



3901 Argyle Terrace, N.W.
Washington, D.C. 20011
www.dcohc.org

Testimony of
Robert S. Becker

On behalf of the D.C. Open Government Coalition
March 28, 2023

Before the Committee on Executive Administration and Labor
Council of the District of Columbia

FY 2024 Budget Oversight Hearing — Board of Ethics and Government Accountability,
Office of Open Government

On behalf of the D.C. Open Government Coalition, thank you for giving us the opportunity to testify in support of the Office of Open Government's (OOG) request for budget enhancements, and to advocate for funding in the Fiscal Year 2024 budget to create a Government Information and Transparency Commission. I am a member of the Coalition board, and a Ward 4 resident.

In the Board of Ethics and Government Accountability (BEGA) performance oversight hearing in February, we highlighted several areas in which the OOG, if given authority and resources, could greatly improve public-body compliance with the Freedom of Information Act (FOIA) and Open Meetings Act (OMA). But rather than provide needed resources, the mayor's FY24 budget continues a long-running effort to cut the OOG's funding in real terms. Because the proposed \$31,283 increase in OOG FY24 funding represents only 2/3 of the rate of inflation between March 2022 and February 2023, adoption of the mayor's budget would be a spending cut.

When viewed in relation to BEGA and the Office of Government Ethics (OGE), the proposed budget demonstrates that the mayor considers the OOG to be the poor step-child of government accountability. Local funding for BEGA and the OGE at least would keep pace with inflation. More significantly, in FY24, the OOG will receive only 26.1% of BEGA's total budget, down from 26.9% in FY23. Although transparency is essential to ensure ethical, accountable government, the mayor would allocate only \$1.1 million to the OOG out of BEGA's \$4.2 million appropriation.

BEGA's responses to the Committee's budget questionnaire reinforce the perception that the Board, as well as the mayor, prioritizes ethics enforcement over the public's right-to-know. In response to Question 14, "Will the proposed FY24 budget allow the agency to meet all statutory mandates?", BEGA says the OGE will not have enough money, but says nothing about the detrimental impact on the OOG.

I was unable to testify at the BEGA budget hearing because I was traveling, but I have watched the video. I would like to elaborate on points OOG Director Niquelle Allen made, and answer Chairwoman Bonds's questions regarding creation of a Government Information and Transparency Commission.

For several years, the Coalition has testified at performance and budget oversight hearings about serious problems in administration and enforcement of the FOI Act and OMA. In March, we told this committee that,

to improve transparency and reduce its cost, the D.C. government needs to modernize systems the executive and legislative branches use to maintain, preserve, secure and retrieve their public records, whether they are data sets, documents, emails, text messages or are in other formats. In addition, the district needs to begin the lengthy process of digitizing its paper records to facilitate retrieval and greatly reduce the cost of storing them.

Last Fall, the Coalition circulated a draft bill to create a commission that would examine wholistically the transparency and related technology issues that regularly arise across the executive and legislative branches of the D.C. government. *See attached draft*. The commission would be tasked with recommending capital expenditures, legislation and policy changes to improve records management, security and access, and facilitate public engagement with District agencies and public bodies.

In the BEGA budget hearing, Director Allen asked the committee to include funding in the FY24 budget to stand up the commission this year, and Chairwoman Bonds asked about the cost and logistics associated with doing so. Perhaps with an eye toward creating the commission in the Budget Support Act (BSA), Chairwoman Bonds cited the Limited-Equity Cooperative Task Force (LECTF) as a possible model, and asked whether, to reduce the cost of the commission, BEGA could provide staff support.

If the Council can create the commission through the budget process, the Coalition would strongly support the effort. Unfortunately, there are significant hurdles to using the BSA as a vehicle to create it. The Information Technology and Transparency Commission would work across the legislative and executive branches, and bring into play multiple executive agencies overseen by the committees on Executive Administration and Labor, Housing, Public Works and Administration, Judiciary and Public Safety, and Facilities and Family Services; and the Committee of the Whole. Council Rule 703 appears to preclude one committee from proposing actions that reach beyond the scope of its oversight authority.

The LECTF would not be a good model for creating the proposed commission through the BSA. The Council created the task force by enacting the [Limited-Equity Cooperative Task Force Act of 2018, Bill 22-99](#). The [Committee Report](#), 8, said, “[i]mplementation [would] result in a cost of approximately \$60,000 to the Department of Housing and Community Development.” The expenditure was “the estimated cost of hiring a consultant to manage the Task Force, provide administrative support, and produce the report,” not to cover agency staff time. *Id.*

Furthermore, members of the proposed commission will need support and research assistance in areas such as records management and security, information technology, and public-engagement systems, as well as government transparency. Neither the OOG nor BEGA currently has that broad range of expertise, and could not justify the expense to acquire it.

Instead, we used as a model the bill to establish the Police Reform Commission, which the Council initially funded with \$500,000 to cover the cost of staffing by a consulting firm. The attached draft would authorize Information Technology and Transparency Commission members to hire a director, staff and consultants as needed. We believe the cost for day-to-day administration and support would be far less for this body than for the Police Reform Commission.

We look forward to working with this committee to create the Information Technology and Transparency Commission. If you have questions, please let us know.

Thank you.

Formed in March 2009, the D.C. Open Government Coalition seeks to enhance public access to government information and transparency of government operations of the District. We believe transparency promotes civic engagement and is critical to a 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.

For additional information call Robert Becker, 202 306-2276.

