

Contracts Procurement & FOIA

Office of Open
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Agenda

- Foundations of DC FOIA & Procurement
- Procurement Records
- Proactive Disclosure and FOIA Requests
- Exemptions and Redactions in Procurement

Foundations of D.C. FOIA & Procurement

D.C. Freedom of Information Act

It is 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. (D.C. Official Code § 2-531)

DC FOIA provides the public the right to access government records and is designed to promote transparency and accountability across the District Government.

D.C. Official Code § § 2-531 – 2-540

§ 2-531. Public Policy

§ 2-532. Right of access to public records; allowable costs; time limits

§ 2-533. Letters of denial

§ 2-534. Exemptions from disclosure

§ 2-535. Recording of final votes

§ 2-536. Information which must be made public

§ 2-537. Administrative appeals

§ 2-538. Oversight of disclosure activities

§ 2-539. Definitions

§ 2-540. Short title

D.C. Municipal Regulations §§1-400 – 1-417

§1-400 PURPOSE AND APPLICATION.

§1-401 AGENCY RESPONSIBILITY.

§1-402 REQUESTS FOR RECORDS.

§1-403. to 404. [RESERVED].

§1-405. TIME LIMITATIONS.

§1-406. EXEMPTIONS

§1-407. RESPONSES TO REQUESTS.

§1-408. FEES.

§1-409. to 411. [RESERVED].

§1-412. REVIEW OF DENIALS.

§1-413. RECORDS MAINTAINED BY AGENCIES.

§1-414. [RESERVED].

§1-415. OVERSIGHT.

§1-416. to 417. [RESERVED].

Procurement Law Overview

- D.C. contracting and procurement is governed primarily by D.C. Official Code Title 2 (Government Administration), including procurement chapters.
- Sources for locating relevant procurement laws and regulations include:
 - D.C. Official Code Title 2 (Government Administration) – including chapters on procurement.
<https://code.dccouncil.gov/us/dc/council/code/titles/2/>
 - Office of Contracting and Procurement (OCP) website
<https://ocp.dc.gov/>
 - OCP regulations and manuals <https://ocp.dc.gov/page/laws-regulations1>

Procurement Records

Public Records in General

- The term “public record” is defined in the D.C. Code.
- Public records include “all books, papers, maps, photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.” (D.C. Official Code §2-502(18))
- “Public records include information stored in an electronic format”. (D.C. Official Code §2-502(18))
- Electronic format includes text messages and some applications. *See* OOG Advisory Opinion on Applicability of D.C. FOIA to Text Messaging (including Ephemeral-Content Applications such as WhatsApp)
https://www.open-dc.gov/sites/default/files/FOIA%20Advisory%20Opinion_Text%20Messages_OOG%202022-001_03162022.pdf

Includes records of
some contractors

- Includes **ANY** record produced or collected pursuant to a contract with a private contractor to perform a public function. D.C. Official Code §2-532(a-3)).

Procurement Records

- Procurement records such as Requests for Proposals (RFPs), bid documents, award notices, and contract terms are generally considered public records when prepared, used, or retained by the agency as part of the procurement process and must be disclosed under D.C. FOIA unless they meet one of the exemptions set forth in D.C. Official Code § 2-534.
- This includes pre-award, award, and post-award materials.

Common Procurement Records

- Solicitations
- Vendor Proposals/Bids
- Evaluation Records
- Contract Award Documents
- Invoices & Purchase Orders

Solicitations

- Documents issued to vendors announcing a procurement opportunity and outlining requirements, evaluation criteria, and submission instructions. Examples include:
 - Requests for Proposals (RFPs)
 - Requests for Quotations (RFQs)
 - Request for Task Order Proposals (RFTOP)

Vendor Proposals & Bids

- Vendor Submissions responding to solicitations, including:
 - Technical Proposals
 - Price Proposals
 - Past Performance Information
- These documents often contain commercial or financial information

Evaluation Records

- Internal agency records used to assess proposals, including:
 - Scoring Sheets
 - Technical Evaluation Reports
 - Source Selection Memos
- Portions of these may fall under the D.C. FOIA exemption for inter-agency or intra-agency communications. (D.C. Official Code §2-534(4))

Contract Award Documents/Contract Amendments & Modifications

- Contract award documents are documents announcing the selected vendor and terms of the award.
- Contract amendments and modifications are formal changes to contract terms, scope, pricing, or duration.
- The Office of Contracting and Procurement (OCP) is required to post contract awards greater than \$100,000. These can be found on its transparency portal <https://contracts.ocp.dc.gov/>

Invoices & Purchase Orders

- Documents that include billing, payments, and purchase order transactions.
- OCP posts purchase order transactions online.
<https://contracts.ocp.dc.gov/>

Internal Procurement Records

- Agency Evaluations
- Scoring Sheets
- Technical Reviews
- Source Selection Memos
- Communications with vendors such as emails, letters, texts, etc.)

