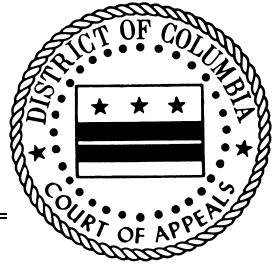


No. 21-CV-0543



Clerk of the Court
Received 08/02/2022 04:38 PM
Filed 08/02/2022 04:38 PM

In the District of Columbia Court of Appeals

DISTRICT OF COLUMBIA,
Appellant,

v.

TERRIS, PRAVLIK & MILLIAN, LLP,
Appellee.

On Appeal from a Judgment of the
Superior Court of the District of Columbia

**APPELLEE'S SUPPLEMENTAL BRIEF
ADDRESSING THE IMPACT OF THE RECENT DISTRICT OF
COLUMBIA FREEDOM OF INFORMATION ACT LEGISLATION**

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Counsel for Appellee

August 2, 2022

*Counsel expected to argue

DISCLOSURES PURSUANT TO RULES 28(a)(2) AND 26.1

Plaintiff-Appellee Terris, Pravlik & Millian, LLP (TPM) is a nongovernmental party. Accordingly, TPM provides the following information regarding the parties, *amici curiae*, and their counsel. This information is identical to that which was filed with Appellee's Brief, dated January 28, 2022, except that it adds additional detail as to *amici* and Appellant's counsel.

Plaintiff-Appellee TPM. TPM is a partnership and has been and continues to be represented by its partners Kathleen L. Millian, Todd A. Gluckman, and Nicholas Soares. TPM's full list of partners also includes Carolyn Smith Pravlik, Zenia Sanchez Fuentes, Patrick A. Sheldon, Alicia C. Alcorn, Michael L. Huang, and Stephanie Ann Madison.

***Amicus Curiae* Council of the District of Columbia.** The Council of the District of Columbia filed an *amicus curiae* brief in support of Appellee TPM and affirmance on February 8, 2022. The Council is represented by Nicole L. Streeter, Daniel P. Golden, and Wei Guo. It was represented by the same attorneys when it made similar filings in the Superior Court.

***Amici Curiae* Organizations.** The DC Open Government Coalition, American Civil Liberties Union of the District of Columbia, DC Fiscal Policy Institute, Public Citizen, Reporters Committee for Freedom of the Press, and Washington, D.C. Professional Chapter of the Society of Professional Journalists

filed an *amici curiae* brief in support of Appellee TPM and affirmance on February 4, 2022. It is represented by Adina H. Rosenbaum and Allison M. Zieve of the Public Citizen Litigation Group.

Defendant-Appellant District of Columbia. The Defendant-Appellant is the District of Columbia, which was represented by Andrew Saindon, Honey Morton, and Fernando Amarillas in the Superior Court. Its opening appeal brief lists Karl A. Racine, Loren L. AliKhan, Caroline S. Van Zile, Ashwin P. Phatak, and Richard S. Love. Its reply appeal brief lists those attorneys except for Loren L. AliKhan, who is now a judge on this Court.

Respectfully submitted,

/s/ Todd A. Gluckman

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INTRODUCTION

The District of Columbia Freedom of Information Act (DC FOIA) explicitly designates certain budget-related information as public information and requires that the information be placed online. D.C. Code § 2-536(a)(6A) & (b). Defendant-Appellant District of Columbia (“the District”) did not post it online.

Plaintiff-Appellee Terris, Pravlik & Millian, LLP (TPM) searched for such information online and sought it through a DC FOIA request. The Mayor¹ refused to produce it, raising various arguments which the Superior Court rejected and are addressed in the briefing to date.

One of the Mayor’s arguments is that the deliberative process privilege in DC FOIA protects from disclosure the very information that DC FOIA explicitly deems public and requires to be posted online. *See* Brief for the District of Columbia (“Def. Br.”), pp. 13-20; Reply Brief for the District of Columbia (“Def. Reply Br.”), pp. 1-8. TPM and the Council showed why the Mayor is mistaken. Brief for Appellee (“Pl. Br.”), pp. 10-21; Brief of *Amicus Curiae* Council of the District of Columbia (“Council Br.”), pp. 2-13.

Then, on July 13, 2022, the Mayor signed into law the Agency Budget Request Freedom of Information Clarification Emergency Amendment Act of 2022 (“2022

¹ TPM generally refers to Appellant as the Mayor rather than the District of Columbia because the Mayor has opposed disclosure while the Council of the District of Columbia filed an *amicus curiae* brief supporting TPM and affirmance.

Clarification Act”).² That law amended DC FOIA Sections 2-534 and 2-536 to further clarify that the budget-related information explicitly made public by DC FOIA cannot be withheld pursuant to the deliberative process privilege.

CHANGES TO DC FOIA

I. DC FOIA PRIOR TO THE 2022 CLARIFICATION ACT

Prior to the 2022 Clarification Act, the DC FOIA provisions related to the deliberative process privilege (Section 2-534(a)(4), (c), & (e)) stated:

Exemptions from Disclosure

(a) The following matters may be exempt from disclosure under the provisions of this subchapter: . . . (4) Inter-agency or intra-agency memorandums or letters, including memorandums or letters generated or received by the staff or members of the Council, which would not be available by law to a party other than a public body in litigation with the public body.

² The 2022 Clarification Act is in the Addendum below (pp. 12-15). Section 1041 of the 2022 Clarification Act provides its title. Section 1042 amends DC FOIA (the corresponding revised codified versions of DC FOIA provisions are also below in the Addendum (pp. 16-20, 26-28); the prior version is in the Addendum attached to the January 28, 2022 Brief for Appellee (pp. 54-59)). Section 1043 of the 2022 Clarification Act states that it “shall apply as of December 7, 2004.”

As described in Appellee’s July 19, 2022 Notice of Supplemental Authority, the 2022 Clarification Act was passed, along with other budget-related legislation, on an emergency basis to address funding issues relevant to other matters and therefore it will only be in place temporarily. An identical version of this amendment is currently working its way through the legislative process without emergency authorization. *See* Fiscal Year 2023 Budget Support Act of 2022 (B24-0714). The Mayor signed it on July 25, 2022, and it now requires Congressional Review. TPM will file with the Clerk an additional Notice of Supplemental Authority when that Congressional Review is complete. No additional briefing should be needed because the permanent version is identical to the emergency version.

...

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit nondisclosure of information of which disclosure is authorized or mandated by other law.

...

(e) All exemptions available under this section shall apply to the Council as well as agencies of the District government. The deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege are incorporated under the inter-agency memoranda exemption listed in subsection (a)(4) of this section, and these privileges, among other privileges that may be found by the court, shall extend to any public body that is subject to this subchapter.

Prior to the 2022 Clarification Act, the DC FOIA provisions related to the public disclosure of budget-related information (Section 2-536(a)(6A) & (b)) stated:

Information which must be made public.

(a) Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information, and do not require a written request for information: . . .

(6A) Budget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports, and strategic plans and performance-based budget submissions;

(b) For records created on or after November 1, 2001, each public body shall make records available on the Internet or, if a website has not been established by the public body, by other electronic means. This subsection is intended to apply only to information that must be made public pursuant to this subsection.

II. 2022 CLARIFICATION ACT AMENDMENTS TO DC FOIA

The 2022 Clarification Act modifies two sections of DC FOIA. At Section 1042, the Act adds paragraph (c)(1) to D.C. Code § 2-534, “Exemptions from disclosure,” which clarifies that:

(c)(1) Notwithstanding any other provision of law, no document or information described in section 206(a)(6A) [D.C. Code § 2-536(a)(6A), the public budget information provision] that was created on or after December 7, 2004, shall be exempt from disclosure pursuant to subsections (a)(4) and (e) of this section [the deliberative process privilege].

In other words, the new law makes it absolutely clear that the deliberative process privilege cannot be used to withhold the budget-related information explicitly made public by D.C. Code § 2-536(a)(6A) (“paragraph 6A”).