Attachment

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a D.C. Government Information and Transparency Commission (“Commission”) to examine the District government’s institutions, laws, practices, procedures, regulations and technology that provide for creation, storage, retrieval and public access to government records and data, and public engagement with the government; and to provide evidence-based recommendations for: (1) improving, reforming, and revising those institutions, laws, practices, procedures and regulations; and (2) a long-term capital improvement program to acquire and upgrade technology needed to implement those recommendations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “D.C. Government Information and Transparency Commission Establishment Act of 2023”.

Sec. 2. D.C. Government Information and Transparency Commission; establishment.

(a) There is established a D.C. Government Information and Transparency Commission (“Commission”) to examine the District government’s institutions, laws, practices, procedures, regulations and technology that provide for creation, storage, retrieval and public access to government records and data, and public engagement with the government; and to provide evidence-based recommendations for:

(1) improving, reforming, and revising those institutions, laws, practices, procedures and regulations; and

35 (2) a long-term capital improvement program to acquire and upgrade technology
36 needed to implement those recommendations.

37 (b) The Commission, by a majority vote, shall select a Director who shall perform the duties
38 required for the day-to-day functioning of the Commission as considered necessary by the members,
39 including appointment of staff, selection of consultants, and the administration of meetings and report
40 production.

41 Sec. 3. Composition

42 (a) The Commission shall be comprised of twenty one (21) members, at least a
43 majority of whom shall be from outside the District government.

44 (b) Commission members shall be drawn from among the following
45 entities/categories:

- 46 (1) District government agencies, including OCTO;
- 47 (2) The Council of the District of Columbia and its professional staff;
- 48 (3) The Office of Open Government;
- 49 (4) The Office of the Attorney General for the District of Columbia;
- 50 (5) The Office of the Secretary;
- 51 (6) The Department of General Services, Contracting & Procurement
52 Division;
- 53 (7) Consumers of government information, including media, researchers,
54 community organizations and the business community;
- 55 (8) Experts in design and implementation of public engagement technology;
- 56 (9) Experts in design, implementation and security of records and data
57 management systems;
- 58 (10) Experts in records management; and

59 (11) Experts in government transparency law and policy.

60 (c) The Chairman of the Council, no later than _____, shall:

61 (1) Appoint the Commission members.

62 (2) Designate a member who is not employed by the District government as
63 the Commission's chairperson.

64 (3) Designate the Director of the Office of Open Government and the Chief
65 Data Officer as the Commission's vice-chairpersons.

66 Section 4. Funding.

67 The Council shall make appropriations sufficient to fund the Commission's operations
68 pursuant to Sec. 2(b) above.

69 Section 5. Report.

70 (a) The Commission shall submit its recommendations in a report to the Mayor and
71 Council no later than .

72 (b) The report required by paragraph (1) of this subsection shall include but not be
73 limited to analyses and recommendations on the following topics:

74 (1) Specific proposals for government-wide procedures governing creation,
75 acquisition, storage, retention, retrieval and disclosure of District government data and records

76 (2) Design criteria and requirements that facilitate compliance with
77 procedures described in subsection (b)(1) that all District public bodies, executive and
78 legislative, must follow when developing or acquiring records management and public
79 engagement platforms.

80 (3) Specific proposals to upgrade existing records management and public
81 engagement platforms, and acquire new technology to enhance internal use, public access and
82 engagement in the twenty-first century.

83 (4) The feasibility of implementing mechanisms to ensure compliance with
84 records management and public access laws and regulations among executive branch subordinate
85 and independent agencies, boards and commissions, the Council and Advisory Neighborhood
86 Commissions, and to provide an administrative review process in instances of non-compliance.

87 (5) Specific proposals to improve the D.C. Freedom of Information Act
88 (“D.C. FOIA”) Portal and to promote open data and proactive disclosure of information.

89 (6) Analysis of whether the D.C. FOIA and Open Meetings Act (“OMA”), as
90 currently implemented, provide the public the robust access to the operations of the D.C.
91 government guaranteed by D.C. Code §§ 2-531, et seq., and 2-572, et seq., and, if not, make
92 specific proposals to update and/or reform those statutes.

93 (7) Specific proposals to strengthen the Office of Open Government’s role in
94 promoting training, compliance, enforcement, administration, and government-wide oversight of
95 the D.C. FOIA and OMA.

96 (8) Specific proposals for effecting proactive public disclosure of useful
97 records and databases.

98 (9) Best practices for governmental offices, entities, and independent agencies
99 for efficiently administering the D.C. FOIA.

100 (10) Specific proposals for greater uniformity among executive branch
101 independent and subordinate agencies, boards and commissions, the Council, and ANCs in
102 processing of D.C. FOIA requests and imposition of processing and duplication fees.

103 Section 6. Openness.

104 The Commission shall comply with the D.C. Freedom of Information Act and Open
105 Meetings Act.

106 Section 7.

107 This Act shall sunset upon the Commission submitting its report or on _____, as provided
108 for in section 5 of this Act, or _____, whichever is later.

109 Sec. 8. Fiscal impact statement.

110 The Council adopts the fiscal impact statement in the committee report as the fiscal
111 impact statement required by section 4aofthe General Legislative Procedures Act of 1975,
112 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code§ 1-301.47a).

113 Sec. 9. Effective date.

114 This act shall take effect following approval by the Mayor (or in the event of veto by the
115 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
116 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
117 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
118 Columbia Register.