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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 Government Operations & Facilities

FY 23 Budget Oversight – Office of the Chief Technology Officer

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Thank you for the opportunity to follow up our performance oversight testimony and provide related views on the budget of the Office of the Chief Technology Officer (OCTO).

In February we discussed our Coalition’s concerns about one piece of technology. It’s the online platform or “portal” called FOIAXpress. D.C. government has used the software since 2014 under a contract with a private firm in Maryland (the latest three-year extension costing $750,000). Thousands of requesters each year use it, with considerable frustration for many, to ask public bodies for government records that must under the Freedom of Information Act provide them, with limited exemptions. The platform collects requester and request details, connects requests to the right office in any of dozens of agencies, and helps both requester and agency track the rest of the process. No complex eligibility, fee, or other determination is involved at the request portal stage; all evaluation of each request is done within the staff of the specific agency addressed.

We explained the problems[[1]](#footnote-1) and why doing better matters: efficient access to the government’s records is one way to build trust and elicit informed participation.

Our Coalition today has two requests for the Committee:

* first, to assign responsibility and resources to fix the platform to correct the many incorrect features noted in the recent Office of Open Government review and to evaluate and implement opportunities to enhance requesters’ experience;
* second, to learn from this case study of years of inattention to a troubled public web interface, and to legislate so that customer experience in future is central in service delivery generally, and especially in digital services.

We have ideas about both.

1. **Fix the FOIAXpress platform**

We can think of two ways to get focus and resources that have been lacking:

* leave FOIAXpress with OCTO but give them what they need to do the job of evaluation and improvement; or
* assign FOIAXpress to another agency, also with the necessary contract and staff budget.

Along with almost every other general policy and program aspect of the D.C. Freedom of Information Act, the request platform is not thoughtfully, purposively assigned to any home in government. It appeared, according to OCTO officials, almost accidentally on their books in 2015, left behind following the division of various legal tasks between the Mayor’s Office of Legal Counsel and the Office of Attorney General when the attorney general became a separately elected position.[[2]](#footnote-2) OCTO has one contract staffer to answer the help line.

Thus, the whole deal—all aspects of policy and management of the processing of FOIA requests through software and staff, lacks an agency base and thus escapes the normal agency-centered performance management and budgeting by the mayor and Council.

OCTO of course has appropriate staff, available on a fee-for-service basis. They worked overtime during the COVID-19 years, using knowledge of development of online systems to help agencies serve the public with case and vaccination tracking, urgent application procedures for emergency rent assistance, and other novel government services—helping DCPS, for example, collect thousands of staff and student vaccination assurances just hours before schools reopened.

OCTO even offers client agencies a “Usability Lab,” where citizen volunteers will try out software and provide feedback in a structured format.[[3]](#footnote-3) Would that had been done for the FOIA request portal.

But OCTO’s assistance isn’t available for the portal without extra budget to augment their own staff and pay the contractor for software changes the contract doesn’t allow OCTO to make.

The Office of Open Government (OOG) is another possible home for the FOIA portal contract. That agency has staff already knowledgeable from their roles as informal FOIA ombudsman; trainer of agency FOIA Officers, staff and ANC commissioners; and statutory responsibility as reviewer of FOIA implementation complaints such as the Coalition’s on the portal. From that experience they would be ideal to review the portal and set a thoughtful agenda of improvement to serve requesters and the agencies. The committee could readily transfer the contract to OOG, which would need an added staff slot and the funds for the contract.

Replacement of the 2014 AINS software product should also be on the table in D.C. as it is in the federal sector. There, agencies using AINS FOIAXpress for years are looking at alternatives as D.C. has never done.[[4]](#footnote-4)

1. **Design and deliver services better so that all can use them effectively, especially digital**

The committee should lead the way to place in statute a policy that “improving service delivery and customer experience should be fundamental priorities,” as President Joe Biden phrased it in the December Executive Order pushing the federal government in the same direction.[[5]](#footnote-5) As the Order also said:

Management of [the government’s] customer experience and service delivery should be driven fundamentally by the voice of the customer through human-centered design methodologies; empirical customer research; an understanding of behavioral science and user testing, especially for digital services; and other mechanisms of engagement.

With this FOIA portal example, and others fresh in mind from the COVID-19 period, for example, an unemployment benefits system that, despite millions invested, did not deliver what our residents urgently needed in the crunch, the time has come for the Council dramatically to raise the profile of issues in the District government’s electronic service delivery.

It is time for a new expectation, again quoting apt language from the White House, that in D.C.,

agencies that provide significant services directly to the public will identify and gather feedback from customers; establish service standards and measure performance against those standards; and benchmark customer service performance against the best customer experience provided in the private sector.

OCTO has elected to interpret modestly its statutory mandate, D.C. Code § 1-1402, to “centralize responsibility for the District government’s investments in information technology and

telecommunications systems” and “develop and enforce policy directives and standards regarding information technology and telecommunications systems throughout the District government.”

Surely direction and standards are essential, not optional, to be sure every agency builds electronic services so that consumers are well-served, and evaluates to find out.

Is it enough to have a mission, as OCTO does today, to “empower D.C. Government through technology by providing valued services, advising agencies, and collaboratively governing IT.”[[6]](#footnote-6)

The D.C. Auditor urges a broader OCTO role, as both necessary and not at all inconsistent with its 1998 statute.[[7]](#footnote-7) Reviewing another case study of ineffective IT project planning in 2017, and the hesitancy of the executive to manage such efforts more aggressively (that one cost tens of millions and delivered skimpy results after many years), the Auditor wrote:

[W]e note that OCTO has a far broader statutory mandate than appears to be followed today. When created, OCTO was designed to serve as the government’s leader in setting policy and developing and operating information technology systems. It appears that OCTO is serving instead as a support agency, providing more limited support based on what Executive Branch operating agencies contract and pay for. OCTO’s overall role in the D.C. government may be an appropriate subject for further ODCA review.