Section 1042 of the 2022 Clarification Act also adds paragraphs (d)(1) and (2) to D.C. Code § 2-536, “Information which must be made public,” which clarify:

(d)(1) Notwithstanding any other provision of law, no document or information described in subsection (a)(6A) of this section [the public budget information provision] that was created on or after December 7, 2004, shall be exempt from disclosure pursuant to section 204(a)(4) and (e) [D.C. Code § 2-534(a)(4) and (e), the deliberative process privilege provision].

(2) In addition to making such document or information public information pursuant to subsection (a) of this section, a public body shall provide any document or information described in subsection (a)(6A) of this section that was created on or after December 7, 2004, to a person who has requested to inspect or copy it pursuant to section 202 [D.C. Code § 2-532], regardless of the date on which such request may have been made.

This amendment also makes it absolutely clear that the deliberative process privilege cannot be used to withhold the budget-related information explicitly made public by paragraph 6A.

III. RATIONALE FOR THE 2022 CLARIFICATION ACT

On April 21, 2022, the D.C. Council Committee of the Whole (COW), which is comprised of all Councilmembers, explained that the 2022 Clarification Act amends DC FOIA “to clarify that the Mayor may not rely on the [deliberative process privilege exemption in D.C. Code § 2-534] as a basis for withholding the documents expressly made public by section 206(a)(6A).”³ It further explained:

Section 206(a) of DC FOIA specifically designates several categories of information as public information that must be disclosed even in the absence of a written request pursuant to section 202. In 2004, the Council amended section 206(a), adding a new paragraph (6A) specifically to make public certain additional materials, including “[b]udget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process” The

³ The following sources of legislative history referenced herein are in the Addendum below (pp. 32-42): (1) April 21, 2022 Report and Recommendations of the COW regarding the 2022 Clarification Act, pp. 112-114 (PDF pp. 119-121), <http://chairmanmendelson.com/wp-content/uploads/2022/04/FY23-COW-Budget-Report-Draft-4-20.pdf> (archived [here](#) on July 28, 2022); (2) May 3, 2022 Letter from the Mayor, p. 5, https://lms.dccouncil.us/downloads/LIMS/49079/Other/B24-0714-Mayor's_Letter_to_Council_5-3-22.pdf (archived [here](#) on August 2, 2022); (3) May 10, 2022 Report of the COW, p. 9, <http://chairmanmendelson.com/wp-content/uploads/2022/05/B24-714-FY23-BSA-PACKET.pdf> (archived [here](#) on July 28, 2022); and (4) July 13, 2022 Letter from the Mayor, p. 1, https://lms.dccouncil.us/downloads/LIMS/49679/Other/B24-0845-B24-845_Letter_from_the_Mayor.pdf (archived [here](#) on July 29, 2022).

amendment sheet that proposed this change to DC FOIA stated that the goal of adding the new paragraph (6A) was to “expand public access to key budget documents so that residents can participate more fully in the budget dialogue,” and to “promote accountability by making the financial operations of the District government more transparent.” Notwithstanding the Council’s stated intent in enacting paragraph (6A), the Mayor consistently has failed to make public the specific materials described therein. Moreover, in response to a recent request submitted pursuant to section 202 of DC FOIA, the Mayor refused to provide the requestor the agency budget requests transmitted to the OCFO by DCPS and OSSE in connection with the preparation of the Fiscal Year 2019 budget.

The requestor who sought the Fiscal Year 2019 agency budget requests from DCPS and OSSE challenged the Mayor’s withholding of those requests in D.C. Superior Court, and the court ruled in the requestor’s favor, rejecting the Mayor’s claim that the budget requests are protected by the deliberative-process privilege and therefore exempt from disclosure under section 204(a)(4) and (e) of DC FOIA. The court then ordered that those agency budget requests be produced to the requestor and that all documents described in section 206(a)(6A) be made publicly available. However, the Mayor has appealed those rulings and now seeks to have the D.C. Court of Appeals reverse the Superior Court’s holding that the documents described in section 206(a)(6A) are not subject to withholding under section 204(a)(4) and (e). *See District of Columbia v. Terris, Pravlik & Millian, LLP*, No. 21-CV-543. Although the current provisions of DC FOIA already preclude the Mayor from withholding those documents pursuant to section 204(a)(4) and (e) (as the D.C. Superior Court recently concluded), this subtitle would foreclose any possible contrary reading of those provisions and would clarify that the Mayor may not rely on the deliberative-process privilege or other common-law and statutory privileges as a basis for withholding the documents and information described in section 206(a)(6A). Moreover, the subtitle applies this clarification retroactively as of the effective date of the legislation enacting section 206(a)(6A), so that it governs the public disclosure of any documents described in section 206(a)(6A) that were created on or after December 7, 2004, and applies to any request made pursuant to section 202 for such documents, regardless of the date on which it may have been made. [emphasis added]

On May 3, 2022, the Mayor responded:

The Committee of the Whole has recommended a Budget Support Act subtitle that is intended to require the Mayor to publicly disclose certain internal discussions about the development of the Mayor's budget proposal that are protected by the deliberative process privilege. This provision is unnecessary and will hinder the Executive's ability to propose to the Council a budget that best meets the needs of our residents and businesses.

The courts and policymakers have long recognized that the deliberative process privilege is critical to governors, the Mayor, and other executives being provided with candid and complete information by their staff and advisors and that the absence of the privilege will chill and distort the type of open discussion that is necessary for optimal Executive decision-making. The Committee of the Whole subtitle does not dispute the importance of the privilege or that the budget-related documents covered by the proposed subtitle are in fact covered by the deliberative process privilege – but instead seeks to statutorily destroy that long-standing privilege to force the disclosure of otherwise protected documents.

Moreover, the provision is simply unnecessary. The Mayor and agencies already provide thousands of pages of documents related to the proposed budget and its formulation, answers hundreds (and likely thousands) of Council questions and appear at dozens of public hearings before the Council. The Council and the public have more than adequate information about the budget process with which to make informed decisions and recommendations.

On May 10, 2022, the D.C. Council COW replied:

Contrary to the Mayor's statement in her May 3, 2022, correspondence with the Chairman regarding the Council's preliminary budget decisions that the COW "does not dispute . . . that the budget-related documents covered by the proposed subtitle are in fact covered by the deliberative process privilege," paragraph (6A) always has required that the Mayor make those documents public; indeed, any other reading of that provision would render it a nullity. Notwithstanding the Council's stated intent in enacting paragraph (6A), the Mayor

consistently has failed to make public the specific materials described therein. Moreover, in response to a recent request submitted pursuant to section 202 of DC FOIA, the Mayor refused to provide a requestor the agency budget requests transmitted to the OCFO by DCPS and OSSE in connection with the preparation of the Fiscal Year 2019 budget. The requestor who sought the Fiscal Year 2019 agency budget requests from DCPS and OSSE challenged the Mayor’s withholding of those requests in D.C. Superior Court, and the court ruled in the requestor’s favor, rejecting the Mayor’s claim that the budget requests are protected by the deliberative-process privilege and therefore exempt from disclosure. *See Terris, Pravlik & Millian, LLP v. District of Columbia*, Case No. 2020 CA 3087 B. . . .

On July 19, 2022, the Mayor signed the 2022 Clarification Act into law, and issued a letter that reiterated points that she made in her May 3 letter.

ARGUMENT

I. THE 2022 CLARIFICATION ACT DEFINITELY FORECLOSES THE MAYOR’S DELIBERATIVE PROCESS PRIVILEGE ARGUMENT

The Mayor argued that (1) the introductory language to DC FOIA § 2-536—“Without limiting the meaning of other sections of this subchapter”—must mean that Section 2-536(a)(6A) is subject to the deliberative process privilege in Section 2-534 and therefore the requested information need not be disclosed, and (2) that conclusion is compelled by this Court’s decision in *Office of People’s Counsel v. Public Service Commission of the District of Columbia*, 955 A.2d 169 (D.C. 2008). Def. Br. 15-20; Def. Reply Br. 1-7. Both TPM and the Council explained why the District is wrong. Pl. Br. 10-21; Council Br. 2-13.

To the extent that there could have been any doubt, the 2022 Clarification Act definitively forecloses the Mayor’s argument. It is not possible for the Mayor to claim that the material at issue is protected when the Council passed a law, and the Mayor signed it, stating explicitly that the material is not protected. Indeed, as the D.C. Council explained in its April 21 and May 10 reports, although DC FOIA “already precluded the Mayor from withholding those documents pursuant to section [2-536(a)(6A)],” it passed the 2022 Clarification Act to “foreclose any possible contrary reading of those provisions.”

