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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 Health

FY 22 Performance Oversight – Department of Health

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Thank you for the opportunity to provide views for the record on the Department of Health (DOH) performance. We work in coalition with the many advocates in the community who ask us to lift up voices for effective public access to government records. This is one example.

Our concern is straightforward, and we ask your help in emphasizing to DOH the need to prioritize public information mandates in Council statutes.

This need arises since DOH has ignored the annual reports called for in Section 8 of the Death With Dignity Act of 2016, D.C. Code § 7-661.07. Reports were issued, withdrawn, and not replaced until our FOIA request last year, and even then, they have not all been published.

**Council's statutory mandate still needs to be fulfilled.**

The DOH is responsible for the annual public report on elements of the Death With Dignity Act. Community members contacted the Open Government Coalition when they needed help finding the reports online. Three (the oldest) have been posted, but the rest are still unavailable. Here’s the story.

We filed a FOIA request in August 2022 asking for the reports. DOH staff explained that the reports had been issued but withdrawn to remove “information that was improperly included in previous versions of the reports and that could have potentially allowed for personal identification of individuals seeking to utilize the Act.”

To our repeated inquiries, DOH officials answered last year that resources of staff and records were being assembled and reconstruction of the reports was “in progress.”

In January, we filed an administrative appeal to the Mayor’s Office of Legal Counsel on the ground of constructive denial—failure to release records in agency possession without a lawful reason (since the agency said it had the reports, it, therefore, could simply redact parts and release the rest to meet our request).

Later in January, the agency sent reports for 2017-2018, 2018-2019, and 2019-2020 (and posted them at https://dchealth.dc.gov/publication/death-dignity-annual-reports). The agency added, “Information for the 2020-2021 report and 2021-2022 report are [*sic*] still being compiled and will be published in the near future.” We have received no further records, nor are any more available online.

We reasoned that possible identifiability of individuals in statistical data must arise in many other health reporting contexts. We spoke with officials elsewhere to learn best practices for dealing with this situation and locate exhibits of reports suitably tailored. We passed those on to DOH officials and never heard back. It remains to be seen why seven months of work were needed if the original reports had been compiled and even published but needed some edits to lessen the risk of identifiability.

**Conclusion: Council guidance is essential to assure agency attention to mandatory public data and reports**

We look forward to Council's direction to DOH to strengthen internal controls in two respects:

* enhancing agency report processing so that identifiability is included in initial review criteria;
* elevating FOIA response priority, so resources are available for timely resolving request issues.

The Death With Dignity Act was a controversial public policy. Predictions of how it would work in practice divided opponents and advocates in the Council chamber during dramatic hearings. Reporting requirements were added so that the community would have data that could shed light on what were, at the time of passage, just guesses.

We hope you can share our disappointment and take appropriate action because the DOH still needs to fulfill the statutory reporting requirement.

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 participates in a National Freedom of Information Coalition where advocates from dozens of states work together on common issues all are facing.