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 **Statement by D.C. Open Government Coalition**

Submitted by

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Co-Chair, Coalition Legal Committee

For the hearing record

Council of the District of Columbia, Committee on Facilities & Family Services

FY 22 Performance Oversight – Department of General Services

February 28, 2023

Thank you for the opportunity to provide views on the performance of the Department of General Services (DGS). We work in coalition with the many longstanding archives advocates in the community, as part of our advocacy for effective public access to government records old and new.

DGS manages the construction project that will result in a new archive building in three years. Good news last year included filling the key position of D.C. Archivist and restarting planning with an architectural design contract awarded to Hartman-Cox with EYA. These were significant milestones by OS and DGS. And the firm submitted building ideas in the fall and drawings in December.

The key issue for the hearing must be to communicate to DGS and the executive the **urgent need for several substantive public consultations** on programming and how that is to be reflected in the design. This need arises since DGS and its architects have ignored Council’s repeated requirements for public engagement, yet with every passing day decisions are being made behind closed doors in preparing further highly detailed filings for various review bodies such as zoning.

**Council directions for planning process elements remain unfulfilled.**

The DGS FY23 budget report of the Council Committee on Government Operations & Facilities provided specific directions based on public witnesses’ testimony last spring, including by the Open Government Coalition. Unfortunately, the guidance has been little followed.[[1]](#footnote-1)

**1. Community advisors need to be used more and better.** Writing last spring, the Committee “urge[d] DGS to include the Archives Advisory Group in its decision-making around the Archives project, especially as it relates to the architecture and engineering work that DGS has already begun to procure for the project.”

To “include” in our view should mean more than occasional chats or public briefings and forwarding contract deliverables by a public website. But **there has not been substantial involvement** that we can see. On the contrary, we observe the Advisory Group meetings, and the group has appeared to be frustrated as they are not timely receiving detailed materials they need and request. Most distressing, they seem not to be invited to take part in significant and substantive discussion, yet months of planning go on. For example, there was no discussion of the public comments on the September design report. Nor has there been discussion of the drawings. And the planned UDC uses have not been clarified.[[2]](#footnote-2)

This is a loss to the community, as the Council appointed to the Advisory Group a solid set of members with highly relevant expertise (e.g., archives design and management, architecture, public history programming) that could augment the minimal staff in the Public Records Office in Office of the Secretary (the official government “client” for the complex building project).

**2. Serious attention to the digital archive still missing**. The Committee also “strongly” encouraged attention to digital archival material destined for the new facility. It rejected the DGS insistence “that they will not have a role in preparing digital archives.” The Committee wrote, “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 also encouraged the District’s Office of the Chief Technology Officer to “coordinate with Office of the Secretary, 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.”[[3]](#footnote-3)

Again, from what we can tell, specific attention to the digital archive has been limited. The architects’ treatment in their initial report treatment was brief. And it appears both Archives Advisory Group and OCTO have been in no significant discussions with DGS, architects, and public records officials. We wrote our own concerns about digital records in our comments on the first planning report in September and never heard back from anyone.[[4]](#footnote-4)

**Agency pre-hearing answers are limited, and the record should be augmented.**

* **Are upwardly revised cost figures formally incorporated in the contract or guidance so architects know they should plan to that figure?** An outdated $73M cost figure, estimated

years ago, has been a source of confusion. Unfortunately, it remains. To Q. 107, the agency said only that “a tentative budget” is $103M while “approved funds” remain $73M. The unanswered question asked what figure the architects are authorized to work with. Nothing could be more important to clarify.

* **Public involvement in archives planning must be increased.** We discussed above our observations of the limited consultations so far in planning. The question on that subject confirmed our view. The DGS answer to Q. 109 begins with mis-identifying the key group as “Archives of American Gardens.” If “correspondence and project updates” have been sent to that organization (part of the Smithsonian), they may well be confused.[[5]](#footnote-5) The rest of the answer should be explored in the oversight hearing as it does not appear to anyone that there is any “consistent channel” that does what’s needed. The Archives Advisory Group, for example, has never received “correspondence” of any significance.

