**DISTRICT OF COLUMBIA AGENCIES’ “E-FOIA” PERFORMANCE**

Analysis of Information Required by Law to Be Available On-Line

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A section of the D.C. Freedom of Information Act for 40 years has required agencies to make various kinds of records available free and without request, and relevant records created after 2001 must be published online. D.C. Code § 2-536. A review of websites of over 50 D.C. agencies in 2009-10 found widespread noncompliance.[[2]](#footnote-2) Related federal FOIA background is extensive.[[3]](#footnote-3)

This report describes results of visits this year to websites of 30 of the original D.C. agencies, looking again for the required information. We looked for posted records in 10 of 12 categories listed in the statute.[[4]](#footnote-4) The statutory requirements are shown in full in the table of results below.

**Results**

These 30 agencies do not consistently and fully post agency-specific records as required:

* + - * Fewer than 10 agencies posted even partial information in six of the 10 statutory categories.
			* Many agencies scored higher in three categories but only because we generously credited links to other sources, even though agency details would require burdensome further search. For example, most linked to the 515-page PDF file published quarterly by Department of Human Resources listing all employees in alphabetical order; many also linked to the Office of Contracting & Procurement master list of hundreds of contracts; still others linked to a central list of purchases using a government “P-Card” or to the mayor’s budget (seven volumes). For meeting minutes, a few linked to the citywide master calendar of public meetings maintained by Office of Open Government, where some agencies post minutes afterwards.
			* Less than half the agencies posted information about their rules and policies, and again many

made do with links to general databases of D.C. Code or D.C. Municipal Regulations.

* + - * No agency published records of broader interest released under D.C. FOIA, though we credited some agencies lists of “often-requested reports.” (None linked to the FOIAXpress reading room.)

Results:

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| --- | --- | --- |
| **D.C. Code** **§2-536** | **Specific Information Required to Be Posted** |  **Extent of Information Found on**  **30 Agency Websites** |
|  **Full**  | **Some**  | **None** |
| (1) | Names, salaries, title, and dates of employment of all employees and officers | 24 | 0 | 6 |
| (2) | Administrative staff manuals and instructions to staff that affect a member of the public | 1 | 7 | 22 |
| (3) | Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases | 1 | 4 | 25 |
| (4) | Those statements of policy and interpretations of policy, acts, and rules which have been adopted by a public body | 7 | 5 | 18 |
| (5) | Correspondence and materials referred to therein, by and with a public body, relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party | 0 | 0 | 30 |
| (6) | Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies | 0 | 12 | 18 |
| (6A) | Budget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports, and strategic plans and performance-based budget submissions | 2 | 22 | 6 |
| (7) | Minutes of all proceedings of all public bodies | 2 | 6 | 22 |
| (9) | Copies of all records, regardless of form or format, which have been released to any person under [FOIA] and which, because of the nature of their subject matter, the public body determines have become or are likely to become the subject of subsequent requests for substantially the same records | 0 | 4 | 26 |
| (10) | A general index of the records referred to in this subsection, unless the materials are promptly published and copies offered for sale | 1 | 0 | 29 |

**Analysis and Recommendations**

1. D.C. agency compliance is weak and even the higher scores in a few topic areas reflect not public access to agency data but links to massive files requiring further search.
2. Even scattered compliance is not easy to navigate as agencies post records on the statutory topics on their sites in different ways—suggesting no oversight for customer-friendly consistency. The case of DCRA and building permits shows even a flagrant problem can go unnoticed for years.
3. Yet proactive disclosure grows, as agencies respond in many ways to increased demand for records and data and new sources spring up each month as agencies serve customers eager for new forms of transparency. General advocacy for better compliance with this out-of-date statute appears misplaced, but revision of the law and advocacy for more consistent agency web treatment of information availability could be useful. A federal seven-agency experiment in posting all FOIA releases (perhaps with a delay to protect press scoops) is worth review for possible adaptation here. A June 2016 DOJ report, *Proactive Disclosure Pilot Assessment,* is available at: <http://bit.ly/29UUXyO> and the Reporters Committee recently surveyed press reactions.
1. The analysis and opinions in this paper are the author’s alone. The author gratefully acknowledges the online research and initial tabulations by Timothy Martin, Georgetown University Law Center, Class of 2016. [↑](#footnote-ref-1)
2. D.C. Open Government Coalition, *D.C. Agencies’ E-FOIA Compliance*. A brief summary is available at: <https://dcogc.org/wp-content/uploads/2010/05/efoia-audit-summary.pdf>. [↑](#footnote-ref-2)
3. The federal FOIA statute in section (a)(2) for thirty years required agencies to make available three kinds of information (final opinions and orders, policy statements, and staff manuals), typically in “reading rooms.” FOIA requests of general interest were added in 1996 amendments, known as the “E-FOIA Amendments” as they also required electronic rather than physical access, via online posting. Repeated GAO and outside reviews have noted problems with federal agency compliance. Federal agencies began to face new transparency goals far beyond those in (a)(2) since the President's FOIA Memorandum of January 21, 2009, available at: <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/foia-memorandum.pdf>, and the Attorney General's FOIA Guidelines issued in March 2009 that urged federal agencies to post all kinds of records of interest to the public. [↑](#footnote-ref-3)
4. We didn’t search for names and addresses of absentee property owners (added in 1993) and building permits and plans (added in 2004). A link for the former is on the website of Department of Consumer & Regulatory Affairs but is broken. Building permits are also within DCRA and not available online, according to the Office of Open Government investigation of a citizen complaint. See *Eckenwiler Opinion*. Available at <http://www.open-dc.gov/sites/default/files/OOG%20002_1.29.16%20AO_Redacted.pdf>. [↑](#footnote-ref-4)