

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON THE JUDICIARY**



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**COUNCIL OF THE DISTRICT OF COLUMBIA**

**PUBLIC HEARING  
COMMITTEE ON BUSINESS, CONSUMER AND REGULATORY  
AFFAIRS**

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
BUDGET OVERSIGHT HEARING  
FISCAL YEAR 2017**

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**Testimony of Traci L. Hughes, Esq.  
Director  
Office of Open Government  
Board of Ethics and Government Accountability**

**Wednesday, April 20, 2016  
10:00 A.M.  
1350 Pennsylvania Avenue, N.W.  
Room 412  
Washington, D.C. 20004**

Good afternoon, Chairperson Orange and members of the Committee. I am Traci Hughes, Director of the Office of Open Government (OOG), Board of Ethics and Government Accountability (BEGA). Thank you for accommodating me, and allowing me the opportunity to testify during the public witness portion of today's hearing. To be clear, I am testifying today in my capacity as Director of the OOG and not as a member of the public.

The OOG oversees compliance of all District Government Agencies with the Freedom of Information Act (FOIA). And in my role as Director, I serve as the chief FOIA officer for the city and am statutorily charged with the authority to issue advisory opinions on implementation of FOIA pursuant to D.C. Official Code § 2-593(c).

This authority extends to the issuance of non-binding advisory opinions as my office cannot compel agencies to provide government records, but can work directly with agencies to conform to the law. I may issue advisory opinions *sua sponte*, or upon request by a member of the public or any government agency.

As this committee is aware, I issued an opinion on January 29, 2016, at the request of Commissioner Mark Eckenwiler. Specifically, the OOG was asked to opine on whether the Department of Consumer and Regulatory Affairs (DCRA) is complying with the mandatory disclosure requirement of local FOIA. At issue was whether DCRA was failing to abide by D.C. Official Code § 2-536(a)(8A) which states: “[a]ll pending applications for building permits and authorized building permits, including the permit file”; and D.C. Official Code § 2-536(b) requiring such files to “...be made available on the Internet.”

Prior to issuing the opinion, I conducted an internal review of DCRA operations regarding public access to these records, and found critical systemic failures have led to DCRA's inability to conform with D.C. Official Code 2-536. I have included with the record the opinion, and will note the highlights which are the reasons for my testimony today.

First, I must note for the Committee that Director Bolling and members of her staff were forthcoming and candid regarding the agency's limitations in publishing on its site all pending and authorized building permits, applications and corresponding permit files. However, despite the fact that the requirement that these records be published online and free of charge since 2001, DCRA has now for 15 years failed to comply with this mandatory disclosure requirement in FOIA.

DCRA staff claim that they are in need of additional funding of more than a million dollars to digitize, publish and maintain these records electronically. DCRA finds itself in a predicament that is not unusual to District Government agencies: legacy IT systems are inherited containing dated government records, and new systems are built using technology and platforms which do not pull data from the old systems. While I disagree with the claimed costs of this much needed IT upgrade, and believe the cost could be half of what DCRA is anticipating, the agency is in dire need of the enhancement.

Without it, the agency is left wide open to FOIA litigation for non-compliance, and members of the public will continue to be subjected to an internal policy contrary to the law requiring the public to go to outside vendors to pay for records that they should have access to immediately, online and for free.

In fact, as recently as this week, a staff member from my office requested a building permit and was told that it would take up to 48 hours for the agency to retrieve the file, and then he must go to one of the vendors supplied by DCRA to make copies for a cost. And this is after I issued the opinion requiring the agency to stop this procedure.

I recognize DCRA has implemented this policy in an effort to comply with FOIA, but this internal policy is doing little to bring the agency into compliance. I strongly encourage this Committee to allocate funding for the revamped IT infrastructure to provide records subject to 2-536.

Thank you for the opportunity to testify. I welcome any questions you may have.