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**Testimony of**

**D.C. Open Government Coalition**

by

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Co-Chair, Coalition Legal Committee

Submitted to the

Council of the District of Columbia, Committee on Business & Economic Development

 Public Hearing on PR24-0754

Chief Financial Officer of the District of Columbia Glen M. Lee Confirmation Resolution of 2022

June 16, 2022

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Thank you for the opportunity to provide views relevant to the nomination of Mr. Glen M. Lee as the District of Columbia Chief Financial Officer (CFO).

The work of the CFO has never been more important. District of Columbia finances face an especially daunting period ahead unless people come back to work downtown.[[1]](#footnote-1) We have been saved by the stimulus funds, and public comprehension of the scale and significance of that has not sunk in.

We were pleased to see Mr. Lee’s resume says he’s “committed to implementing transparent
financial processes that provide clarity to decision makers and the public.”

Our Coalition shares that goal and we’re here this morning to provide information about one aspect of the OCFO public transparency—accessibility of records under the D.C Freedom of Information Act (FOIA).

We hope these details will provide the Committee an area to explore with the nominee, and also provide Mr. Lee with background on issues he may wish to address assuming he is confirmed as the District’s next independent Chief Financial Officer.

**OCFO has FOIA problems**

In brief:

* Information to guide FOIA requesters on the OCFO website is wrong
* The form for submitting a FOIA request has unlawful and unhelpful elements
* Requests are not answered promptly: median response last year was 20 days (a third over 26)
* Almost two-thirds of processed requests were granted in full suggesting proactive publication could reduce FOIA work

Details are in the appendix.

**OCFO has the means to address the problems**

OCFO has two main advantages over the typical D.C. government agency in addressing issues in its FOIA processing:

* Authority: OCFO as an independent agency can decide its own FOIA processing software. To replace a previous Salesforce solution the agency selected Armedia.[[2]](#footnote-2) It can direct the firm without layers of review.
* People: OCFO has a large IT staff to service all the systems needed to handle massive details of the District’s finances.[[3]](#footnote-3)

Together these ingredients—definite FOIA problems, independent authority to make IT and software decisions, and ample professional staff--suggest change to improve the user experience with OCFO FOIA work should not be difficult.

We ask the committee to discuss with the candidate two areas:

* his plans, as a priority, for correcting the public information access details we identify as misleading and incorrect, and
* second, to raise for ongoing discussion the long-term efficiencies that may come from re-thinking how the public finds OCFO information it needs.[[4]](#footnote-4) Greater proactive publication of existing information is suggested by the fact that the vast majority of OCFO FOIA requests are granted in full. That is, the information the public needs is generally released without time-consuming exemption and redaction. That makes sense, as OCFO numerical data lack personally identifiable details that elsewhere require segregation/redaction for privacy protection. The way to improve efficiency for the public and staff is to release more without request.

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.

**Appendix**

**Details of FOIA problems in Office of the Chief Financial Officer**

1. **OCFO has a dc.gov web** [**page**](https://cfo.dc.gov/page/open-government-and-foia-cfo) **with incorrect FOIA information.**

The OCFO FOIA page, <https://cfo.dc.gov/page/open-government-and-foia-cfo>, says:

If you cannot find the information you are looking for here or elsewhere on DC.gov, you can [submit a FOIA request online](https://foia-dc.gov/palMain.aspx) via the DC government Public FOIA Portal. Requests may also be submitted by mail, fax or email. However, please note that FOIA requests submitted online will be easier to track and process. To understand the process before making a request, please see [foia.dc.gov](http://foia.dc.gov).

This is wrong, as a user following these instructions will find it impossible to submit a FOIA request to OCFO via the usual DC government Public FOIA Portal (FOIAXpress). That is because OCFO has its own tracking system including request portal and form. Thus it is not available as one among 50+ agency destinations in the regular portal’s submission form drop-down menu. And the regular portal offers no redirection or help to the requester who knows OCFO is the place she wants but can’t see it in the menu.

The OCFO FOIA page also offers a link to another generic D.C. FOIA page for more details, but it is useless as it has the same incorrect features. That is, it also directs the requester to use the Public FOIA Portal that does not connect to OCFO and offers no help.

1. **The OCFO request form includes unlawful and confusing features.**

The same OCFO page correctly directs requesters to “submit your FOIA request and monitor its status online by clicking on [FOIA Request Form](https://foia-ocfo.arkcase.com/foia/portal/newRequest).” This link is to the actual OCFO form. It is improved in layout and design compared to the same form on FOIAXpress but unfortunately copies aspects later removed from the original form and adds needless confusion. These details include:

* Requester is prompted to supply details not required by law (“position, organization”) and if absence of red asterisks means optional, that is not explained
* “Consent” and “proof of identity” are listed without explanation though no form of consent or identity verification is needed for the usual FOIA request. Both were for years included on the D.C. form also without explanation. But OCTO at our Coalition’s repeated urging directed the contractor to remove both. User feedback and further review (including review of federal FOIA treatment of the situations where these apply) showed these are confusing and may be moved without affecting most requests. Consent may be needed in third-party request situations; proof of identity may be required for first-person requests (one’s own records). Neither need burden the typical requester to OCFO any more than at FOIAXpress.
1. **The OCFO request form (and other site features) lack some user-friendly details.**

The OCFO request form takes time and, once started, may require research to finish. Yet it does not explain if there is a session time limit, what warnings of time-out may be expected, or whether incomplete work can be saved.