TPM explained (Pl. Br. 17-19) that this Court addressed a similar, but distinguishable, dispute in *Kane v. D.C.*, 180 A.3d 1073, 1082-1084 (D.C. 2018). In *Kane*, “nothing in the legislative history . . . suggest[ed] that the Council meant . . . to limit” the deliberative process privilege. 180 A.3d at 1083. Here, however, paragraph 6A was specifically added to “expand public access to key budget documents” and “promote accountability by making the financial operations of the District government more transparent.” Pl. Br. 18-19 (quoting JA 95). Moreover, the 2022 Clarification Act now makes absolutely clear that the material made public in paragraph 6A is not protected by the deliberative process privilege.

Moreover, in *Kane*, this Court noted that the “Council confirmed [the Court’s] understanding” of the statute when it modified the law to make explicit that the deliberative process privilege protects the relevant documents. 180 A.3d at 1083;

see Pl. Br. 19. Here, the Council has made clear through the 2022 Clarification Act that the deliberative process privilege does not protect the documents explicitly made public by paragraph 6A.

II. THE 2022 CLARIFICATION ACT APPLIES TO THE REQUEST AND INFORMATION AT ISSUE IN THIS CASE

The 2022 Clarification Act applies retroactively to all “document[s] or information” “created on or after December 7, 2004.” *See* D.C. Code §§ 2-534(c-1), 2-536(d)(1) & (2) (Addendum below, pp. 19, 27-28); 2022 Clarification Act, Section 1043 (Addendum below, p. 13) (“This subtitle shall apply as of December 7, 2004.”); *Holzager v. D.C. Alcoholic Beverage Control Board*, 979 A.2d 52, 56-57 (D.C. 2009) (where the Council has “expressly prescribed the statute’s proper reach,” that is dispositive as to retroactivity); *see also Kane*, 180 A.3d at 1083 (clarification applied retroactively). Accordingly, the 2022 Clarification Act applies to the request and information at issue in this case.

Respectfully submitted,

/s/ Todd A. Gluckman

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August 2, 2022

Counsel for Appellee

SUPPLEMENTAL STATUTORY AND REGULATORY ADDENDUM

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AN ACT

D.C. ACT 24-470

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 13, 2022

To enact and amend, on an emergency basis, provisions of law necessary to support the Fiscal Year 2023 budget.

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Sec. 1032. The Healthy Public Buildings Assessment Act of 2016, effective April 1, 2017 (D.C. Law 21-237; D.C. Official Code § 10-711 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 10-711) is amended by striking paragraph (5A).

(b) Section 3 (D.C. Official Code § 10-712) is amended as follows:

(1) Subsection (b-1) is amended by striking the phrase “construction, excavation, or substantial renovation:” and inserting the phrase “construction, or excavation:” in its place.

(2) Subsection (d-1) is amended by striking the phrase “excavation, substantial renovation, or construction” and inserting the phrase “excavation, or construction” in its place.

SUBTITLE E. FOIA DISCLOSURE CLARIFICATION

Sec. 1041. Short title.

This subtitle may be cited as the “Agency Budget Request Freedom of Information Clarification Emergency Amendment Act of 2022”.

Sec. 1042. The Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), is amended as follows:

(a) Section 204 (D.C. Official Code § 2-534) is amended by adding a new subsection (c-1) to read as follows:

“(c-1) Notwithstanding any other provision of law, no document or information described in section 206(a)(6A) that was created on or after December 7, 2004, shall be exempt from disclosure pursuant to subsections (a)(4) and (e) of this section.”.

(b) Section 206 (D.C. Official Code § 2-536) is amended by adding a new subsection (d) to read as follows:

“(d)(1) Notwithstanding any other provision of law, no document or information described in subsection (a)(6A) of this section that was created on or after December 7, 2004, shall be exempt from disclosure pursuant to section 204(a)(4) and (e).

“(2) In addition to making such document or information public information pursuant to subsection (a) of this section, a public body shall provide any document or information described in subsection (a)(6A) of this section that was created on or after December 7, 2004, to a person who has requested to inspect or copy it pursuant to section 202, regardless of the date on which such request may have been made.”.

Sec. 1043. Applicability.

This subtitle shall apply as of December 7, 2004.

TITLE II. ECONOMIC DEVELOPMENT AND REGULATION

SUBTITLE A. HEIRS' PROPERTY

Sec. 2001. Short title.

This subtitle may be cited as the “Heirs’ Property Legal Assistance Emergency Act of 2022”.

- (2) Fiscal Year 2024: \$5,269,923;
- (3) Fiscal Year 2025: \$6,511,694; and
- (4) Fiscal Year 2026: \$3,427,291.

(c) The amounts identified in subsections (a) and (b) of this section shall be made available as set forth in the approved Fiscal Year 2023 Budget and Financial Plan.

TITLE IX. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

Sec. 9001. Applicability.

Except as otherwise provided, this act shall apply as of October 1, 2022.

Sec. 9002. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 9003. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
July 13, 2022



COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, DC, 20004

Docket No. **B24-0845**

[] ITEM ON CONSENT CALENDAR

[X] ACTION

[X] VOTE DATE

[X] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

[] ROLL CALL VOTE - Result

Final Reading

June 7, 2022

Approved

Lewis George

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Henderson	X					R. White	X				
Allen	X					Lewis George				X		Silverman	X				
Bonds	X					McDuffie	X					T. White	X				
Cheh	X					Nadeau	X										
Gray	X					Pinto	X										
X - Indicate Vote		AB - Absent				NV - Present, Not Voting						Rec - Recused					

CERTIFICATION RECORD

Secretary to the Council

6.9.22

Date



Council of the **DISTRICT OF COLUMBIA**

Code of the District of Columbia

§ 2-534. Exemptions from disclosure.

NOTE: This section includes amendments by emergency legislation that will expire on October 11, 2022. To view the text of this section after the expiration of all emergency and temporary legislation, click this link: [Permanent Version](#).

NOTE: Section 1043 of D.C. Act 24-470 provides that the amendments made to this section by section 1042(a) of D.C. Act 24-470 shall apply as of December 7, 2004.

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(2A) Any body-worn camera recordings recorded by the Metropolitan Police Department:

(A) Inside a personal residence; or

(B) Related to an incident involving domestic violence as defined in [§ 4-551\(1\)](#), stalking as defined in [§ 22-3133](#), or sexual assault as defined in [§ 23-1907\(a\)\(7\)](#).

(3) Investigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would:

(A) Interfere with:

(i) Enforcement proceedings;

(ii) Council investigations; or

(iii) Office of Police Complaints ongoing investigations;

(B) Deprive a person of a right to a fair trial or an impartial adjudication;

(C) Constitute an unwarranted invasion of personal privacy;

(D) Disclose the identity of a confidential source and, in the case of a record compiled by a law-enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(E) Disclose investigative techniques and procedures not generally known outside the government; or

(F) Endanger the life or physical safety of law-enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters, including memorandums or letters generated or received by the staff or members of the Council, which would not be available by law to a party other than a public body in litigation with the public body.

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(7) Information specifically authorized by federal law under criteria established by a presidential executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such executive order;

(8) Information exempted from disclosure by [§ 28-4505](#);

(9) Information disclosed pursuant to [§ 5-417](#);

(10) Any specific response plan, including any District of Columbia response plan, as that term is defined in [§ 7-2301\(1\)](#), and any specific vulnerability assessment, either of which is intended to prevent or to mitigate an act of terrorism, as that term is defined in [§ 22-3152\(1\)](#);

(11) Information exempt from disclosure by [§ 47-2851.06](#);

(12) Information, the disclosure of which would reveal the name of an employee providing information under subchapter XV-A of [Chapter 6 of Title 1](#) [[§ 1-615.51](#) et seq.] and [subchapter XII of Chapter 2 of this title](#) [2-233.01 et seq.], unless the name of the employee is already known to the public;

(13) Information exempt from disclosure by [§ 7-2271.04](#);

(14) Information that is ordered sealed and restricted from public access pursuant to [Chapter 8 of Title 16](#);

(15) Any critical infrastructure information or plans that contain critical infrastructure information for the critical infrastructures of companies that are regulated by the Public Service Commission of the District of Columbia;

(16) Information exempt from disclosure pursuant to [§ 38-2615](#);

(17) Information exempt from disclosure pursuant to [§ 50-301.29a\(13\)\(C\)\(i\)](#); and

(18) Information exempt from disclosure pursuant to [§ 24-481.07\(a\)](#); and

(19) Information exempt from disclosure under [subchapter XIV of Chapter 1A of Title 41](#).

