

**Fiscal Year 2023 District Budget – D.C. Council Committee Actions**

**May 2022**

Information below is from D.C. Council draft committee reports on the FY 2023 budget. Committees hold performance oversight hearings early in the year, budget hearings in March and April, then in late April mark up the mayor's budget proposal and vote on their recommended changes (within limits imposed by Council rules). The Council Chairman merges committee actions with his preferences and presents a final budget for review by the Committee of the Whole and the full Council. Voting begins May 10 and continues May 24.

Six Coalition testimonies on different agencies with responsibilities affecting open government are summarized in an April blog [here](https://dcogc.org/blog/coalitions-budget-testimonies-cap-council-hearings-season/), with links to written statements and hearing videos.

A seventh pertinent item is added below, an amendment to D.C. FOIA proposed by the Council chairman to be enacted in the Budget Support Act. It relates to the proactive publication requirement, the subject of the Coalition’s recent *amicus* brief in the D.C. Court of Appeals.

1. **ADVISORY NEIGHBORHOOD COMMISSIONS AND OFFICE OF ANCs**

**Coalition request:** Add staff in the central office and funding for commissions’ improved records management (including technology) to assure FOIA compliance; complete websites for all ANCs and provide technology for open meetings act compliance

**Background:** Some 300 commissioners serve in 40 Advisory Neighborhood Commissions (with dozens more coming with pending redistricting after ward boundary changes following the 2020 Census). They give input on D.C. government activity affecting their areas that must be accorded “great weight.” A central Office of ANCs (part of the legislative branch) has had many challenges with both staffing and leadership, as well as its structural feature disconnected from the expertise and resources of the executive branch. Tech aspects of websites and virtual meetings, and managing records to satisfy FOIA requests, have all been rocky for some ANCs. One requester’s lawsuit was settled just in 2021, after D.C. lost at trial and on appeal over six years, defending one ANC’s denial of email on private accounts. D.C. had to pay $140,000 of legal fees to the requester, money surely better spent getting FOIA right the first time.

**Committee:** Government Operations & Facilities (chaired by at-large Council member Robert White Jr.)

**The Committee recommendation:** The Committeeexpressed “particular concern” over FOIA compliance and added funds for a general counsel in the central office to strengthen advice on all kinds of legal needs of the 40 ANCs. The Committee added other support, no doubt awaiting a new office director to right the ship.

**Source:** Committee report is [here](https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/625f27bebed5b4634ad3ee43/1650403263232/GOF%2BFY23%2BReport%2B%2B%2BRecommendations%2Bon%2BFY23%2BBudget%2B-%2BCirculation%2BDraft%2B-%2B04.19.2022.pdf), pp. 49-57.

1. **MAYOR’S OFFICE OF LEGAL COUNSEL (MOLC)**

**Coalition request:** Acknowledge the FOIA appeal backlog problem, require an agency solution (or move the task), and fund the necessary surge staff to catch up

**Background:** FOIA appeals were backlogged severely during the pandemic and still have not caught up. Staff decisions in D.C. government agencies applying complicated FOIA law are error prone and up to half have been overturned in past years. So, the process of quick and independent review by the mayor is important (now delegated to her Office of Legal Counsel). But that office failed to decide most FOIA appeals in 2021. While keeping the public in the dark, the office let the backlog grow beyond 300 and failed to ask for help in the FY23 budget.

**Committee:** Housing & Executive Administration (chaired by at-large Council member Anita Bonds)

**The committee recommendation**: The Committee provided no added funds and didn’t reassign appeals to another office. It did ask MOLC to do its work on time (“ensure FOIA requests are completed within the required timeline”) and to stop hiding the problem (“provide quarterly status reports on the number of cases received by agency, the number of resolutions in progress and date of completion, and the number of cases that remain unresolved”).

**Source:** Committee report is [here](https://dccouncil.us/wp-content/uploads/2022/04/MARK-UP-VERSION-FY23-COHEA-Budget-Report.pdf), pp. 27-28 and 87-88.

