

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT**



COUNCIL OF THE DISTRICT OF COLUMBIA

PUBLIC HEARING

**B21-0697, the “Advisory Neighborhood Commissions Omnibus
Amendment Act of 2016”**

**Testimony of Traci L. Hughes, Esquire
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Board of Ethics and Government Accountability**

**Wednesday, July 6, 2016
10:00 A.M.
1350 Pennsylvania Avenue NW
Room 500
Washington, D.C. 20004**

Good morning, Chairperson Bonds. My name is Traci Hughes, and I am the director of the Office of Open Government (OOG), an independent office under the Board of Ethics and Government Accountability (BEGA). I am pleased to be here today to testify about Bill 21-0697, the “*Advisory Neighborhood Commissions Omnibus Amendment Act of 2016*.”

It is the mission of the OOG to ensure that government operations at every level are transparent, open to the public and promote civic engagement. Specifically, my office is charged with the oversight of all public bodies to ensure compliance with the Open Meetings Act. Additionally, the OOG ensures agency, and public official compliance with the Freedom of Information Act (FOIA). As the OOG director, I serve as the chief FOIA officer for the District and provide advisory opinions on compliance with the Act. I also make policy recommendations to the Executive, and advise the Council on legislation and rulemakings affecting government transparency.

The purpose of my testimony today is two-fold: (1) to address the proposed amendment in Bill 21-0697 that would exclude Advisory Neighborhood Commissions (ANCs) from the definition of agency in the District of Columbia Administrative Procedure Act; and (2) to publically offer a tool to ANCs which would increase access to ANC meeting records, reducing the burden placed on ANCs in processing requests for records.

Removal of ANCs as an Agency

Without question, the role of the ANC is important and far-reaching. Each ANC is duly elected by the public to advise the Council of the District of Columbia, the Mayor, and all agencies, boards and commissions, on matters of government policy ranging from social services, to planning and development, to education and the District’s budget.¹ Each ANC is to hear from their constituents with the goal of fully informing our government. ANCs are to be the voice of our communities and neighborhoods, and must have their ear to the ground on matters that are impacting the lives and livelihoods of District residents. In fact, the statutory positioning of

¹ D.C. Official Code § 1-309.10(a) (2016).

ANCs is such that the law requires that the recommendations of an ANC be given great weight during the deliberations by a governmental agency.²

The responsibility of ANCs are of such import, that the Council required in its passage of D.C. Official Code § 1-309.11 that all ANC meetings be noticed and open to the public. And that all official votes, and full transcriptions of meetings be public.³ This is entirely consistent with the very foundation of local FOIA and the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them.⁴

It is the position of the OOG that the proposed amendments skirts the long-standing requirement of all public officials that they be transparent, and make government records available under FOIA. Although it may be frustrating for ANCs to comply with FOIA, each are statutorily bound to maintain and make public all records generated in the course of their duties as elected officials. The law is unwavering on this point, as D.C. Official Code § 2-502(1) (3) and (18A) encompass ANCs as a public body, and therefore an agency, required to abide by the laws of the District of Columbia. Frustration with compliance with FOIA should not be a barometer by which the Council begins to pick and choose who may comply with the law, and who may not. Should the proposed amendment move forward, the Committee risks sending all agencies down a slippery slope of compliance with the District's open records laws, and will be completely antithetical to the public's right to know.

This right is not a novel one, and is well endorsed and supported by the Courts and the Council itself. Prior to the Council's passage of D.C. Law 13-283, the "Freedom of Information Amendment Act of 2000", the District FOIA law only extended coverage at that time to the Mayor and agencies. However, this legislative body following a then nationwide trend, and to codify its longstanding practice of abiding by FOIA, although not statutory bound to do so, unanimously voted to extend FOIA's coverage to include the Council of the District of Columbia. In extending coverage of FOIA to itself, the Council spoke loudly and favorably for

² *Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd.*, 766 A.2d 59, 2001 D.C. App. LEXIS 18.

³ D.C. Official Code § 1-309.11(g) requires all final decisions, including concurring and dissenting opinions; name and salary information of ANCs and employees; expenditures; minutes; and reports to the District of Columbia Auditor be made public.

⁴ D.C. Official Code § 2-531, *et. seq.* (2016).

greater government transparency and stated on the record, “[N]evertheless, it is only fair for the Council to abide by the same rules as the executive branch with respect to public access to information.”

Public Tool to Improve Access to ANC Records

Rather than this knee-jerk reaction to ANC frustrations on abiding with District FOIA, the OOG can offer an easy and sustainable tool to all ANCs: a central repository of meeting dates, minutes, audio files, video files and any administrative materials relative to a particular meeting date. The portal would also include ANC contact information, including their government issued email addresses.

Since late 2013, the OOG has provided as a courtesy to the public and the government the only central repository of boards and commissions meeting dates, and corresponding records. The calendar, found at www.open-dc.gov under the Boards and Commissions Meeting [tab](#), is maintained entirely by the OOG, and offers direct access to administrative points of contact for each board and commission to directly upload from wherever they sit all meetings records. Use of the calendar by administrative staff does not require any technical expertise other the ability to upload files. The calendar is entirely supported by OOG, and is designed to eliminate bottlenecks in publishing content. Its use is elementary, and does not require ANCs to be technologically savvy.

While the OOG notes that there is an Advisory Neighborhood Commissions calendar that the ANC office maintains via the Office of the Chief Technology Officer, it does not offer a user-friendly platform or the ability to directly attach meeting records to the site, as does the OOG boards and commissions calendar.

The central calendar is a tool that the Mayor’s Office encourages all public bodies to utilize, and it has been well-received by the public because it is a one-stop-shop for boards and commissions information and records.

I am certain the same will prove true for ANCs should this Committee support the development of the central calendar. The OOG can easily duplicate and modify the portal for use by ANCs, and will provide an immediate means of compliance with D.C. Official Code § 1-309, thereby

reducing the number of FOIA requests and strain on ANCs and staff when processing FOIA requests. I am confident we can work together to employ this solution with little to no learning curve.

Thank you for the opportunity to testify. I am happy to answer any questions the Committee may have.