(a-1)(1) The Council may assert, on behalf of any public body from which it obtains records or information, any exemption listed in subsection (a) of this section that could be asserted by the public body pertaining to the records or information.

(2) Disclosure of any public record, document, or information from a District of Columbia government agency, official, or employee to the following persons or entities

shall not constitute a waiver of any privilege or exemption that otherwise could be asserted by the District of Columbia to prevent disclosure to the general public or in a judicial or administrative proceeding:

(A) The Council;

(B) A Council committee;

(C) A member of the Council acting in an official capacity;

(D) The District of Columbia Auditor;

(E) An employee of the Office of the District of Columbia Auditor; or

(F) The Ombudsperson for Children or an employee of the Office of the Ombudsperson for Children.

(b) 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 pursuant to subsection (a) of this section. In each case, 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 in subsection (a) of this section under which the deletion 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.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit nondisclosure of information of which disclosure is authorized or mandated by other law.

(c-1) Notwithstanding any other provision of law, no document or information described in section 206(a)(6A) that was created on or after December 7, 2004, shall be exempt from disclosure pursuant to subsections (a)(4) and (e) of this section.

(d)[(1)] The provisions of [this subchapter](#) shall not apply to vital records covered by [Chapter 2 of Title 7](#) or [Chapter 2A of Title 7](#).

[(2)] The provisions of [this subchapter](#) shall not apply to:

(A) The Violence Fatality Review Committee, established by [§ 5-1431.01](#);

(B) The Child Fatality Review Committee, established by [§ 4-1371.03](#);

(C) The Maternal [Mortality] Review Committee, established by [§ 7-671.02](#); and

(D) The Domestic Violence Fatality Review Board, established by [§ 16-1052](#).

(e) All exemptions available under this section shall apply to the Council as well as agencies of the District government. The deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege are incorporated under the inter-agency memoranda exemption listed in subsection (a)(4) of this section, and these privileges, among other privileges that may be found by the court, shall extend to any public body that is subject to this subchapter.

([Oct. 21, 1968, Pub. L. 90-614, title II, § 204](#); as added [Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 3744](#); [Mar. 5, 1981, D.C. Law 3-169, § 3\(c\), 27 DCR 5368](#); [Oct. 8, 1981, D.C. Law 4-34, § 29\(i\), 28 DCR 3271](#); [June 19, 1982, D.C. Law 4-119, § 2\(f\), 29 DCR 1952](#); [Apr. 27, 2001, D.C. Law 13-283, § 3\(d\), 48 DCR 1917](#); [Oct. 17, 2002, D.C. Law 14-194, § 302, 49 DCR 5306](#); [Oct. 28, 2003, D.C. Law 15-38, § 3\(b\), 50 DCR 6913](#); [Mar. 17, 2005, D.C. Law 15-256, § 2\(b\), 52 DCR 1158](#); [Apr. 13, 2005, D.C. Law 15-354, § 83\(a\), 52 DCR 2638](#); [Apr. 7, 2006, D.C. Law 16-91, § 132\(b\), 52 DCR 10637](#); [Sept. 19, 2006, D.C. Law 16-152, § 2, 53 DCR 5371](#); [Mar. 14, 2007, D.C. Law 16-262, § 231, 54 DCR 794](#); [May 5, 2007, D.C. Law 16-307, § 3\(a\), 54 DCR 868](#); [June 13, 2008, D.C. Law 17-176, § 5, 55 DCR 5390](#); [Mar. 25, 2009, D.C. Law 17-353, § 174, 56 DCR 1117](#); [Mar. 11, 2010, D.C. Law 18-119, § 3, 57 DCR 906](#); [Feb. 26, 2015, D.C. Law 20-160, § 2\(a\), 61 DCR 10735](#); [Oct. 22, 2015, D.C. Law 21-36, § 4063, 62 DCR 10905](#); [Mar. 9, 2016, D.C. Law 21-83, § 2\(b\), 63 DCR 774](#); [July 3, 2018, D.C. Law 22-118, § 201, 65 DCR 5064](#); [Oct. 30, 2018, D.C. Law 22-164, § 201, 65 DCR 9324](#); [Oct. 30, 2018, D.C. Law 22-168, §§ 3053, 6143, 65 DCR 9388](#); [Dec. 13, 2018, D.C. Law 22-197, § 222, 65 DCR 9554](#); [Apr. 5, 2021, D.C. Law 23-270, § 207, 68 DCR 001510](#); [Nov. 13, 2021, D.C. Law 24-45, § 7094\(b\), 68 DCR 010163](#); [July 13, 2022, D.C. Act 24-470, § 1042\(a\), 0 DCR 0.](#))

Prior Codifications

1981 Ed., § 1-1524.

1973 Ed., § 1-1524.

Section References

This section is referenced in [§ 1-301.89a](#), [§ 1-309.13](#), [§ 1-610.64](#), [§ 2-532](#), [§ 2-533](#), [§ 2-537](#), [§ 8-105.09](#), [§ 8-634.03](#), and [§ 8-1321](#).

Cross References

Environmental controls, wastewater control, confidential or privileged information, exemption from disclosure, grounds for exemption, see [§ 8-105.09](#).

Hazardous waste management, confidential or privileged information, exemption from disclosure, grounds for exemption, see [§ 8-1321](#).

Applicability

[Section 7208 of D.C. Law 24-45](#) repealed the applicability provision of [section 301 of D.C. Law 23-270](#) that impacted this section. Therefore the amendment of this section by Law 23-270 has been implemented.

[Section 7208 of D.C. Act 24-159](#) repealed the applicability provision of [section 301 of D.C. Law 23-270](#) that impacted this section. Therefore the amendment of this section by Law 23-270 has

been implemented.

Applicability of [D.C. Law 23-270: § 301 of D.C. Law 23-270](#) provided that the change made to this section by [§ 207 of D.C. Law 23-270](#) is subject to the inclusion of the law's fiscal effect in an approved budget and financial plan. Therefore that amendment has not been implemented.

[Section 7035 of D.C. Law 22-168](#) repealed [§ 301 of D.C. Law 22-118](#) removing the applicability restriction impacting this section. Therefore the amendments made to this section by [D.C. Law 22-118](#) have been given effect.

Applicability of [D.C. Law 22-118: § 301 of D.C. Law 22-118](#) provided that the change made to this section by [§ 201 of D.C. Law 22-118](#) is subject to the inclusion of the law's fiscal effect in an approved budget and financial plan. Therefore that amendment has not been implemented.

Section 3 of [D.C. Law 15-256](#) provided: "Sec. 3. Applicability. This act shall apply with respect to any requests for records pending on the effective date of this act, whether or not the request was made prior to that date, and shall apply to any civil action pending on that date."

