

How Can I Get D.C. Government Records?

(A Guide to the D.C. Freedom of Information Act)

The public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. D.C. Code § 2-531

February 2023

Is there access to records of all parts of D.C. government?

***No.*** While the Freedom of Information Act (FOIA) was passed originally in 1976 to apply to records of only the D.C. executive branch, it was extended in 2001 to cover records of the D.C. Council. However, court records are not covered by this statute.

Records of some D.C. Superior Court and Court of Appeals cases in recent years are now available online; more are available at courthouse terminals.

No federal agency records are covered by the D.C. FOIA, so even some agencies with significant activity here (U.S. Attorney for D.C., U.S. Park Police, U.S. Marshals Service, U.S. Parole Commission) are subject only to federal FOIA. The Metro system has its own FOIA process.

Records produced or collected pursuant to a contract by a D.C. agency with a private firm to perform a public function are covered. Make a request as usual to the agency responsible for the contractor, as the law requires them to release records just the same as agency records. Contract documents (solicitation, bids award records) may have to be requested from the Office of Contracting and Procurement (OCP). The law requires some details of contracts to be posted; you can search for them at the OCP website, https://ocp.dc.gov/page/ocp-contracts-and-procurement-transparency-portal .

How do I request a record?

Each D.C. government agency processes requests for its own records. But there is a central intake; you can submit a request at an online portal that connects to most D.C. agencies. Your request will be acknowledged by email and assigned a tracking number. The portal keeps a list of your requests and shows limited information about their status (such as “in process”). Go to <https://foia-dc.gov/>.

You can also send a request directly to the FOIA officer in the relevant agency or contact that officer later with questions. The website of each agency has a tab marked “Open Government and FOIA” that usually lists the officer with a phone number and email address. A list of all agency FOIA Officers is also on the Office of Open Government site at <https://www.open-dc.gov/dc-foia-officer-contact-information>, but as these officials often change the list is hard to keep current.

How do I describe what I want?

The request portal requires you to name the agency that has the records you want (you can call FOIA officers in advance and ask if they have what you seek). Be as specific as possible (letters, emails, memos, plans, pictures, permits, maps, contracts, payment records, data files, spreadsheets, etc.). A record can be in any medium. Include a range of dates. Gives names of people who are mentioned in records or who may know where to find records if known. (Emails must be searched even if you don’t know names.)

The law requires agencies to respond only to requests that “reasonably describe” the records, and agencies do use this requirement as a reason for rejecting confusing and vague requests.

You don’t need to explain your reason for a request (though you’ll be asked to explain the use of the records if you request a public interest fee waiver). The scale of the request (small, medium, or large numbers of pages or files) is irrelevant though very large requests may be released in segments that can drag on a long time.

Can I get records about myself?

***Yes.*** But the agency may ask for proof of identity. Note there is no separate D.C. law comparable to the federal Privacy Act that spells out a separate right to see, or add a correction to, records about you held by a government agency. A request for your own record is like any other under FOIA, so exemptions may apply. D.C. agencies interpret privacy very broadly and, in the Coalition’s opinion, incorrectly deny records that in any conceivable way might identify someone.

Can I get help with a request?

The D.C. Office of Open Government has informative web pages, and staff can answer questions and sometimes unstick agency problems. An online service that helps people file requests nationwide is Muckrock. The Reporters Committee for Freedom of the Press has an online request generator. The D.C. government has a FOIA web page.

The D.C. Open Government Coalition tries to answer all questions as best we can. Our website has very detailed help texts, <https://dcogc.org/access/access-to-information/>. Or write to us at [info@dcogc.org](file:///C%3A%5CUsers%5Cmxmoore%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5COL2IUV6J%5Cinfo%40dcogc.org).

How soon will I get an answer?

The D.C. statute requires an answer in 15 working days. The agency may ask for a 10-day extension (for example, for complex requests or a need to consult other agencies). But delays are a common complaint and there is no effective solution. (See below on appeals.)

