



approach

ETHICS WEEK 2021
REAPPROACHING ETHICAL VALUES



FOIA 101

THE PATH THAT LEADS TO OPENNESS AND ACCOUNTABILITY

Sheree DeBerry, Esq.

Attorney Advisor, Office of Open Government

October 20, 2021

Office of Open Government (OOG)

Board of Ethics & Government Accountability (BEGA)

The OOG is an independent office within BEGA charged with advancing open governance in the District of Columbia.

The Director of OOG serves as the city's advisor to FOIA Officers and provides formal/informal advice to agencies seeking guidance and compliance.

The OOG advocates for fair and efficient FOIA processing.
The OOG also assists members of the public in filing FOIA requests.

The OOG is responsible for advising/training public bodies on the requirements of D.C. FOIA as well as the Open Meetings Act.

THE DISTRICT OF COLUMBIA FREEDOM OF INFORMATION ACT

- The District of Columbia Freedom of Information Act (D.C. FOIA) is a D.C. law that gives the public the right to access information from the District of Columbia Government.
- D.C. government must release information that is requested, unless that information is protected from disclosure.
- D.C. Official Code §§ 2-531 – 2-540

PUBLIC POLICY

- 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. Official Code § 2-531
- D.C. FOIA applies to the Mayor, agencies and the Council of the District of Columbia; All public bodies.

APPLICABLE REGULATIONS



- **1 DCMR § 400 et. seq.** contains the rules and procedures to be followed by *ALL* agencies, offices, and departments of the District of Columbia, and *ALL* persons requesting records pursuant to FOIA.

GOVERNMENT AGENCY RESPONSIBILITY

- Each agency head must designate an individual as its FOIA Officer.
- Each agency must post on its website the name, title, address, telephone number, and email address of the designated FOIA Officer.
- 1 DCMR § § 401.2 – 401.3

REQUEST FOR RECORDS

- ANY PERSON has a right to inspect, and at his or her discretion, to copy ANY public record of a public body except as expressly provided by exemptions from disclosure.
- D.C. Official Code § 2-532(a)

RECORDS AVAILABLE WITHOUT A FOIA REQUEST

Employee's salary;
Title and
Employment dates;

Contracts
Expenditures;
Budgets;

Manuals; Policies;

Rules; Opinions;

Orders; and

Final meeting
minutes of open
proceedings of
public bodies

D.C. Official Code
§ 2-536



PUBLIC RECORDS

- Includes all books, papers, maps, photographs, maps, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the public body.
- Public records include information stored in an electronic format.
- D.C. Official Code § 2-502(18)

SUBMISSION OF FOIA REQUEST

Requests may be made orally or in writing.

1 DCMR § 402.1

May ask that oral request be submitted in writing.

1 DCMR § 402.2

Requests may be mailed, faxed, emailed or submitted through the D.C. FOIA Portal.

1 DCMR § 402.3

SUBMISSION OF FOIA REQUEST

- A request shall reasonably describe the desired record(s). Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied.
- 1 DCMR § 402.4

TIME IS OF THE ESSENCE

Response Time – 15 days; Exclude Saturdays, Sundays, and legal holidays

Request for Body-Worn Camera Footage – MPD has 25 days to respond

10-day Extension – Unusual Circumstances; Voluminous amount of records; Consultation with another agency

MUST notify requester in writing

D.C. Official Code § 2-532(d)

FOIA REQUEST



FOIA REQUEST

FOIA Officers should acknowledge request as soon as possible.