Emergency Legislation

[For temporary \(90 days\) amendment of this section, see § 1042\(a\) of Fiscal Year 2023 Budget Support Emergency Act of 2022 \(D.C. Act 24-470, July 13, 2022, 0 DCR 0\).](#)

[For temporary \(90 days\) amendment of this section, see § 7094\(b\) of Fiscal Year 2022 Budget Support Emergency Act of 2021 \(D.C. Act 24-159, Aug. 23, 2021, 68 DCR 008602\).](#)

[For temporary \(90 days\) amendment of this section, see § 6133 of Fiscal Year 2019 Budget Support Congressional Review Emergency Act of 2018 \(D.C. Act 22-458, Oct. 3, 2018, 65 DCR 11212\).](#)

[For temporary \(90 days\) amendment of this section, see § 3120 of Fiscal Year 2019 Budget Support Congressional Review Emergency Act of 2018 \(D.C. Act 22-458, Oct. 3, 2018, 65 DCR 11212\).](#)

[For temporary \(90 days\) amendment of this section, see § 3053 of Fiscal Year 2019 Budget Support Congressional Review Emergency Act of 2018 \(D.C. Act 22-458, Oct. 3, 2018, 65 DCR 11212\).](#)

[For temporary \(90 days\) amendment of this section, see § 6133 of Fiscal Year 2019 Budget Support Emergency Act of 2018 \(D.C. Act 22-434, July 30, 2018, 65 DCR 8200\).](#)

[For temporary \(90 days\) amendment of this section, see § 3120 of Fiscal Year 2019 Budget Support Emergency Act of 2018 \(D.C. Act 22-434, July 30, 2018, 65 DCR 8200\).](#)

[For temporary \(90 days\) amendment of this section, see § 3053 of Fiscal Year 2019 Budget Support Emergency Act of 2018 \(D.C. Act 22-434, July 30, 2018, 65 DCR 8200\).](#)

For temporary (90 day) amendment of section, see § 3 of Master Business Registration Delay Emergency Act of 2002 (D.C. Act 14-595, January 7, 2003, 50 DCR 647).

For temporary (90 day) amendment of section, see § 3 of Master Business Registration Delay Congressional Review Emergency Act of 2003 (D.C. Act 15-73, April 16, 2003, 50 DCR 3616).

For temporary (90 day) amendment of section, see § 3 of Master Business Registration Second Delay Emergency Act of 2003 (D.C. Act 15-83, May 19, 2003, 50 DCR 4100).

For temporary (90 day) amendment of section, see § 3(b) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment of section, see §§ 2(a) and 3 of Freedom of Information Legislative Records Clarification Emergency Amendment Act of 2003 (D.C. Act 15-190, October 24, 2003, 50 DCR 9499.)

For temporary (90 day) amendment of section, see § 2(a) of Freedom of Information Legislative Records Clarification Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-372, February 19, 2004, 51 DCR 2611).

For temporary (90 day) amendment of section, see § 2(b) of Freedom of Information Legislative Records Clarification Emergency Amendment Act of 2004 (D.C. Act 15-591, November 1, 2004, 51 DCR 10729).

For temporary (90 day) amendment of section, see § 2(b) of Freedom of Information Legislative Records Clarification Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-23, February 17, 2005, 52 DCR 2975).

For temporary (90 day) amendment of section, see § 2 of Office of Police Complaints Emergency Act of 2006 (D.C. Act 16-379, May 19, 2006, 53 DCR 4403).

For temporary (90 day) amendment of section, see § 2 of Office of Police Complaints Congressional Review Emergency Act of 2006 (D.C. Act 16-524, November 7, 2006, 53 DCR 9273).

For temporary (90 days) amendment of this section, see § 2(a) of the Critical Infrastructure Freedom of Information Emergency Amendment Act of 2013 (D.C. Act 20-229, November 29, 2013, 60 DCR 16788, 20 DCSTAT 2630).

For temporary (90 days) amendment of this section, see § 2(a) of the Critical Infrastructure Freedom of Information Congressional Review Emergency Amendment Act of 2014 (D.C. Act 20-285, February 20, 2014, 61 DCR 1603).

For temporary (90 days) amendment of this section, see § 3 of the Educator Evaluation Data Collection Emergency Amendment Act of 2014, (D.C. Act 20-328, May 22, 2014, 61 DCR 5361).

For temporary (90 days) amendment of this section, see § 2(a) of the Critical Infrastructure Freedom of Information Second Congressional Review Emergency Amendment Act of 2014 (D.C. Act 20-459, Oct. 24, 2014, 61 DCR 11374, 20 STAT 4364).

For temporary (90 days) amendment of this section, see § 2(a) of the Critical Infrastructure Freedom of Information Third Congressional Review Emergency Amendment Act of 2014 (D.C. Act 20-580, Jan. 13, 2015, 62 DCR 1264, 21 STAT 730).

For temporary (90 days) amendment of this section, see § 3 of the Educator Evaluation Data Protection Emergency Amendment Act of 2015 (D.C. Act 21-35, Mar. 30, 2015, 62 DCR 4546, 21 DCSTAT 874).

For temporary (90 days) amendment of this section, see § 4063 of the Fiscal Year 2016 Budget Support Emergency Act of 2015 (D.C. Act 21-127, July 27, 2015, 62 DCR 10201).

For temporary (90 days) amendment of this section, see § 2(b) of the Body-Worn Camera Program Emergency Amendment Act of 2015 (D.C. Act 21-253, Dec. 30, 2015, 63 DCR 271).

Temporary Legislation

For temporary (225 day) amendment of section, see § 3 of the Master Business Registration Delay Temporary Act of 2003 (D.C. Law 14-302, May 3, 2003, law notification 50 DCR 3776).

For temporary (225 day) amendment of section, see § 2(a) of the Freedom of Information Legislative Records Clarification Temporary Amendment Act of 2003 (D.C. Law 15-83, March 10, 2004, law notification 51 DCR 3375).

For temporary (225 days) amendment of this section, see § 2(a) of the Critical Infrastructure Freedom of Information Temporary Amendment Act of 2013 (D.C. Law 20-71, February 22, 2014, 61 DCR 27).

For temporary (225 days) amendment of this section, see § 3 of the Educator Evaluation Data Collection Temporary Amendment Act of 2014 (D.C. Law 20-132, Aug. 8, 2014, 61 DCR 6338).

For temporary (225 days) amendment of this section, see § 3 of the Educator Evaluation Data Protection Temporary Amendment Act of 2015 ([D.C. Law 21-6](#), June 4, 2015, 62 DCR 4562).

References in Text

The “Vital Records Act of 1981”, referred to in subsection (d), is [D.C. Law 4-34](#).

Editor's Notes

The Law Effective Date Notice for D.C. Law 1-96, published on April 8, 1977, was incorrect and was corrected on June 3, 1977, and published at 23 DCR 9532b.

PUBLICATION INFORMATION

Current through

July 22, 2022

Last codified Emergency Law:

[Act 24-470 effective July 13, 2022](#)

Last codified D.C. Law:

[Law 24-146 effective July 22, 2022](#)

Last codified Federal Law:

[Public Law 115-334 approved Dec. 20, 2018](#)

[<https://github.com/dccouncil/law-xml>]

[<https://github.com/dccouncil/law-html>]

[<http://www.openlawlib.org/>]



Council of the **DISTRICT OF COLUMBIA**

📖 Code of the District of Columbia

§ 2–536. Information which must be made public.

NOTE: This section includes amendments by emergency legislation that will expire on October 11, 2022. To view the text of this section after the expiration of all emergency and temporary legislation, click this link: [Permanent Version](#).

NOTE: Section 1043 of D.C. Act 24-470 provides that the amendments made to this section by section 1042(b) of D.C. Act 24-470 shall apply as of December 7, 2004.

(a) Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information, and do not require a written request for information:

(1) The names, salaries, title, and dates of employment of all employees and officers of a public body;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by a public body;

(5) Correspondence and materials referred to therein, by and with a public body, relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(6A) Budget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports, and strategic plans and performance-based budget submissions;

(7) The minutes of all proceedings of all public bodies;

(8) All names and mailing addresses of absentee real property owners and their agents;

(8A) All pending applications for building permits and authorized building permits, including the permit file;

(9) Copies of all records, regardless of form or format, which have been released to any person under this chapter and which, because of the nature of their subject matter, the public body determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(10) A general index of the records referred to in this subsection, unless the materials are promptly published and copies offered for sale.

(b) For records created on or after November 1, 2001, each public body shall make records available on the Internet or, if a website has not been established by the public body, by other electronic means. This subsection is intended to apply only to information that must be made public pursuant to this subsection.

(c) For the purposes of this section “absentee real property owners” means owners of real property located in the District that do not reside at the real property.

(d)(1) Notwithstanding any other provision of law, no document or information described in subsection (a)(6A) of this section that was created on or after December 7, 2004, shall be exempt from disclosure pursuant to section 204(a)(4) and (e).