Testimony at the recent oversight hearing for Office of Public Records also confirmed no one is satisfied with the public consultation on the archives design project.[[6]](#footnote-6) Public witnesses there noted that it would be a best practice for DGS to direct the architects to hold one or more charettes at which D.C. officials would commit to collaborative work to reach the best design possible.[[7]](#footnote-7)

* **Expert help with digital archiving plans is again mischaracterized and dismissed by the DGS response and must be corrected.** The DGS answer to Q. 110 on working with OCTO says that the “client agency the Office of the Secretary/Office of the Senior Advisor will be working in coordination with the National Archives to perform digital archiving services.” We have never heard of a role for the National Archives (a federal agency) in the new D.C. archives building project, especially “digital archiving services.” (On the contrary, one hopes for fewer records in federal storage, with return of D.C. records held there while our facilities were inadequate.) So, this was a surprise and should be clarified that D.C. must do its own work to get this right.

This answer concludes with another narrow statement of mission of the type that the Council committee warned against last year when DGS said it wouldn’t be “preparing” digital materials. This year, the agency says “DGS’s scope for this project is design and construction of the new building.” True, but we quote again from the FY23 Budget Report, “this response misses the point.”

The Committee explained, “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 should explore how DGS will assure that relevant expertise is involved in the design stage so that present and future digital records will be properly archived.

**Conclusion: Council guidance is essential, so archives planning includes expanded user and community expert involvement now.**

We look forward to Council direction to DGS (perhaps jointly between this committee and the Committee on Executive Administration and Labor, with jurisdiction over public records) that expanded consultations in the very near future are needed. A common suggestion seems to be that there be several serious sessions with architects, agency staff, outside experts and the user public -- before any more details are locked in by DGS’ architects’ submissions to review bodies with apparent executive approval. Planning so far has not earned the community stamp of approval.

For any questions, reach me at: fmulhauser@aol.com or 202-550-4131

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 D.C. open government 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 13 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. *Report and Recommendations of the Committee on Government Operations and Facilities on the Fiscal Year 2023 Budget* (April 20, 2022), pp. 136-137. Available at: <https://tinyurl.com/26wm49ud>. [↑](#footnote-ref-1)
2. When the community learned no details are settled about the UDC plans to use the building for university archives and a jazz music collection, we submitted a FOIA request for the memorandum laying that out. DGS responded that they had no such document. [↑](#footnote-ref-2)
3. See OCTO discussion in *FY23 Budget Report* (note 1 above), p. 118. [↑](#footnote-ref-3)
4. Digital records obviously make public access easier, such as by FOIA. Open Government Coalition comments are available here: <https://dcogc.org/wp-content/uploads/2022/10/OGC-letter-on-Archives-draft-initial-report.docx>. [↑](#footnote-ref-4)
5. The Archives of American Gardens is part of Smithsonian Gardens. See <https://gardens.si.edu/collections/archives/>. The unit collects, preserves, and provides access to written records and photographs that document the history of gardens in America. [↑](#footnote-ref-5)
6. Committee on Executive Administration & Labor, February 10, 2023. Available at: <https://www.youtube.com/watch?v=nu8X-XEKwuI>. [↑](#footnote-ref-6)
7. According to experts, “A charette is an intensive workshop in which various stakeholders and experts are brought together to address a particular design issue… A charrette can be the mechanism that starts the communication process among the project team members, building users, and project management staff. As such, it is important that all relevant decision makers attend. Furthermore, a charrette can be viewed as a creative burst of energy that builds momentum for a project and sets it on a course to meet project goals. It can transform a project from a static, complex problem to a successful, buildable plan. Usually, it is an intensely focused, multi-day session that uses a collaborative approach to create realistic and achievable design ideas that respond successfully to the issues at hand.” *Whole Building Design Guide*. Available at: <https://www.wbdg.org/resources/planning-and-conducting-integrated-design-id-charrettes>. [↑](#footnote-ref-7)