The form doesn’t give a character or word limit for the two text boxes (“request description” and “waiver request requires reason”) nor a countdown counter showing the characters remaining. It is not clear why the limit for the former appears to be 9,000 characters (including spaces) while for the latter is 32,000 (including spaces). No option is offered to present the fee waiver justification (“reason”) in an attachment as is offered for the request description. Fee waiver is hard to discuss adequately unless the requester knows how fees vary with type of requester and type of work, yet the form offers no help with suggested sources of information even just the statute or the agency fee schedule to allow estimation.

Boxes on the form labeled “expand files” are unexplained.

The choice of “delivery method” allows only two, email and mail. For larger digital files neither are well-suited. It also conceals the statutory option to “inspect” responsive records before any further delivery.

The “reading room” function lacks information to explain its coverage and appears unused (a search for “OCFO” items returned nothing). We have argued a similar function in the D.C. Portal (equally empty) should be discontinued.

1. **The D.C. Auditor suggests results data still missing; and OCFO processing of FOIA requests shows areas for improvement.**

**Substance.** On the substance of OCFO information available to the public, we note the work of the D.C. Auditor that has called attention to the lack of information, required in law, connecting money and results—useful to the public as well as those in government.[[5]](#footnote-5) The idea has waxed and waned in popularity, in D.C. government as elsewhere, but did get enacted into law at D.C. Code 47-308.01-.03. The Auditor makes clear the mayor and OCFO have not followed the statute to present a budget in the terms required.

The auditor concluded three years ago as a new financial information system was planned, if the “Mayor and Council determine that the current Performance Based Budget law should not be adhered to, now would be a prudent time to replace that law with a statute that elected and appointed officials are prepared to embrace.”

The Auditor will testify today that the District “would be in a far better position to assess the efficiency and effectiveness of District programs and services if the government followed the requirements of the performance-based budget law, and the annual strategic business plans would provide auditors with a roadmap on what is expected of agencies at a sufficiently granular level to permit auditing against written and approved agency expectations.” That’s worth discussing with Mr. Lee today.

**Request processing.** The data suggest interesting possibilities for improvement in public access to OCFO records. The mayor’s FY 2021 [annual report](https://os.dc.gov/sites/default/files/dc/sites/os/publication/attachments/FY-2021-District-of-Columbia-FOIA-Report.pdf) on FOIA processing shows 308 new (263) and backlogged (45) requests available for processing last year. OCFO completed all but 19, though those 19 had been waiting a very long time, on average 172 days. Of the 289 completed, less than half (142) were on time; another third (107) took more than 26 days.

The interesting additional observation from the data is that, despite delays, OCFO granted most FOIA requests in full.

These data, together, suggest requesters now ask for records that are available, but OCFO makes them wait beyond statutory limits to get them. Analysis of OCFO business processes in handling requests may show areas for reducing delay, but improved proactive disclosure seems a target of opportunity since requests are typically granted in full.[[6]](#footnote-6)

1. DowntownDC Business Improvement District, *Winter 2022 DowntownDC Economy Update* (reporting as of March 15, 2022, office workers are in the office at only 41% of pre-pandemic levels). Available at: <https://tinyurl.com/4hwj6y9e>. [↑](#footnote-ref-1)
2. Updating FOIA request management software is a common problem. DC [purchased](https://dcogc.org/blog/50-d-c-agencies-one-foia-portal/) FOIAXpress software almost a decade ago and officials seem powerless to improve it and fear losing sunk training costs across 50 agencies. Two dozen federal agencies have used FOIAOnline, initially developed by EPA in 2012, for a decade but it is outdated and due to be replaced. The company chosen by OCFO, [Armedia](https://armedia.com/solution/foia/), integrates various capabilities with core software called [ArkCase FOIA](https://www.arkcase.com/arkcase-foia/). Armedia is among those with newer software hoping for enlarged federal business. The company [wrote](https://www.arkcase.com/foiaonline-end-of-life-how-to-prepare-your-organization-for-smooth-a-transition/) recently “a time of change is a good time to step up the game and think outside of the proverbial box…[since] modern FOIA software solutions will help agencies achieve more with fewer resources.” The work with DC is [described](https://www.arkcase.com/arkcase-foia-solution-increase-ocfo-productivity/) on the company site. [↑](#footnote-ref-2)
3. The D.C. Auditor in testimony to be presented at this hearing describes the OCFO this way: “an unusual if not unique public entity, tantamount to a separate branch of government designed to be a check on both the Executive and Legislative branches through exercising its separate and independent authority.” OCFO has 100 staff (of 1000 total) for its own IT alone while OCTO has 200 total for all D.C. IT functions. [Mayor’s FY23 Budget Vol. 2](https://app.box.com/s/bzjtghnj6tsfqxvlleob88r41k7lildf) at pp. A-131 (OCFO) and A-143 (OCTO). [↑](#footnote-ref-3)
4. See discussion in the final part of the appendix. [↑](#footnote-ref-4)
5. For example, see the recent community-wide discussion of crime-fighting approaches and how ideas, funds, and results are not yet well-connected. For the history of discussion in D.C. government of linking budgets and results (expected and observed), *see* D.C. Auditor, *Management Alert: District Government Not in Compliance with Statutory Performance Budget Requirement* (February 13, 2019). Available at: <https://tinyurl.com/5n7ys78t>. [↑](#footnote-ref-5)
6. *See* Margaret B. Kwoka, *Saving the Freedom of Information Act* (Cambridge U. Press, 2021) (devoting a chapter to increased disclosure, arguing at p. 183, “we can learn what information constituencies want by what they request and respond with targeted affirmative disclosure regimes”). [↑](#footnote-ref-6)