(2) In addition to making such document or information public information pursuant to subsection (a) of this section, a public body shall provide any document or information

described in subsection (a)(6A) of this section that was created on or after December 7, 2004, to a person who has requested to inspect or copy it pursuant to section 202, regardless of the date on which such request may have been made.

[\(Oct. 21, 1968, Pub. L. 90-614, title II, § 206; as added Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 3744; Mar. 17, 1993, D.C. Law 9-241, § 9, 40 DCR 629; Apr. 27, 2001, D.C. Law 13-283, § 3\(e\), 48 DCR 1917; Dec. 7, 2004, D.C. Law 15-205, § 1222, 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-354, § 7, 52 DCR 2638; Apr. 7, 2006, D.C. Law 16-91, § 133, 52 DCR 10637; July 13, 2022, D.C. Act 24-470, § 1042\(b\), 0 DCR 0.\)](#)

Prior Codifications

1981 Ed., § 1-1526.

1973 Ed., § 1-1526.

Section References

This section is referenced in [§ 1-610.64](#) and [§ 8-151.08](#).

Effect of Amendments

[D.C. Law 13-283](#) rewrote the section which prior thereto read:

“Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information:

“(1) The names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

“(2) Administrative staff manuals and instructions to staff that affect a member of the public;

“(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

“(4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

“(5) Correspondence and materials referred to therein, by and with the Mayor or an agency, relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

“(6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

“(7) The minutes of all proceedings of all agencies; and

“(8) All names and mailing addresses of absentee real property owners and their agents. ‘Absentee real property owners’ means owners of real property located in the District that do not reside at the real property.”

[D.C. Law 15-205](#) added pars. (6A) and (8A) to subsec. (a).

D.C. Law 15-534, in subsec. (a), validated a previously made technical correction.

[D.C. Law 16-91](#), in par. (6A) of subsec. (a), validated a previously made technical correction.

Emergency Legislation

[For temporary \(90 days\) amendment of this section, see § 1042\(b\) of Fiscal Year 2023 Budget Support Emergency Act of 2022 \(D.C. Act 24-470, July 13, 2022, 0 DCR 0\).](#)

For temporary (90 day) amendment of section, see § 1222 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1222 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Short Title

Short title of subtitle U of title I of Law 15-205: Section 1221 of [D.C. Law 15-205](#) provided that subtitle U of title I of the act may be cited as Freedom of Information Amendment Act of 2004.

Editor's Notes

The Law Effective Date Notice for D.C. Law 1-96, published on April 8, 1977, was incorrect and was corrected on June 3, 1977, and published at 23 DCR 9532b.

PUBLICATION INFORMATION

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July 22, 2022

Last codified Emergency Law:

[Act 24-470 effective July 13, 2022](#)

Last codified D.C. Law:

[Law 24-146 effective July 22, 2022](#)

Last codified Federal Law:

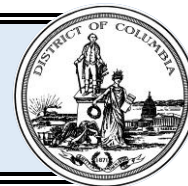
[Public Law 115-334 approved Dec. 20, 2018](#)

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COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
FISCAL YEAR 2023 COMMITTEE BUDGET REPORT



DRAFT 4/20

TO: Members of the Council of the District of Columbia

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: April 21, 2023

SUBJECT: Report and Recommendations of the Committee of the Whole on the
Fiscal Year 2023 Budget and Corresponding Budget Support Act

The Committee of the Whole, having conducted hearings and received testimony on the Mayor’s proposed fiscal year 2023 operating and capital budgets for the agencies under its purview, reports its recommendations for consideration by members for inclusion in the final Fiscal Year 2023 Budget. The Committee also comments on several subsections of the Fiscal Year 2023 Budget Support Act of 2022, and makes its own additional proposals.

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147 ~~Economic Security Act, approved March 27, 2020 (Pub. L. 116-136; 134 Stat. 281), if the~~
148 ~~reprogramming of such funds is consistent with the purpose for which the funds were~~
149 ~~appropriated.~~

150 ~~“(2) At the request of the Mayor, the Chief Financial Officer of the District of~~
151 ~~Columbia (“CFO”) shall reprogram funds described in paragraph (1) of this subsection;~~
152 ~~provided, that the CFO determines that the funds are available for reprogramming.”.~~

TITLE COW-A FOIA DISCLOSURE CLARIFICATION

I. PURPOSE, EFFECT, AND IMPACT ON EXISTING LAW

This subtitle amends the Freedom of Information Act of 1976 (“DC FOIA”) to clarify that the Mayor may not rely on the exemption from disclosure provided by section 204(a)(4) of DC FOIA for certain “inter-agency or intra-agency memorandums or letters,” including the statutory and common-law privileges incorporated therein by section 204(e), as a basis for withholding the documents expressly made public by section 206(a)(6A).

II. COMMITTEE REASONING

Section 206(a) of DC FOIA specifically designates several categories of information as public information that must be disclosed even in the absence of a written request pursuant to section 202. In 2004, the Council amended section 206(a), adding a new paragraph (6A) specifically to make public certain additional materials, including “[b]udget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process” The amendment sheet that proposed this change to DC FOIA stated that the goal of adding the new paragraph (6A) was to “expand public access to key budget documents so that residents can participate more fully in the budget dialogue,” and to “promote accountability by making the financial operations of the District government more transparent.” Notwithstanding the Council’s stated intent in enacting paragraph (6A), the Mayor consistently has failed to make public the specific materials described therein. Moreover, in response to a recent request submitted pursuant to section 202 of DC FOIA, the Mayor refused to provide the requestor the agency budget requests transmitted to the OCFO by DCPS and OSSE in connection with the preparation of the Fiscal Year 2019 budget.

The requestor who sought the Fiscal Year 2019 agency budget requests from DCPS and OSSE challenged the Mayor’s withholding of those requests in D.C. Superior Court, and the court ruled in the requestor’s favor, rejecting the Mayor’s claim that the budget requests are protected by the deliberative-process privilege and therefore exempt from disclosure under section 204(a)(4) and (e) of DC FOIA. The court then ordered that those agency budget requests be produced to the requestor and that all documents described in section 206(a)(6A) be made publicly available. However, the Mayor has appealed those rulings and now seeks to have the D.C. Court of Appeals reverse the Superior Court’s holding that the documents described in section 206(a)(6A) are not subject to withholding under section 204(a)(4) and (e). *See District of Columbia v. Terris, Pravlik & Millian, LLP*, No. 21-CV-543. Although the current provisions of DC FOIA already preclude the Mayor from withholding those documents pursuant to section 204(a)(4) and (e) (as the D.C. Superior Court recently concluded), this subtitle would foreclose any possible contrary reading of those provisions and would clarify that the Mayor may not rely on the deliberative-process privilege or other common-law and statutory privileges as a basis for withholding the documents and information described in section 206(a)(6A). Moreover, the subtitle applies this clarification retroactively as of the effective date of the legislation enacting section 206(a)(6A), so that it governs the public disclosure of any documents described in section 206(a)(6A) that were created on or after December 7, 2004, and applies to any request made pursuant to section 202 for such documents, regardless of the date on which it may have been made.

III. SECTION BY SECTION ANALYSIS

Sec. XX01. Short title.

Sec. XX02. Clarifies that the Mayor may not rely on the exemptions set forth in section 204(a)(4) and (e) of DC FOIA to withhold certain budget requests, submissions, and reports transmitted by agencies, boards, and commissions to the OCFO during the budget development process, as well as certain other documents described in and made public by section 206(a)(6A) of DC FOIA.

Sec. XX06. Sets the applicability of the subtitle to December 7, 2004.

IV. LEGISLATIVE RECOMMENDATION

153 **TITLE I, SUBTITLE COW-B. FOIA DISCLOSURE CLARIFICATION.**

154 Sec. XXX1. Short title.

155 This subtitle may be cited as the “Agency Budget Request Freedom of Information

156 Clarification Amendment Act of 2022”.

157 Sec. XXX2. The Freedom of Information Act of 1976, effective March 29, 1977 (D.C.
158 Law 1-96; D.C. Official Code § 2-531 et seq.), is amended as follows:

159 (a) Section 204 (D.C. Official Code § 2-534) is amended by adding a new subsection (c-
160 1) to read as follows:

161 “(c-1) Notwithstanding any other provision of law, no document or information described
162 in section 206(a)(6A) that was created on or after December 7, 2004, shall be exempt from
163 disclosure pursuant to subsections (a)(4) and (e) of this section.”.

