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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 23 Budget Oversight Hearing - Office of Administrative Hearings

March 25, 2022

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Thank you for the opportunity to provide views on the mayor’s budget request for the Office of Administrative Hearings (OAH).

As we did at oversight, we speak again today on behalf of the public, those who use the District’s central hearing panel to get review of mistakes by D.C. government.[[1]](#footnote-1) We urge you to keep them in mind as you evaluate the resources available to the OAH. Ask: will this FY23 budget allow users finally to find information about their case and about the treatment of past cases like theirs?

We have reviewed the mayor’s budget and the answer is impossible for the lay public to find.[[2]](#footnote-2) The committee should ask enough questions to be sure the agency has necessary resources and add where needed.

OAH judges’ opinions must be published online and after 20 years they still are not.[[3]](#footnote-3) Unlike many courts, OAH has not moved to digital case records, nor has it ever allowed access to paper files as courts have been required to do for many years. Publication thus requires major innovation.

OAH has been noncompliant for decades and the committee’s FY22 budget report suggested some impatience with the slow pace of progress. The report called the OAH case management system “outdated and inaccessible to litigants” and found it “essential” that final orders (the term used by judges referring to their opinions deciding cases) be accessible. The report directed the agency to “prioritize the creation of a fully searchable public portal with all Final Orders in FY 22.”[[4]](#footnote-4)

In this FY22 year, the OAH reports only planning. The performance oversight materials said staff would “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.”[[5]](#footnote-5) The chief judge's February testimony didn't mention the project.

For FY23, no added IT staff are apparently requested, though the need for more than two is obvious—likely around five.[[6]](#footnote-6) Added funds are needed probably for OCTO help and also for changes to the contract for the case management system.

Unfortunately, beyond staff, budget categories such as “nonpersonnel services” or “contractual services” are not further broken down. “Information technology” is even cut.

**So, it’s impossible to identify in the mayor’s FY23 budget for OAH any clearly dedicated funds for the “searchable public portal” so long overdue.** The committee should ask for a plan due October 1 matching milestones and resources in the coming year, and ask also for quarterly updates.

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.

1. See our testimony available here: <https://dcogc.org/wp-content/uploads/2022/02/OGC-testimony-on-OAH-2-10-22.docx>. [↑](#footnote-ref-1)
2. *D.C. Government* *FY23 Proposed Budget and Financial Plan*, Vol. 2, Agency Budget Chapters-Part I, Section C-101 (March 17, 2022). Available at: <https://tinyurl.com/4hrxx6hw>. [↑](#footnote-ref-2)
3. D.C. Code § 2-536(a)(3) and (b). The Office of Open Government gave the OAH a formal opinion in 2020 saying so, following our Coalition’s complaint. Available at: <https://tinyurl.com/yc4963ad>. The OOG concluded “OAH is not fully compliant with the mandatory disclosure provisions of D.C. FOIA…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.” [↑](#footnote-ref-3)
4. *D.C. Council Committee on Government Operations & Facilities, FY22 Budget Report* (June 1, 2021), p.95. Available at: <https://tinyurl.com/mu4bf33s>. OAH has promised this in internal performance plans for several years as well. [↑](#footnote-ref-4)
5. Prehearing responses, Q.10. Available at: <https://tinyurl.com/mshnzxw9>. [↑](#footnote-ref-5)
6. OAH reported in prehearing responses to Q.63, “the agency is currently going through a digital transformation, and this period of integrating new technology into business processes is highly sensitive and requires additional IT support staff… OAH has only two IT positions to support 103 FTEs. The demand on those two positions has exceeded their capacity, which has in some circumstances negatively impacted case and workflow. To improve workflow and increase overall agency efficiency, OAH needs additional support staff, as well as a more robust and well-staffed IT department.” The two existing slots are listed in prehearing materials as vacant as of January. [↑](#footnote-ref-6)