Proactive Disclosure and FOIA Requests

D.C. FOIA Proactive Disclosure

- D.C. law requires agencies to make certain categories of records public without a FOIA request. Records that must be available to the public without the need of a FOIA request include:
 - Administrative manuals
 - Regulations
 - Organizational charts
 - Awarded contracts/Contracts expenditures
 - Budgets
 - Policies
 - Etc.

See D.C. Official Code §2-536.

Proactive Disclosure

- The public can access and search certain procurement information without filing a FOIA request using the OCP Contracts and Procurement Transparency Portal. <https://contracts.ocp.dc.gov/>
- Awarded contracts valued at \$100,000 or more
- Solicitations and opportunities
- Regulations, manuals, budgets, and organizational charts
- Purchase orders and purchase card transactions
- <https://ocp.dc.gov/page/open-government-and-FOIA>

FOIA Requests

- 1 DCMR §400 et. seq. contains the rules and procedures to be followed by ALL agencies, offices, and departments of the District of Columbia, and ALL persons requesting records pursuant to FOIA.
- The regulations can be accessed online at <https://www.dcregs.dc.gov>.
- ANY person/entity has a right to inspect, and at their discretion, to copy ANY public record of a public body except as expressly provided by the FOIA exceptions. (D.C. Official Code § 2-532(a))
- FOIA requests may be filed via:
 - DC FOIA Portal (recommended though not required)
<https://myfoiadc.govqa.us/>
 - Email, mail, phone, or fax (except OAG)

Who Handles Procurement-Related FOIA Requests?

- For Procurement documents, make sure the request is directed to the right agency.
- The Office of Contracting and Procurement (OCP) processes FOIA requests for *most* but not all District agencies. In general, If an agency receives a FOIA request for solicitations, contracts, modifications to contracts, bid/proposal scoring or evaluation documents, they should refer the requester to OCP.
- Agencies with independent contracting authority, such as the Dept. of General Services (DGS), the District of Columbia Public Schools (DCPS), and WMATA process their own requests. FOIA requests for contract and procurement records should be submitted directly to these agencies.

Exemptions and Redactions in Procurement

Key Exemptions Relevant to Procurement

- Trade Secrets/Commercial or Financial Information (§ 2-534(1))
- Personal Privacy (§ 2-534(2))
- Inter-agency / Intra-agency Memos (§ 2-534(4))

Trade Secret Exemption (Most Common)

D.C. Official Code § 2-534(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;”

- Protects competitive interest
- Often applies to vendor pricing, methodologies, proprietary systems
- Requires case-by-case analysis
- Consider whether information is publicly available

MOLC FOIA Appeal 2026-034

- In August 2025, an individual submitted a DC FOIA request to the Dept. of Housing and Community Development (DHCD) seeking records related to compliance monitoring of several properties.
- DHCD responded in October 2025 and provided the requester with redacted documents and explained that “the electronic documents have been redacted because portions of the information contained therein are subject to the trade secrets and commercial or financial information exemption D.C. Code §2-534(a)(1)...”
- DHCD also claimed the personal privacy exemption (§ 2-534(a)(2)) and the deliberative process privilege (§ 2-534(a)(4)), however the requester did not challenge the personal privacy exemption, and DHCD acknowledged that it might have misapplied the deliberative process privilege. Thus, the appeal centered on DHCD’s use of the trade secrets exemption. (§ 2-534(a)(1))

MOLC FOIA Appeal 2026-034 (cont'd)

- In their appeal to the Mayor's Office of Legal Counsel (MOLC), the requester maintained that DHCD had an obligation to provide any reasonably segregable portion of the exempt records and noted that the agency has previously disclosed similar documents resulting in a waiver of any privilege.
- DHCD maintained that it had properly applied the privilege and that there was no evidence that it failed to provide any reasonably segregable portion of the records.

MOLC FOIA Appeal 2026-034 (cont'd)

- The MOLC noted that “Exemption 1 protects information that: (1) is a trade secret or commercial or financial information; (2) was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, “as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

MOLC FOIA Appeal 2026-034 (cont'd)

- The MOLC stated that “DHCD utilized Exemption 1 to redact information received from a housing provider including the total number of units held, the market rate of these units, the number of vacant and occupied units, the unit/number of bedrooms, the maximum rent, the subsidy received, the rent charged and the rent charged at acquisition.”
- In explaining why it withheld this information, DHCD stated that “the real estate market is a very complex and highly competitive industry. Developers seek every opportunity to capitalize on emerging opportunities. Applicants have a reasonable expectation when submitting their financial information that it will not be released to the public. DHCD should not be compelled to disclose financial data of applicants and expose them to unnecessary risks and harm[...].”

MOLC FOIA Appeal 2026-034 (cont'd)

- The MOLC found that “Because the requested information was obtained from outside the government, the party from which it was obtained faces actual competition and the disclosure of the withheld portion of the documents would result in a competitive disadvantage, i.e., an injury, this Office agrees that DHCD may withhold the information it redacted pursuant to Exemption 1.”
- The MOLC found that DHCD had released all non-exempt content from the responsive records identified. Thus, the requesters assertion that DHCD had failed to produce the reasonably segregable portions of the record was inapplicable.