164 (b) Section 206 (D.C. Official Code § 2-536) is amended by adding a new subsection (d)
165 to read as follows:

166 “(d)(1) Notwithstanding any other provision of law, no document or information
167 described in subsection (a)(6A) of this section that was created on or after December 7, 2004,
168 shall be exempt from disclosure pursuant to section 204(a)(4) and (e).

169 “(2) In addition to making such document or information public information
170 pursuant to subsection (a) of this section, a public body shall provide any document or
171 information described in subsection (a)(6A) of this section that was created on or after December
172 7, 2004, to a person who has requested to inspect or copy it pursuant to section 202, regardless of
173 the date on which such request may have been made.”.

174 Sec. XXX3. Applicability.

175 This subtitle shall apply as of December 7, 2004.



MURIEL BOWSER
MAYOR

May 3, 2022

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 504
Washington, DC 20001

Dear Chairman Mendelson:

My Fiscal Year 2023 Fair Shot budget was delivered to the Council when spring was just a few days away. After a very difficult two years, our community is ready to feel the hope and renewal that spring symbolizes. As I travel throughout the District, I often meet residents eager to move beyond the isolation of the pandemic and build a stronger, more connected sense of community. I can see family and friends reuniting; our students continue in-person learning; our workers making their way back to the office; tourists returning to DC; and our restaurants and hotels are once again filling up with customers who are excited to be in the company of other people enjoying our beautiful city.

I applaud the Council for moving forward with the vast majority of my budget proposals. This is a budget that reflects our DC values and the belief that we can work together to build a stronger, more equitable DC for all our residents. However, there are some changes proposed by Committees that fail to meet our residents' needs and expectations. Several reductions will have debilitating and serious impacts on our ability to deliver key services, and keep our residents, networks, and facilities safe. I do not believe the Committee proposals were made with that intent, so I am providing additional details to help the Council fully understand the implications of proposed reductions, including:

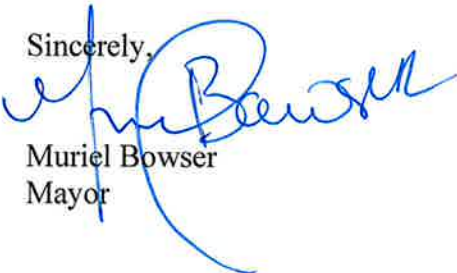
- **A 20 percent reduction to my proposal to put the Metropolitan Police Department (MPD) on a path toward 4,000 sworn officers.** My proposed budget included a \$30 million investment in officer recruitment and retention; the Council has indicated it wants to cut that by 20 percent. It is important to be clear: the full \$30 million package is needed to ensure we can recruit *and retain* enough officers to return MPD's ability to respond to and prevent crime to where our city needs it to be.
- **Removal of school resource officers (SROs) from our public schools.** The Council continues its effort to eliminate school resource officers (SROs) despite the lack of support from our school principals. Our SROs foster relationships with students and staff and help

- \$60 million to build an indoor sports complex at RFK Stadium and provide our residents with new public recreation amenities;
- \$680,000 for a rapid response team to quickly make needed repairs at our parks and recreational facilities;
- Roadway safety:
 - \$10 million a year for the continued deployment of near-term “quick-build” traffic calming measures on roadways and to begin replacing temporary traffic calming measures with permanent infrastructure;
 - \$200 million over six years for major streetscape projects to redesign roadways and improve safety, including \$60 million for improvements to Wheeler Road, Alabama Avenue, and Martin Luther King, Jr. Avenue in Ward 8;
 - \$9.4 million to hire 100 newly created full-time school crossing guards and traffic control officers;
- Transforming the DC Jail:
 - \$251 million through FY 2028 to build an annex to the District’s Correctional Treatment Facility (CTF) that will provide a new, modernized facility for up to 600 inmates and move us closer to shutting down the outdated DC Jail.

These are just a few highlights of the FY 2023 Budget that will help more Washingtonians build a future in a safer, stronger, healthier, and more equitable DC.

As always, my team and I are available for further discussion of these issues.

Sincerely,



Muriel Bowser
Mayor

cc: Members of the Council of the District of Columbia
Dr. Fitzroy Lee, Acting Chief Financial Officer, Office of the Chief Financial Officer

Negative Impacts of Proposed Council Committee Reductions to the Proposed FY 2023 Budget

Committee of the Whole

Reductions to the Workforce Investment Council (WIC) budget for Employer Partnerships will reduce job training opportunities for residents

The Committee of the Whole proposed reducing the funding for Employer Partnerships, a grant program that funds partnerships between employers, educational institutions, and training providers to get residents credentialed and ready to enter or re-enter the workforce. This is vital work for the District's recovery. I am proud the WIC launched the first round of grants in February and is already working to issue the second round of grants. This proposed reduction would mean that up to 80 DC residents would not be able to participate in these training programs.

Reduction of funding for the Streets for People project eliminates a vital economic recovery tool

The Committee of the Whole has recommended reducing the Office of Planning's Streets for People project by \$1,650,000. Given that \$1,880,520 of the total \$2,325,000 budgeted for this project was set aside for grants, this change would leave just \$230,520 for street and public space activations. This change would essentially end the Streets for People grants program as a vital economic recovery program for downtown and would eliminate grants to the downtown BIDs.

Addition of the FOIA disclosure subtitle will hinder the Mayor's ability to propose a budget to the Council that best serves District residents and will establish a dangerous and unnecessary precedent

The Committee of the Whole has recommended a Budget Support Act subtitle that is intended to require the Mayor to publicly disclose certain internal discussions about the development of the Mayor's budget proposal that are protected by the deliberative process privilege. This provision is unnecessary and will hinder the Executive's ability to propose to the Council a budget that best meets the needs of our residents and businesses.

The courts and policymakers have long recognized that the deliberative process privilege is critical to governors, the Mayor, and other executives being provided with candid and complete information by their staff and advisors and that the absence of the privilege will chill and distort the type of open discussion that is necessary for optimal Executive decision-making. The Committee of the Whole subtitle does not dispute the importance of the privilege or that the budget-related documents covered by the proposed subtitle are in fact covered by the deliberative process privilege – but instead seeks to statutorily destroy that long-standing privilege to force the disclosure of otherwise protected documents.

Moreover, the provision is simply unnecessary. The Mayor and agencies already provide thousands of pages of documents related to the proposed budget and its formulation, answers hundreds (and likely thousands) of Council questions and appear at dozens of public hearings before the Council. The Council and the public have more than adequate information about the budget process with which to make informed decisions and recommendations.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

DRAFT

TO: All Councilmembers
FROM: Chairman Phil Mendelson
Committee of the Whole
DATE: May 10, 2022
SUBJECT: Report on Bill 24-714, the “Fiscal Year 2023 Budget Support Act of 2022”

The Committee of the Whole, to which Bill 24-714 was referred, reports favorably thereon, with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

The purpose of Bill 24-714, the Fiscal Year 2023 Budget Support Act of 2022 (“FY 2023 BSA”), is to amend or enact various provisions of law that support the implementation of a balanced Fiscal Year 2023 budget and financial plan.