Though a strong tech agency would seem most appropriate, it may be time to establish a formal part of the executive that is not a technology agency but places elsewhere a new focal point to emphasize the customers who use digital government services.

The key need is for an orientation to systematically identifying and resolving the root causes of customer experience challenges. We urge it today for electronic services, but such a mind-set should be welcomed in many D.C. agencies interacting with the public in diverse ways.

To redirect the approach to electronic services like FOIA request processing, we recommend proceeding in two stages:

1. Hold a roundtable, first with public and government witnesses together with experts in web-based interfaces, to set an agenda of FOIA improvement including not only the portal but agency request processing, FOIA officer training, and appeals and enforcement -- in short to explore the

shape of the next generation of digital public records request management. Then, repeat the roundtable focused on other agencies that interact digitally with customers.

1. Draw on the roundtables’ results to draft a charter for establishment of an Office of Electronic Government in OCTO or elsewhere. It would be tasked to develop standards for D.C. government agencies’ handling of common challenges such as login and identity management, web site designs and accessibility, notifications, and systematic evaluation of users’ experiences using a range of methods. The office should also design requirements for regular reporting from agencies so that the executive branch can designate each year electronic services of the highest importance to the public and in greatest need of improvement. Finally, the office should propose additions to agency performance plans and personnel rules so that both the plans and executives’ evaluations include attention to results in improving users’ experience with electronic access to government services.

The Coalition looks forward to working with the committee to fix the FOIA portal, but to also learn from that experience how we must design an improved approach within the government, so policy and accountability measures assure that user perspectives inform the design of all public-facing systems—precisely what we have found missing in the years of treatment of the FOIA portal.

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. The Office of Open Government in February issued an advisory opinion reviewing the portal, in response to the Coalition’s complaint. Available at: <https://tinyurl.com/2p83kkwr>. The opinion agreed that to the extent the public portal and agency management features are “held out to the public as aids to transparency, but instead function as impediments, the District is improperly implementing the D.C. FOIA requirements.” After close review, the opinion noted legal errors and confusions and directed changes as well as further review of the system performance by OCTO and contracting officials – a review never done since 2014 as far as we know. [↑](#footnote-ref-1)
2. Any attempt to “manage FOIA” in D.C. would involve 80 agencies of the executive branch (some mayoral, some independent), and the 200 Advisory Neighborhood Commissions. The law also applies to the D.C. Council which manages its own modest flow of under a hundred requests annually. In the states, the task is staggering, with 10,000 entities subject to the law in New York and 2,300 in Washington. The District of Columbia receives about 10,000 requests a year; Washington 285,000; Massachusetts 22,000; Vermont 4,200. Christina Koningiser, “Transparency Deserts,” *Northwestern Univ. Law Review*, Vol. 114, 1461 (2020), at p.1468 n.32, also p.1477. Available at: <https://tinyurl.com/2p8vtnnt>. [↑](#footnote-ref-2)
3. The lab is here: <https://octo.dc.gov/octo-usability-lab>. The user testing protocol is reported to be from SiteImprove, a global firm that helps clients evaluate their web activity. See here: <https://siteimprove.com/en-us/content-experience/>. [↑](#footnote-ref-3)
4. The National Archives and Records Administration includes the federal FOIA ombudsman, Office of Government Information Services (OGIS) that held a FOIA tech showcase in February. Several dozen companies presented competing software that has sprung up in the years since AINS began. OGIS placed the presentations online at <https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council/nexgen-foia-showcase>. Short video presentations from each are on YouTube; required watching for D.C. FOIA officials, who may not be aware of the creativity and user-sensitivity in a new generation of request management software offerings. Available at: <https://www.youtube.com/playlist?list=PLugwVCjzrJsWw0q-NEFgx40PJAX0_Jn9t>. [↑](#footnote-ref-4)
5. *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,* E.O*.* 14058 (December 16, 2021). Available at: <https://tinyurl.com/2rteh6fz>.  [↑](#footnote-ref-5)
6. OCTO, *Draft Technology Strategic Plan for D.C.: Unleashing the Possible* (November 8, 2019). Available at: <https://tinyurl.com/4am7nw5n>. [↑](#footnote-ref-6)
7. Office of the D.C. Auditor, *Planning, Buying, and Implementing A New Information Technology System: A Case Study of the D.C. Business Portal* (February 9, 2017). Also, in 2017 the Auditor reviewed the slim protection of personally identifiable information (PII) in agency data files. Dramatic, costly breaches underscored the risks. The report again noted more oversight by OCTO was important as a course-correction in its hands-off approach to D.C. agencies that had downplayed or ignored the issue. Central information security leadership and standards have evolved, but at the time the Auditor wrote in a way that sounds like the situation with FOIA processing: “District agencies are individually responsible for developing and implementing PII protection policies and procedures. Today OCTO does not monitor agencies to determine if policies governing PII have been written, updated, or properly implemented.” A follow-up in 2019 found slow pace of improvement. We imagine an auditor would find the same if they looked today for D.C. agency policies about the importance of users’ experience of electronic government. Office of the D.C. Auditor, *The D.C. Government Must Improve Policies and Practices for the Protection of Personally Identifiable Information* (January 6, 2017). Also, *Some Progress Made But More Improvement Needed In Management of Personally Identifiable Information* (July 1, 2019). [↑](#footnote-ref-7)