informa­tion and unprecedented engagement to bring greater meaning to the American experience.** We collaborate with other Federal agencies, the private sector, and the public to offer information—including records, data, and context—when, where, and how it is needed and transform the American public’s relationship with their government. We will lead the archival and information professions to ensure archives thrive in a digital world.” The bill passed but with no appropriation of funds in the years that followed, the mayor made no appointments and no staff went to work. It was repealed by § 7170 of the FY 21 Budget Support Act, Law 24-45 (November 2021). [↑](#endnote-ref-5)
6. Jonetta Barras, “Children at risk: As DC’s child welfare system trends toward destruction and death, will city leaders embrace transformational change?” *DC Line* (January 26. 2022). Available at: <https://tinyurl.com/2p925cra>. [↑](#endnote-ref-6)