Recommend acknowledging request within 24-48 hours

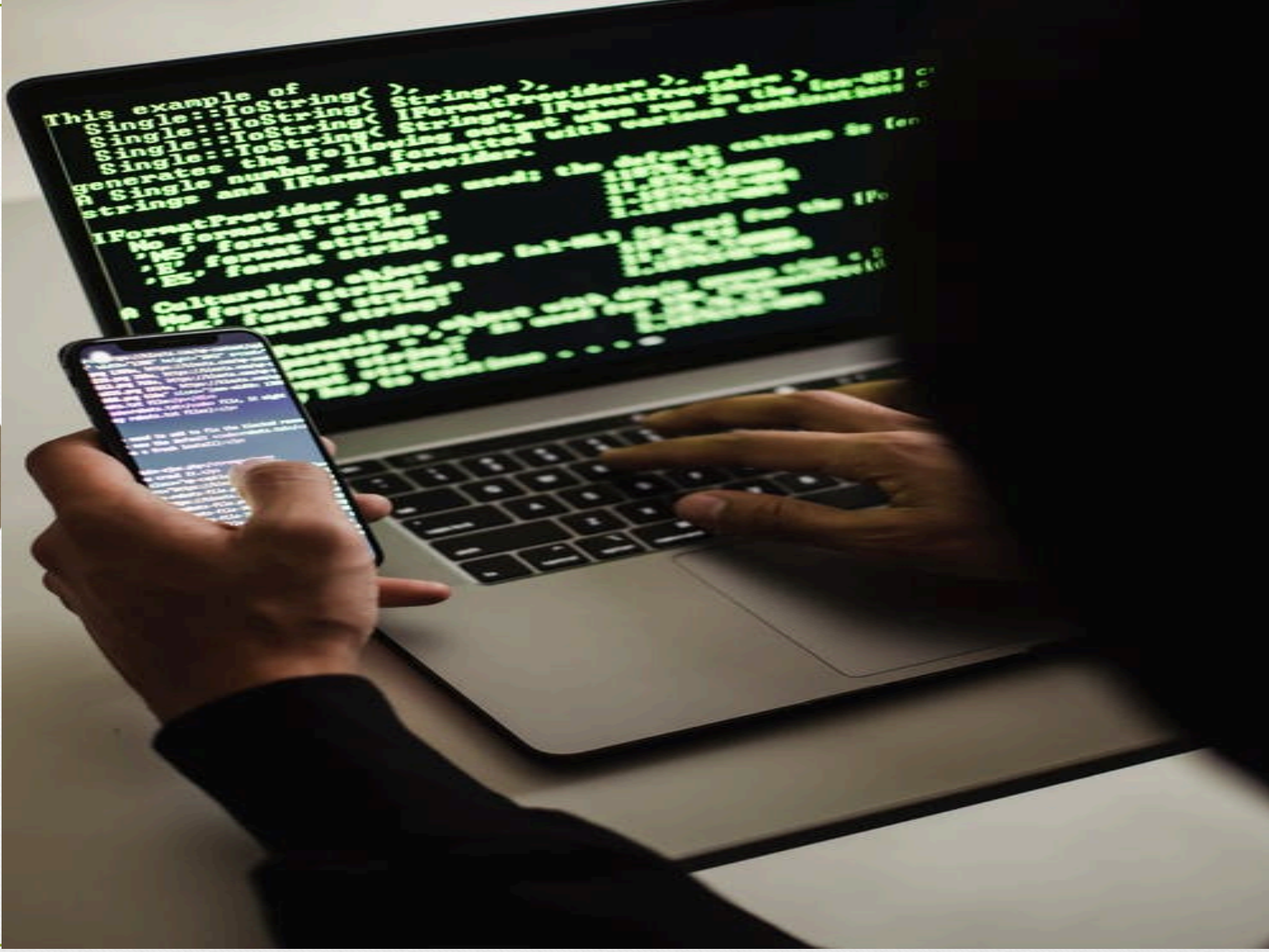
Automatic acknowledgment for requests received via FOIAXpress

FOIA REQUEST

- Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.
- Contact requester if supplemental information is needed.
- 1 DCMR § 402.5

RECORDS
NOT
REASONABLY
DESCRIBED

- When the FOIA Officer contacts the requester for additional information the request is deemed received when the FOIA Officer receives the additional information.
- Request may be placed on HOLD until the additional information is received.
- 1 DCMR § 405.6



```
This example of
$single: -> ToString( ),
$single: -> ToString( IFormatProvider ), and
$single: -> ToString( String, IFormatProvider )
$single: -> ToString( String, IFormatProvider ) c
generates the following output when run in the [en-US] c
p $single: -> ToString( ) is formatted with various combinations c
strings and IFormatProvider.

IFormatProvider is not used; the default culture is [en
No format string:
'M5' format string:
'E' format string:
'P' format string:

A CultureInfo object for [en-US] is used for the IFormatProvider.
No format string:
'M5' format string:
'E' format string:
'P' format string:

A CultureInfo object with a different culture than the
IFormatProvider is used for the IFormatProvider.
No format string:
'M5' format string:
'E' format string:
'P' format string:
...

```

RECORD SEARCH

- All agency employees who maintain records must assist the designated Freedom of Information Act Officer, as appropriate, with the identification and search of responsive records.
- 1 DCMR § 401.5

ADEQUATE RECORD SEARCH

- The agency FOIA Officer should, as a matter of business practice, create an affidavit that describes the agency's search for records, in anticipation of FOIA litigation.
- In assessing whether a District agency conducted an adequate search in response to a FOIA request, courts look not to “the fruits of the search,” but to the “appropriateness of the methods used to carry out the search.” The issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but whether the search for those documents was adequate. *Iturralde v. Comptroller of Currency*, 315 F.3d 311 (D.C. Cir. 2003).

FOIA EXEMPTIONS

Categories of information that may be exempt
from disclosure under FOIA

FOIA Exemptions

A government agency that wishes to withhold information has the burden of showing that a FOIA exemption applies.

See Washington Post Co. v. Minority Bus. Opportunity Comm'n, 560 A.2d 517, 521 (D.C. 1989).