1. **OFFICE OF OPEN GOVERNMENT (part of BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY)**

**Coalition request:** fund a Transparency Task Force to examine the District’s transparency statutes, records management infrastructure, and public engagement technology and to propose amendments to modernize the FOI Act and Open Meetings Act, improvements to the FOIA portal, and technology upgrades to facilitate public access to records and meetings; fund a plan and timetable to bring all public bodies into compliance with the affirmative disclosure requirements in D.C. FOIA, D.C. Code § 2-536; create a FOIA administrative appeal for requesters wrongly denied records by ANCs or the central ANC office; apply the Open Meetings Act to ANCs and fund any incremental costs; direct the mayor to set policy governing retention of text messages on government business, sent or received by District officials and employees on government-issued or personal devices.

**Background:** The multiple requests reflect longstanding concerns of the Open Government Coalition with shortcomings of the open government legal framework and its implementation.

**Committee:** Human Services (chaired by Ward 1 Council member Brianne Nadeau)

**The committee recommendation:** The Committee recommended a start on ambitious plans to digitize D.C. records, calling on BEGA/OOG to “develop a budget and process to determine
how to digitize records and include community partners to help identify the next steps in achieving this goal…Because FOIA statutes have not been amended in 21 years, with the exception of the public health emergency, BEGA will need to work collaboratively with stakeholders to determine a clear plan to digitize decades worth of records. The Committee also recommends that BEGA work with the Office of the Chief Technology Officer (“OCTO”) in its redesign of dc.gov with the goal of laying a groundwork to make digital records accessible on
agency websites. In doing so, BEGA should assert its expertise and share open government best practices with OCTO.”

The Committee also recommended BEGA “work with the Committee to adopt” a Comprehensive Code of Conduct (first suggested in the BEGA 2021 [Best Practices Report](https://bega.dc.gov/sites/bega/files/publication/attachments/2021%20BEGA%20Best%20Practices%20Report.pdf)) that would “address many of the outstanding questions and transparency issues related to District government employees, commissioners, and others subject to the Code.” The Committee added that in doing so, OOG “continue to work with community partners and stakeholders to implement email retention policies, OMA rules for ANCs, and changes to FOIA rules.”

**Source:** Committee report is [here](https://dccouncil.us/wp-content/uploads/2022/04/DRAFT-FY23-Committee-on-Human-Services-Budget-Report-04.19.22-Circulation2.pdf), pp. 87-94

1. **OFFICE OF THE CHIEF TECHNOLOGY OFFICER(OCTO)**

**Coalition request:** Improve FOIA request portal by revisions that prioritize users’ ease of use (or move it to an agency home base where it will get needed attention), or create a new Office of Electronic Government to enforce that priority government-wide

**Background:** Every year thousands of D.C. FOIA requesters struggle through an outdated online request protocol, and it works poorly as an aid to agency staff or public FOIA data users--yet OCTO for years has said it lacks resources (or even mission) to reimagine it.

**Committee:** Government Operations & Facilities (chaired by at-large Council member Robert White Jr.)

**The committee recommendation**: The Committee wrote generally about the complex OCTO budget, where a third is paid by agencies. This may be one reason there is such difficulty getting general, government-wide open government issues prioritized.

On open government, the Committee said that it “appreciates both the repeated testimony of the DC Open Government Coalition and the fact that OCTO leadership has met directly with the Coalition to discuss freedom of information concerns.”  But the Committee did not address FOIA portal technology and instead picked “compliance” as the focus of its comments on FOIA, highlighting Chief Technology Officer Lindsey Parker’s statement that “current freedom of information compliance processes and responsibilities are not well defined in the wake of the establishment of an independently elected Attorney General position” and Parker’s “interest in understanding other states’ digital infrastructure for centralized transparency compliance.” (CTO Parker mentioned to the Coalition in a March call a goal to improve technology of storage and retrieval of D.C. government emails, now distributed among three servers making searches needlessly complex. She asked if the Coalition could send information on how other states managed email and FOIA.) The Committee wrote that it “looks forward to hearing more about OCTO’s research into alternative freedom of information compliance management models, about its consultation with the DC Open Government Coalition, and about any recommended statutory changes that may be necessary to enable best practices in this area.”

