

3901 Argyle Ter., N.W.

Washington, D.C. 20011

[www.dcogc.org](http://www.dcogc.org) -- 202-780-6020

FFF

**Testimony of the**

**D.C. Open Government Coalition**

by

**Fritz Mulhauser**

Co-Chair, Coalition Legal Committee

Before the

Council of the District of Columbia -- Committee on Public Works & Operations

FY 24 Budget Oversight Hearing – Office of Administrative Hearings

April 11, 2023

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Thank you for the opportunity to provide views on the Office of Administrative Hearings (OAH) in connection with the mayor’s FY24 budget request for the agency.

The budget is roughly the same. But the implication is: “Do more with less.” That’s because workload increases[[1]](#footnote-1) and prices rise for all the resources needed. The need is vivid for increased efficiency in hearing and deciding cases.

We offer observations from the perspective of the users, the thousands of people who must use the District’s central hearing panel as their only accessible way to raise questions about dozens of D.C. agencies’ actions—incorrect trash or taxicab tickets, unjustified school suspensions or rent increases, or payment mistakes in public safety-net benefits. For them the questions are simple:

* How do I file a challenge to an agency decision (and what happened in the past with cases like mine)?
* If I file, how do I keep track of my case and get any help I need along the way?

Sadly, in the search for better answers to these questions, committee direction in fund allocation and report language appears not to be followed; and for users, the results in improved services are few.

Specifically, we note these developments in the first part of this year:

* no improvement in electronic access (e-filing, online case information or published final orders);
* no sign of added tech staff to address such problems and pursue innovation;
* no improvement in space and staff to assist the public in person;
* no sign of progress on a staffing study to benchmark personnel needs for the work.

Brief notes on each:

**Electronic access.**

* **E-filing.** There seems little change in the ability of the public to file electronically. OAH web material warns that the office can’t help a user figure out whether OAH is even the right place. If so, filing varies in complexity. Past official announcements indicated that most cases (excepting only those challenging notices of infraction) would be able to be e-filed last November. But today the OAH website still shows only unemployment cases can be filed that way.
* **Case information**. An OAH user can’t consult an online “docket” to follow scheduled events of an individual case. Such aid is commonplace in courts and central administrative panels nationwide.[[2]](#footnote-2)
* **Published final orders.** This project will remedy the OAH nonpublication of its judges’ decisions. For decades that has violated D.C. law and federal regulations. (Publication is also common practice in most central panels elsewhere.) It was a “priority” for FY22, according to the chief’s January 2022 letter to the prior committee chair. OAH officials have announced work under way with a solution from the case management software vendor, then from the D.C. technology agency, OCTO. And now, new comments this March to the OAH Advisory Committee showed the effort again to be stalled, as staff are considering the report of “a new study” by an outside contractor who reviewed OAH systems broadly.[[3]](#footnote-3) Decisions are now promised “later.” And there has been no consultation with users (as far as we know) as the committee also urged. We recall a statement from the dais at a previous budget hearing: “I want to make sure we don’t come back to [future] hearings and people are asking us about this [opinion publication], and we don’t have a timeline.”  *D.C. Council member Robert C. White Jr. (D-At Large) – OAH Budget hearing 3/25/22*.

**Added technical staff**. When OAH noted that the workload of its tech staff left no slack for new projects, the Council doubled that staff (from two to four) for FY23.[[4]](#footnote-4) Despite the committee’s sense of urgency—as communicated by the OAH itself--observers on the OAH staff now tell us the authorized positions have not been filed. That is, they have seen neither postings nor hirings. Our sources could be wrong, of course. In addition, the proposed FY24 budget is puzzling: with so many tech projects incomplete, how can it be that IT staffing will shrink? The mayor’s budget shows a reduction from five to two in Table FSO-4, line 1040. Schedule A for FY24 confirms only two information technology staff.[[5]](#footnote-5)

**Resource center**. A new website is welcome. But courthouses everywhere have found that a central place for help is important to others confused or lacking connection. D.C. Superior Court has evolved a series of such centers in different divisions heavily used by unrepresented people, some staffed by court personnel and others through community resources.[[6]](#footnote-6) But community members contacting our Coalition say they can’t connect with the OAH resource center by phone. Knowledgeable OAH members (speaking anonymously to the Coalition as they’re not authorized to discuss the subject) say despite the Council adding a position for resource center work, other assignments take priority so there are not, in fact, two people full-time to help the thousands of people each year who need guidance on using the Office. Arranging for reliable outside assistance will take time that also seems not available.