Bill 24-714 is a substantial and wide-ranging piece of legislation that will have a significant impact on existing law. The legislation includes nine titles and more than 55 individual subtitles, which are briefly summarized in section VIII below. In addition to the subtitle-by-subtitle analysis set forth below, further background on Bill 24-714 is available in the budget reports produced by the Council’s ten standing committees. The Committee of the Whole recognizes the importance of the policy recommendations set forth by the various committees in their budget reports; these policy recommendations are an essential part of the performance and budget review process by the Council. The committee print attached to this report contains FY 2023 BSA subtitles based on recommendations and feedback from the Council committees, as refined by the Committee of the

orders) and all current and recent DPR work orders through an interface that the Committee is calling a GovSMaRT dashboard. The Department of General Services (DGS) is currently required to post online certain details regarding work orders for DCPS heating, ventilation, and air conditioning system (HVAC) issues. DGS chose to satisfy that requirement by developing an interactive dashboard.⁶ (GOF)

Subtitle D. Public Facilities Environmental Safety Implementation Amendment Act of 2022: This subtitle saves an important portion of the *Public Facilities Environmental Safety Amendment Act* from being repealed for want of funding. In the FY 2022 budget, the Council funded almost all of the changes in the *Public Facilities Environmental Safety Amendment Act of 2020*,⁷ including a mandate that buildings receive inspections every 10 years or less. However, the requirement that, DGS notify the public and remediate certain significant hazards in the course of “demolition, construction, excavation, or substantial renovation” was not funded. This subtitle eliminates the unfunded mandate and makes conforming changes, leaving intact the requirement for new construction, demolition, and excavation. (GOF)

Subtitle E. Agency Budget Request Freedom of Information Clarification Amendment Act of 2022: Section 206(a) of DC FOIA specifically designates several categories of information as public information that must be disclosed even in the absence of a written request pursuant to section 202. In 2004, the Council amended section 206(a), adding a new paragraph (6A) specifically to make public certain additional materials, including “[b]udget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process” Contrary to the Mayor’s statement in her May 3, 2022, correspondence with the Chairman regarding the Council’s preliminary budget decisions that the COW “does not dispute . . . that the budget-related documents covered by the proposed subtitle are in fact covered by the deliberative process privilege,” paragraph (6A) always has required that the Mayor make those documents public; indeed, any other reading of that provision would render it a nullity. Notwithstanding the Council’s stated intent in enacting paragraph (6A), the Mayor consistently has failed to make public the specific materials described therein. Moreover, in response to a recent request submitted pursuant to section 202 of DC FOIA, the Mayor refused to provide a requestor the agency budget requests transmitted to the OCFO by DCPS and OSSE in connection with the preparation of the Fiscal Year 2019 budget. The requestor who sought the Fiscal Year 2019 agency budget requests from DCPS and OSSE challenged the Mayor’s withholding of those requests in D.C. Superior Court, and the court ruled in the requestor’s favor, rejecting the Mayor’s claim that the budget requests are protected by the deliberative-process privilege and therefore exempt from disclosure. *See Terris, Pravlik & Millian, LLP v. District of Columbia*, Case No. 2020 CA 3087 B. Although the current provisions of DC FOIA already preclude the Mayor from withholding those documents pursuant to section 204(a)(4) and (e) (as the D.C. Superior Court recently concluded), this subtitle would foreclose any possible contrary reading of those provisions and would clarify that the Mayor may not rely on the deliberative-process privilege or other common-law and statutory privileges as a basis for withholding the documents and information. (COW)

⁶ <https://dgs.dc.gov/service/dgs-dcps-hvac-public-dashboard>.

⁷ See Section 7205 of the *Subject-to-Appropriations Repeals and Modifications Emergency Amendment Act of 2021*.



MURIEL BOWSER
MAYOR

July 13, 2022

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

I am returning signed Bill 24-0845, the “Fiscal Year 2023 Budget Support Emergency Act of 2022”. The budget we passed this year is one that will continue to help the District’s post-pandemic economy recover; will get residents good-paying, family-sustaining careers; will protect residents’ health and safety; and so much more. Specific to the Fiscal Year 2023 Budget Support Act (BSA) of 2022 (Bill 24-714) and this related emergency measure, I appreciate that the Council approved most of the proposals I submitted for consideration.

I remain concerned, however, about the following subtitles that the Council added to the bill:

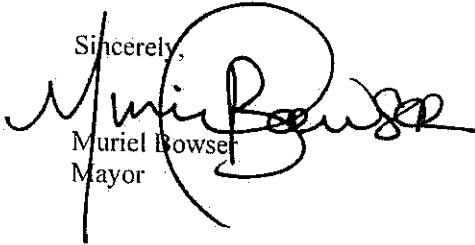
- Title I. Subtitle E. FOIA Disclosure Clarification: This subtitle inappropriately attempts to eliminate the Executive’s deliberative process privilege during the budget formulation process. The courts and policymakers have long recognized that the deliberative process privilege is critical to governors, mayors, and other government decisionmakers being provided with candid and complete information by their staff and advisors. The absence of the privilege chills and distorts the type of open discussion that is necessary for optimal Executive decision-making. This may well result in a budget and financial plan that does not best meet the needs of District residents. The Council’s effort is particularly misguided, because the executive branch already provides thousands of pages of budget information to the Council and testifies and responds to questions from Councilmembers at dozens of budget hearings. The Council has more than enough information to make informed decisions on the budget without this problematic subtitle.

Title IV. Subtitle O: Duke Ellington School of the Arts Funding and Organization Model: This subtitle is an overreach into the Executive functions of negotiating with contractual partners and managing the operations of schools and goes well beyond the Council’s oversight role by including Council-appointed observers in executive branch contract discussions. The subtitle also directs DCPS to enter into a contract with a specific vendor—in this case the Duke Ellington School of the Arts Project, bypassing the contracting and procurement laws of the District of Columbia.

- Title VI. Subtitle E: Green Finance Authority Board: This subtitle, without proper justification, removes the Mayor's authority to appoint the Chair of the Board. The Committee on Transportation and the Environment's report, which initially recommended this subtitle, states that the Board members are in the best position to select the Chair because they can better identify who can make the necessary commitment to serve. This is simply inaccurate; Board candidates are thoroughly vetted by the executive for their experience and expertise and for their ability and commitment to serve in the positions to which they are appointed, and the Mayor is in the best position to judge the appointees' abilities and commitment to serve. The new process for selecting a chair of the Green Finance Authority also runs counter to the countless boards and commissions that the Mayor retains the authority to appoint the chairperson.

Lastly, as a general matter, I am concerned about the large number of non-budget provisions that the Council continues to add to the annual Budget Support Act without adequate opportunity for public input or full discussion with, and consideration by, the Executive. For example, significant policy changes to longstanding programs like the School Year Internship Program, reporting requirements for the Office of Victim Services and Justice Grants grantmaking and the Metropolitan Police Department's budget, structural changes to Duke Ellington's organizational model, and increased motor vehicle registration fees based on weight of the vehicle. I urge the Council in future years to introduce and consider these subtitles as separate pieces of legislation, to allow for robust public input and the type of individualized and focused consideration that are important to a strong policymaking process.

Sincerely,



Muriel Bowser
Mayor

REDACTION CERTIFICATE DISCLOSURE

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
 - An individual's social-security number
 - Taxpayer-identification number
 - Driver's license or non-driver's license identification card number
 - Birth date
 - The name of an individual known to be a minor
 - Financial account numbers, except that a party or nonparty making the filing may include the following:
 - (1) the acronym "SS#" where the individual's social-security number would have been included;
 - (2) the acronym "TID#" where the individual's taxpayer identification number would have been included;
 - (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
 - (4) the year of the individual's birth;
 - (5) the minor's initials; and
 - (6) the last four digits of the financial-account number.
2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5)

(defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Todd A. Gluckman
Signature

21-CV-0543
Case Number

Todd A. Gluckman
Name

August 2, 2022
Date

tgluckman@tpmlaw.com
Email Address

CERTIFICATE OF SERVICE

I hereby certify that, on August 2, 2022, the foregoing Appellee's Supplemental Brief Addressing the Impact of the Recent District of Columbia Freedom of Information Act Legislation was served through this Court's electronic filing system on Appellant District of Columbia through its counsel including Richard S. Love (richard.love@dc.gov) and Caroline S. Van Zile (caroline.vanzile@dc.gov), on *Amicus Curiae* Council of the District of Columbia through its counsel including Daniel Golden (dgolden@dccouncil.us), and on *Amici Curiae* D.C. Open Government Coalition, American Civil Liberties Union of the District of Columbia, DC Fiscal Policy Institute, Public Citizen, Reporters Committee for Freedom of the Press, and Washington, D.C. Professional Chapter of the Society of Professional Journalists through their respective counsel including Adina H. Rosenbaum (arosenbaum@citizen.org).

Respectfully submitted,

/s/ Todd A. Gluckman

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August 2, 2022

Counsel for Appellee