Regarding digital materials to be archived, the Committee “strongly” encouraged OCTO to “coordinate with OS, DGS, the interested public (including the Council-appointed Archives Advisory Group), and external contractors involved in Archives design and construction to ensure that the intake, preservation, and accessibility of digital archival materials are consistently considered and addressed in the design of the new facility.” The Committee repeated warnings about archives building issues in its discussion of Department of General Services, pp. 136-137, rejecting DGS insistence “that they will not have a role in preparing digital archives.” The Committee said “this response misses the point. Digital archival infrastructure and research activities will need a physical space designed to accommodate them and DGS’s architect needs to be aware of these requirements.”

The Committee welcomed the mayor’s proposed budget enhancement for a $1 million project to improve D.C. government agencies’ websites to better serve users. The Coalition has emphasized website modernization in its advocacy for improving the FOIAXpress request portal, though that contract software can’t be revised by District engineers.

**Source:** Committee report is [here](https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/625f27bebed5b4634ad3ee43/1650403263232/GOF%2BFY23%2BReport%2B%2B%2BRecommendations%2Bon%2BFY23%2BBudget%2B-%2BCirculation%2BDraft%2B-%2B04.19.2022.pdf), pp. 110-123.

1. **OFFICE OF THE SECRETARY OF THE DISTRICT – D.C. ARCHIVES**

**Coalition request:** Increase the capital budget; direct agencies to provide immediate public access to the contract for services of the architect; assure resources for planning the archive’s contents and move; enlarge staff for records stewardship now, as well as for future move, and public programming for records use; consider structuring the archives as an independent body

**Background:** D.C. government records are scattered, with outdated retention schedules and zero plans for digital records. Those in D.C. custody, such as old vital records (births and deaths) and land records inherited when the Recorder of Deeds building closed in Judiciary Square are in storage in a warehouse in Shaw with limited access. (The Coalition initiated and worked with experts on a [finding guide](https://dcogc.org/wp-content/uploads/2022/04/DC_Archives_Records_Fact_Sheet_2022-2.pdf) completed this spring.) To assist existing advocates, the Coalition added to its portfolio the openness of historic records and joined with others to testify on behalf of improved current and future public access. That included proper planning for a new facility (with public input), now that a site is chosen on the UDC campus at Connecticut Ave. and Van Ness St. N.W. The archives are managed by a small unit within the Office of the Secretary that has lacked an archives professional as director for years. The lapse in plans, the engagement of a design firm without revisiting the building cost estimate, together with the long-unfilled D.C. Archivist post, suggest the D.C. Archives may fare better as an independent agency with a governing board chosen to maximize public outreach, support, and accountability; that is the arrangement for the D.C. Public Library that yielded a stunning new home of the MLK Jr. Library.

**Committee:** Housing and Executive Administration (chaired by at-large Council member Anita Bonds)

**The Committee recommendation:** The Committee did not add staff (though the present team of only five is not nearly adequate). It noted that “based on feedback to the Committee, there is room to improve the planning and development of a new DC Archives facility by including voices of the public. … The Committee encourages the Mayor to continue to be proactive and actively engaged in the planning and development the [sic] new DC Archives, and provide public comment opportunities.”

Meanwhile, as the new building is years away, the Committee recommended the Office of the Secretary “work to ensure that the existing DC Archives facility adequately serves District residents leading up to the opening of a new facility” And that OS “develops a comprehensive plan for the relocation of the DC Archives including soliciting public comments from interested parties.”

The Committee accepted $1 million transferred from the Committee on Government Operations & Facilities “to support the new DC Archives.” But the Council chairman vetoed it.