My request is important; can I get a quick answer?

Unlike the federal FOIA system, D.C. law does not include a special track for expedited treatment of a request. If you experience delay, it’s always good to check in first at the agency by contacting the FOIA Officer with your request number to find out what’s happening. Sometimes, requests get lost or staff can’t figure out what the requester wanted; these can get cleared up quickly when you ask.

Can an agency deny my request?

***Yes.*** Only half of all requests are granted in whole. The law says a request must “reasonably describe” what’s wanted. Agencies are not required to guess what you want or give you the next best record, so an imprecise request may be denied. Clear and specific requests at the outset help avoid this result and can assist in negotiations if you encounter a delay. One problem with the request portal is limited space in text boxes to describe the request. But there’s an easy answer: attach more pages.

Also, a request can’t be in the form of asking for “information about” something, or answers to questions, or for new charts or tables created from existing data. In other words, ask only for existing records.

The D.C. law includes 19 exemptions, many similar to those in the federal FOIA. Records most commonly exempted have personal information whose release would be a clearly unwarranted invasion of privacy (but a public interest can sometimes override). Law enforcement records are the next most common exemption, if their release could affect investigations or court proceedings, reveal informants or secret techniques, or invade privacy. Agency records that are back-and-forth among staff before any policy or decision is final are also commonly exempted. If you have questions about a denial based on an exemption, the Coalition may be able to advise you. Applying the exemptions can be challenging, especially since they have been interpreted in hundreds of decisions in federal courts. Plus agency staff can make mistakes. The Coalition believes privacy exemptions, especially, are overused by D.C. agencies and lead to unnecessary withholding of information.

Portions of record may have personal or other exempt data while the rest may not be exempt. In that case, the law requires segregation (redaction) of those exempt portions; the rest must be released. Over-redaction is a common complaint.

What can I do about delay or denial?

The easier of two routes is to appeal. The Mayor’s Office of Legal Counsel will review an appeal of delay or denial. No detailed legal argument is needed, no representation by counsel, no fee, and a fast (10-day) response make this a go-to proposition that surprisingly few take advantage of (only a few hundred of the thousands of denials in a year). The opinions about half the time reverse the agency decision in whole or part and send it back for a do-over. Unfortunately, if the agency doesn’t respond to MOLC’s decision, there is no formal enforcement process.

Opinions on past appeals are in a searchable FOIA Appeal database online.

The Office of Open Government can issue advisory opinions on FOIA matters that could be a useful independent source of review, but the Office lacks enforcement authority and this route has not been widely used.

Note that the Mayor’s office does not review appeals of FOIA decisions by the D.C. Council.

The appeals process was backlogged during the public health emergency. The 10-day deadline is rarely met and opinions have not been published for years.

What do I say in an appeal?

Include your request, correspondence, and any records released.

An appeal letter may suggest reasons for questioning the agency results. For example, excessive delay, inadequate search, improper application of exemptions, failure to segregate exempt material and release the rest. But a detailed argument with citations to the law or court opinions is not required. The Mayor’s office reviews whether an agency response followed all the rules that apply.

Where do I send an appeal?

You may appeal at the Portal a request you originally submitted that way. Or may be submitted by email to: [foia.appeals@dc.gov](file:///C%3A%5CUsers%5Cmxmoore%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5COL2IUV6J%5Cfoia.appeals%40dc.gov).

By mail: The Mayor’s Office of Legal Counsel, FOIA Appeal, 1350 Pennsylvania Avenue, NW, Suite 407, Washington, DC 20004.

Send a copy of the appeal and attachments to the FOIA officer of the agency involved.

Can I sue the government for delay or denial or other problems with a FOIA request?

***Yes***, but the easier route is to start with an appeal (see above). The heavier lift is to go to court — to sue the D.C. government in D.C. Superior Court. As there is no special treatment of FOIA cases it can take many months to get a decision. It is not necessary for filing a lawsuit to first use the statute’s other appeal process (to the Mayor).