**Staffing study**. For years, the open government improvements we advocate have been hostage, according to OAH officials, to “staff shortages.” We are sad to report there is no sign of procurement of court management experts to do the staffing study the Council directed last year and funded with a special appropriation of $200,000.[[7]](#footnote-7) We hoped there would be a greater sense of urgency to get good data on the key OAH issue—benchmarking the resources needed to do the work.

The legislature writes the laws, then raises and appropriates funds for the executive to carry them out. Yet regarding key open government improvements at OAH, we are reporting that funds the Council appropriated appear not spent as expected and related directions remain unfulfilled. Thousands remain without the 21st century system they hope for, as they invoke their legal right to challenge their government’s decisions.

As Woodrow Wilson said in his classic *Congressional Government* (1885): “Quite as important as lawmaking is vigilant oversight of administration.” We ask the committee to inquire closely about electronic access, added technical staff to enable that, resource center adequacy, and expert review of staffing, and make unmistakably clear your expectations in the FY24 budget decisions and report.

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 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. OAH judges began the current fiscal year on October 1, 2022, with a backlog of over 13,000 undecided cases across 29 agencies before even one new one. That’s eight months of work in the in-box already on Day One (OAH disposed of 19,000 cases in all FY22). Figures are from February 2023 prehearing responses, <https://tinyurl.com/4k2r2yv5>. And significant case increases are expected from eligibility and renewal questions arising as federal safety-net benefit programs discontinue the continuous enrollment requirements after the public health emergency formally ends in May. [↑](#footnote-ref-1)
2. The schedule for the day is on a screen in the OAH waiting room. Elsewhere, see central hearing list in Louisiana, <https://tinyurl.com/cdppkmmx>; general jurisdiction calendar search in California, <https://tinyurl.com/wdw2wdjb>; hearing schedule in Texas, <https://tinyurl.com/57uxemfh>. The 22 states with central panels are here: <https://tinyurl.com/5nmty3pw>. [↑](#footnote-ref-2)
3. The study was by Mondrian Consulting, <https://mondrianconsulting.com/>. Originally noted in performance oversight pre-hearing Q.29 as a “deep dive” into the OAH, it was mentioned at the March Advisory Committee as a “two week” effort. [↑](#footnote-ref-3)
4. The committee urged OAH “to move swiftly to fill all positions within its IT Department and report back to the Committee if inadequate salaries make doing so difficult.” These were the new staff the Committee asked to “immediately advance the procurement, development, or implementation of a searchable, online, public portal.” [↑](#footnote-ref-4)
5. The mayor’s FY24 OAH budget is at Vol. 2, p. C-95, <https://tinyurl.com/bbdnwatd> and Schedule A is in the budget hearing materials, <https://tinyurl.com/2bjbt9v3>. [↑](#footnote-ref-5)
6. OAH officials fear court-based help will become unauthorized law practice. This valid concern (to protect users) is not the final answer. Lauren Sudeall, “The Overreach of Limits on ‘Legal Advice,’” *Yale Law Journal,* Vol. 131 (2022) (showing that “current definitions and applications of ‘legal advice’ are overly and unnecessarily broad, confusing those bound by them, severely disadvantaging *pro se* litigants, undermining the purpose of such limitations, and, in more extreme cases, implicating due-process concerns expressed by the Supreme Court in *Turner v. Rogers*”). <https://tinyurl.com/3xmncr6v>. [↑](#footnote-ref-6)
7. The committee asked last year for the staffing benchmark study “in advance of the initiation of the Fiscal Year 2024 budget process so that it can guide budget decision-making.” The agency said in performance oversight pre-hearing materials (Q.58) that vendor selection was at the early stage of designing the RFP; the work was said to be likely done by October 2023, long after the Council has put the FY24 budget to bed. [↑](#footnote-ref-7)