Note attention to digital records in the committees’ reports on Office of Open Government and Office of Chief Technology Officer, above.

**Source:** Committee report is [here](https://dccouncil.us/wp-content/uploads/2022/04/MARK-UP-VERSION-FY23-COHEA-Budget-Report.pdf), pp. 27-28, and 93.

1. **OFFICE OF ADMINISTRATIVE HEARINGS**

**Coalition request:** End delays in publishing opinions by requiring a specific plan to do so, funding it with staff and other resources needed, and beefing up public access to information on how to use the hearing process

**Background:** One former chief judge denied any public interest in opinions, but a formal Coalition complaint yielded an Office of Open Government 2020 [opinion](https://www.open-dc.gov/FOIA_AO_OAH_InternetPublication) that failure to publish them had been a 20-year violation of D.C. law. Yet remedial action has languished. In addition to creating a body of secret law, the office offers slim help in an under-resourced help center for the thousands who use the office each year without attorneys. Ironically, the pandemic allowed easier access than before, via virtual hearings that judges have disfavored for years.

**Committee:** Government Operations & Facilities (chaired by at-large Council member Robert White Jr.)

**The committee recommendation:** The Committee credited public testimony for making the case for action on multiple fronts. The Committee report scored the agencyfor last year’s further delay in publishing opinions. It doubled the IT staff and directed it to “immediately advance the procurement, development, or implementation of a searchable, online, public portal for all final orders in Fiscal Year 2023 and to support the permanent use of remote access technology where appropriate.”

The Committee directed OAH to “engage the Office of the Chief Technology Officer and the D.C. Open Government Coalition in its planning process for IT development and provide the Committee a detailed timeline for the release of a public portal for all final orders no later than January 1, 2023, including any additional resources that will be needed to support during its development and operation.”

The Committee also added another staff member to help the public in the resource center and underscored the need for topflight staff to drive innovation in all aspects of the work, providing $200,000 for an outside study to “determine the level of appropriate staffing and salaries that the Office needs to meet its current case flow, including a comparative analysis with similar organizations, proposed efficiencies, and areas for investment.”

**Source:** Committee report is [here](https://static1.squarespace.com/static/5bbd09f3d74562c7f0e4bb10/t/625f27bebed5b4634ad3ee43/1650403263232/GOF%2BFY23%2BReport%2B%2B%2BRecommendations%2Bon%2BFY23%2BBudget%2B-%2BCirculation%2BDraft%2B-%2B04.19.2022.pdf), pp. 89-95.

1. **FOIA PROACTIVE PUBLICATION REQUIREMENT (affecting only certain records of budget process)**

**Coalition request:** None

**Background:** D.C. FOIA, like the federal counterpart, for years has required some records to be published online without any request.That directive has been ignored by most agencies for years despite Coalition complaints and warnings from the Office of Open Government those specific agencies were violating the law (for example, DCRA, OSSE, OAH, DCPS). After the D.C. Superior Court in 2021 decided a challenge by ordering the mayor’s office to begin posting budget requests that are on the list for mandatory publication, the mayor has appealed. The D.C. lawyers argue both that the law exceeds Council powers and that even if within its powers, an exemption in FOIA law for records of internal deliberation shield these items. The Coalition filed an *amicus* brief with six other groups in the Court of Appeals supporting the court decision below.

**Committee:** Committee of the Whole (chaired by Council chairman Phil Mendelson)

**The committee recommendation:** The Committee recommends an amendment to D.C. FOIA to be included in the Budget Support Act that would “clarify that the Mayor may not rely on the deliberative-process privilege or other common-law and statutory privileges as a basis for withholding the documents and information” listed in the FOIA disclosure statute, D.C. Code 2-536 (6A).

**Source:** Committee report is [here](https://dccouncil.us/wp-content/uploads/2022/04/FY23-COW-Budget-Report-Draft-4-20.pdf), pp. 112-114.