EXEMPTIONS

Exemption 1 - Trade secrets and commercial or financial information

Exemption 2 – Personal Privacy;
Exemption 2A – Body-Worn Cameras

Exemption 3 - Investigatory records compiled for law enforcement purposes

Exemption 4 – Common law discovery privileges; Attorney Work Product; Deliberative Process; Attorney Client Privilege

Exemption 5 – Future examination test questions

Exemption 6 – Other statutes, cannot be a regulation; Information specifically exempted from disclosure by statute (other than FOIA)

Exemption 7 – National security matters under federal law

Exemption 8 – Antitrust investigations – D.C. Code Official Code § 28-4505

EXEMPTIONS

Exemption 9 –
Arson
Investigations; D.C.
Official Code § 5-
417

Exemption 10 –
Emergency response
plans

Exemption 11 –
Social security and
federal employer ID
numbers; D.C.
Official Code § 47-
2851.06

Exemption 12 –
Whistleblowers, unless the
name of the employee is
already known; D.C. Official
Code §§ 1-615.51; 2-233.01
et seq.

Exemption 13 –
Homeland security
records; D.C.
Official Code § 7-
2271.04

Exemption 14 –
Sealed criminal
records

Exemption 15 –
Critical infrastructure
(applies only to entities
regulated by the Public
Service Commission)

Exemption 16 –
Teacher evaluations;
– D.C. Official Code
§ 38-2615(a)

REDACTION RULE



- Redaction allows for the release of the records by concealing the exempt portion from public view.
- Any reasonably segregable portion of a public record shall be provided to any person requesting the record after deletion of those portions which may be withheld from disclosure.

REDACTION RULE



- The justification for the deletion shall be explained fully in writing, and the extent of the deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption under which the exemption is made.
- If technically feasible, the extent of the deletion and the specific exemptions shall be indicated at the place in the record where the deletion was made.
- D.C. Official Code § 2-534(b)

REDACTIONS

THE RIGHT TOOL FOR THE JOB? eDiscovery BLUES™

HOW ARE YOU REDACTING EXCEL DOCUMENTS?

WE DON'T HAVE REDACTION SOFTWARE SO I JUST USE THE HIGHLIGHT TOOL ON BLACK.

	G	H
	DATA	AND
	META	DATA
	STILL	PRESENT

BLANG 2020

SHOULD WE ANSWER QUESTIONS?



ANSWERS

A FOIA response does not have to provide ANSWERS to QUESTIONS.

The agency's obligation in meeting a FOIA request is to provide access to its records.

Dugan v. DOJ, 82 F. Supp. 3d 485 (2015)

SHOULD WE CREATE DOCUMENTS?



**DO NOT
CREATE
RECORDS**

FOIA does not require an agency to create documents or opinions in response to an individual's request for information or to obtain records from another agency.

Dugan v. DOJ, 82 F. Supp. 3d 485
(2015)

Will Fees Be Imposed?

- A public body may establish and collect fees.
- Fees should not exceed the actual cost of search, review, redactions, and copies of records.
- D.C. Official Code § 2-532(b)



FEE STRUCTURE

Types of fees:
Search; Review; or
Duplication

Agencies MAY charge:

Commercial requesters for
Search; Review; Duplication

Agencies MAY charge:

Educational, noncommercial
scientific and news media
requesters for Duplication

Agencies MAY charge:

ALL others for Search and
Duplication

FEE WAIVERS

- Documents may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.
- D.C. Official Code § 2-532(b)
- Requester should provide statement in request letter that explains how the records will benefit the general public.
- 1 DCMR § 408.10



ADMINISTRATIVE APPEALS

- Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection or institute proceedings in the D.C. Superior Court.
- D.C. Official Code § 2-537(a)

ADMINISTRATIVE APPEALS

- A DENIAL of a request for any public record must contain:
- The specific reasons for denial; including citations to the specific exemptions relied on as authority for the denial;
- The name(s) of the public official(s) or employees(s) responsible for the decision to deny the request; and
- Notification to the requester of any administrative or judicial right to appeal under § 2-537.

ADMINISTRATIVE APPEALS

Within 5 days, excluding Saturdays, Sundays, or legal holidays of receipt of an administrative FOIA Appeal, the agency must file a response.

An agency may request additional time to file the response to the FOIA appeal by filing a written or emailed request with a copy to the requester, within 5 days excluding Saturdays, Sundays, or legal holidays of receipt of an administrative appeal.

Failure to respond during the 5-day period or an extension granted constitutes a waiver of the agency's right to respond to the appeal.



COMMUNICATION

CONTACT INFORMATION

- Niquelle M. Allen, Director, niquelle.Allen@dc.gov; (202) 481-3406
- Johnnie I. Barton, Chief Counsel, johnnie.barton2@dc.gov; (202) 741-5373
- Sheree DeBerry, Attorney Advisor, sheree.deberry1@dc.gov; (202) 579-1043
- Zita Orji, Trial Attorney, zita.orji@dc.gov; 202-731-2926
- Nicholas Weil, Esq. Attorney Advisor, nicholas.weil@dc.gov; 202-731-2079
- Kevon Bridges, IT Specialist, kevon.bridges@dc.gov; 202-579-3756



?

THANK YOU
FOR
YOUR
ATTENTION
ANY QUESTIONS?

IMAGE CREDITS

[Pexels.com](https://www.pexels.com/); [freepik.com](https://www.freepik.com/)