MOLC FOIA Appeal 2026-034 (cont'd)

- Lastly, the MOLC found that the provision of records in another situation does not compel a similar result in this situation.
- “Unless otherwise prohibited by law, the release of records under DC FOIA is discretionary and can and should be made, notwithstanding the applicability of an exemption, if the public interest will not be harmed by its release. The public nature of information does not necessitate the subsequent release of related documents. Reporters Comm. for Freedom of the Press, 489 U.S. at 762; Long v. United States DOJ, 450 F. Supp. 2d 42, 68 (D.D.C. 2006) (“the fact that some of the personal information contained in these records already has been made public in some form does not eliminate the privacy interest in avoiding further disclosure by the government.”)”

Trade Secret Exemption

- For an additional example of the application of Exemption 1, as well as a thorough discussion of best practices for the application of DC FOIA exemptions, please see Attorney Advisor Joan Lelma's recent training **What Agencies Get Wrong – DC FOIA Exemptions**.
- <https://www.open-dc.gov/documents/what-agencies-get-wrong-dc-foia-exemptions>

Scenario: Trade Secrets

- Request: “All vendor proposals submitted for Contract XYZ.”
- Agency action:
 - Release non-confidential portions (cover pages, general corporate information).
 - Review and possibly redact proprietary methods, pricing formulas, and unique technologies.
 - Cite §2-534(a)(1).

Personal Privacy

D.C. Official Code § 2-534(2) – Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

- Personal email addresses and phone numbers
- Personal identifying information
- Vendor point-of-contact personal data
- Redact only exempt information

Personal Privacy – The Balancing Test

When determining whether the exemption for personal privacy would apply to the requested records, both D.C. FOIA and federal FOIA apply the standard set forth in *Department of Justice v. Reporters Committee for Freedom of Press*, which requires that the government balance the individual's privacy interests against the public interest in disclosure. A FOIA Officer must perform the balancing test under this exemption: the individual's privacy interest in the material at issue must be balanced against the public's interest in disclosing it, and this public interest must serve the "core purpose of shedding light on an agency's performance of its statutory duties."

Department of Justice v. Reporters Comm. for Freedom of Press, 489 U. S. 749, 772, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989)

Scenario: Personal Privacy

- Request: “All emails between contracting staff and Vendor B.”
- Agency Action:
 - Review and possibly release emails but redact personal phone numbers, private email addresses, and unrelated personal attachments.
 - Although this scenario specifically addresses personal privacy, you would of course consider all applicable exemptions. For instance, if the emails discuss or contain a trade secret, you would not release those portions.

Inter-Agency/Intra-Agency Communications

D.C. Official Code § 2-534(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.

- Protects draft versions of documents, internal deliberations, and pre-decisional communications
- Examples in procurement:
 - Draft scoring sheets
 - Internal emails discussing vendor strengths/weaknesses
 - Preliminary award recommendations

Scenario: Agency Communications

- Request: “All evaluation notes for Contract 123.”
- Agency action:
 - Review and possibly release final evaluation documents if factual.
 - Review and possibly redact subjective commentary or draft analyses under §2-534(a)(4).

Additional Scenarios

Scenario: Comparing Multiple Vendor Bids

- What can be potentially be released?
 - Total bid amount (unless proprietary breakdown)
 - Vendor qualifications
 - General descriptions of proposed services
- What may potentially be redacted?
 - Pricing breakdowns
 - Proprietary software descriptions
 - Trade secrets

Scenario: Contract Modifications

- Generally Releasable:
 - Contract changes in scope
 - Updated pricing
 - New deliverables
- Potentially Exempt Portions
 - Vendor proprietary information
 - Personal privacy elements (personal phone numbers, etc.)

Scenario: Communications Between Agency & Vendors

- Potentially Releasable:
 - Formal communications
 - Scheduling emails
 - Clarifying questions
 - Please note that this does not mean these types of communications cannot contain personal privacy or other exempt information
- Potentially Exempt:
 - Draft negotiation notes
 - Internal strategy memos
 - Vendor proprietary disclosures

Scenario: Post-Award Documents

- Potentially Releasable:
 - Contract
 - Amendments
 - Final evaluation
 - Invoices
- Potentially Exempt Portions:
 - Sensitive personal or proprietary information

Upcoming D.C. FOIA Trainings

July 30, 2026

“DC FOIA Appeals: Analysis & Insights”

Louis L. Neal, OOG Chief Counsel

August 6, 2026

**“Electronic Records, Text Messages, and
AI: Modern FOIA Challenges”**

Dir. of Open Govt. Niquelle M. Allen

August 13, 2026

**“Preparing a Civil Case & Defensive
Litigation”**

Brendan Heath & Adam Daniel

Asst. Attorneys General of Civil Lit. Div.
OAG

w/ Q&A Mod. by Dir. Allen

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Thank
you!

PLEASE CONTACT THE
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WITH YOUR QUESTIONS.