Filing costs $120 and the case will await scheduling for several months. When the case gets going, the argument will be over who is right about how the law should apply to your case. The agency can show records secretly to the judge for her decision. D.C. judges are reasonably skeptical of agency claims since they are often wrong, but even so, success usually requires both a skilled attorney and a long slog. If the agency loses, the law allows the court to require the government to pay your attorney’s fees, but those are often contested in another round of drawn-out litigation.

Will the Coalition represent me in a FOIA case?

***Rarely*.** The Coalition has no attorneys on staff. With volunteer help from local law firms, the Coalition sometimes takes cases that raise exceptional questions of law that affect many people.

Will D.C. charge a fee for my request?

There is no charge for filing a request.

Agencies may charge for searching, reviewing, and copying records even if the search does not locate any responsive records or if records are located but are withheld as exempt.

There several discounts available. Media requests are eligible for waiver of fees except for copying. The definition of qualifying “media” is sometimes controversial if a D.C. agency hasn’t kept up and thinks it means only The *Washington Post*. Courts have defined the term broadly. Ask the Coalition for help if necessary.

Requests that are in the public interest (“serving the general public”) are also eligible for full or partial waiver. If you check that box, the portal asks (without explanation) for your reasons. You can explain factors such as these (taken from DOJ guidance on similar federal law): how the subject of the request concerns the operations or activities of the government (not just private or personal business); how the records are likely to contribute to public understanding of government operations or activities and the significance of that contribution; any commercial interest you have in the request and how the public interest outweighs any such commercial interest. And how you wil be able to use any records you obtain to educate the public.

No data are published on fee waiver denials, but the actual amounts of fees collected are tiny—so waivers are evidently common. If a fee waiver is denied, you can cut costs by narrowing the request (for less searching or copying), ask to inspect the records before any copying, or ask for the records downloaded or on CD instead of printed out.

It is the Mayor’s office position that the law does not allow them to consider appeals of agency decisions on fees charged or whether to grant waivers. But the Office of Open Government has recently reversed an agency fee waiver denial for using an incorrect definigtion of “public interest,” so a complaint there may be worth a try.

How can I research the law and D.C. agency processing?

The D.C. Court of Appeals decides what D.C. law means if someone who lost in Superior Court (requester or agency) appeals an initial decision. Appeals take a long time and cost money, so there are only a few dozen opinions on appeals since the law’s inception in 1977. Also, FOIA opinions from all levels of the federal courts are consulted for persuasive interpretation on many aspects where the D.C. and federal provisions are similar.

On federal law, a useful “FOIA wiki” is operated by the Reporters Committee for Freedom of the Press. See here: https://foia.wiki/wiki/Main\_Page. The U.S. Department of Justice publishes a comprehensive legal treatise called Guide to the FOIA, which is available here: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

The mayor reports annually to the D.C. Council on FOIA processing by each D.C. agency, including volume, backlogs, timeliness of processing, requests granted and denied in whole or part, exemptions claimed, and costs and any employees convicted of mishandling a request (never). Also in the report, details of several hundred appeals each year may show you an agency that concerns you has a history of being upheld or reversed on appeal. The 2022 report is not yet available. Past reports are available at: <https://os.dc.gov/page/annual-reports>.

**The D.C. Open Government Coalition**

The D.C. Open Government Coalition seeks to enhance the public’s access to government information and ensure the transparency of government operations of the District of Columbia. We believe that 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 and proceedings, and to educate the public and government officials about the principles and benefits of open government in a democratic society. Visit our website at [www.dcogc.org](http://www.dcogc.org).

***This guide is only for use as general information. It is not intended to be legal advice about any specific situation. For legal advice, consult a qualified attorney. The Coalition may be able to help you locate an attorney. The contents of this guide are up to date as of February 2023.***

D.C. Open Government Coalition
Washington, DC 20056
(202) 780-6020
[www.dcogc.org](file:///C%3A%5CUsers%5Cmxmoore%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5COL2IUV6J%5Cwww.dcogc.org)