# District of Columbia Advancements in Government Transparency and Recommendations for a Sustainable Shift to Openness

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## Introduction

Significant steps have been taken over the last year to make District of Columbia[1] government more transparent and accessible to the public in ways that are in tune with technology and the 24-hours-a-day expectation of access to information.

The Office of Open Government (OOG)[2] in its 2013 Best Practices Recommendations[3] assessed the state of open government in the District of Columbia, and set out a roadmap for the city to adopt a comprehensive citywide policy that improves transparency and properly intersects with the access afforded to the general public under the Freedom of Information Act (FOIA).  As a result of the recommendations of the OOG, city government has begun to shift its focus on disclosure from a baseline assumption that government records are not to be released until proven otherwise, to the acknowledgement that there is a fundamental utility to agencies providing information proactively and in machine-readable formats.

Below is a recap of the District of Columbia's advancements, and further recommendations by the OOG to ensure open government protocols are mandated, and support public records systems that are interoperable, efficient, and user-friendly.

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[1] The District of Columbia (DC) is uniquely situated compared to local governments across the United States. Because DC is not a state, it's local government functions as a city, state and municipality with nearly 700,000 residents.

[2] The Office of Open Government is an independent office under the Board of Ethics and Government Accountability (BEGA), and is charged with advancing open governance in the District of Columbia. The OOG's mission is to ensure that government operations at every level are transparent, open to the public and promote civic engagement. The OOG ensures city-wide compliance with the Open Meetings Act, which requires all public bodies gathered to consider, conduct or advise on public business to take all official action during public meetings and to provide proper notice and detailed records of meetings. In addition to enforcement of the Open Meetings Act, the OOG advocates for fair and efficient Freedom of Information Act (FOIA) processing. The director of the OOG serves as the city's FOIA Officer and provides formal and informal advice to agencies seeking guidance on compliance. The office was statutorily created in 2010, but began operation in April of 2013.

[3] The Board of Ethics and Government Accountability 2013 Best Practices Report, Office of Open Government Assessment and Recommendations, Traci L. Hughes, Esq. (December 31, 2013).

**The Transition Toward a More Open and Responsive Government**

On October 25, 2014, Mayor Vincent C. Gray followed the direction of the OOG's best practices recommendations and announced his intention to implement the *Transparency and Open Government Initiative* impacting some 90 government agencies and 35,000 employees.   And in support of this renewed attention to transparency, the city announced the re-launch of the District's data warehouse  to include 237 new datasets, and a redesigned Track DC where residents may track agency performance.   The data warehouse now includes more than 600 District government datasets and some 1,500 federal datasets in machine-readable formats, including JavaScript Object Notation, Extensible Markup Language, Comma-Separated Values (CSV), and Geographic Information Systems JASON. All data is offered free of licensing and copyright restrictions. [4]

It is clear that the Executive Office of the Mayor was attentive to not only the assessment of the OOG of the need to revamp the means of access and engagement with government data, but to create a central open government portal to access government information.   All of the recommendations  of the OOG concerning open data and improved transparency are memorialized in what is now Mayor's Order 2014-170's Order 2014-170, Transparency, Open Government and Open Data Directive (hereinafter "Directive"). [5]

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[4] Any proposed legislation must hold true to the Creative Commons standard, allowing users to access, build upon and modify District government data.

[5] Also, the Directive created the Chief Data Officer position under the District of Columbia Office of the Chief Technology Officer (OCTO) to put policies and procedures in place to assist agencies in identifying and maintaining datasets.  This was also a best practices recommendation by the Office of Open Government.

**Open Data and Transparency Policy Must Be Codified to Ensure Sustained Progress on Open Government**

The continued publication of datasets is critical to overall transparency, agency accountability, government efficiency, and government responsiveness. The revamped data portal and the issuance of the Directive represent a remarkable leap since the OOG's recommendations[6] in December 2013.  However, now that the Office of the Chief Technology Officer (OCTO) has identified some bulk data, and provides Application Programming Interfaces allowing users to search, retrieve, or submit information directly from online databases, the policy mandated under the Directive must now be committed to legislation.

The publication, maintenance, and archival of data must be clearly set out in a permanent measure so as not to leave any discretion among the Executive and the subordinate and independent agencies that the default is indeed set to open. Additionally, the legislation[7] must include a means of archival and retention of data[8]

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[6] The OOG recommended the District implement a comprehensive citywide open data and transparency policy consistent with that of the federal government requiring all agencies to publish data in machine-readable formats.

[7] The District need not re-invent the wheel.  There are numerous examples from jurisdictions, both near and far, which have adopted open data legislation.

The State of Illinois adopted in March, 2014, the Open Operating Standard Act (H.B. 1040), requiring agencies to inventory data sets; establish maintenance guidelines; and to publish a technical standards manual identifying the reasons for the selection of each technical standard and the types of data for which each is applicable.

The State of Maryland adopted in May, 2014, the Open Data Policy – Council on Open Data (S.B. 644), requiring data to be published in machine-readable formats and establishing a Council on Open Data to recommend guidelines for publishing data. The Montgomery County Government Open Data Implementation Plan is highly instructive, and provides processes that may be memorialized in legislation submitted to the Council for its approval.

The State of Washington adopted in February 2014, H.B. 2202, establishing an open data policy requiring agencies to publish data in a single portal; establish a timeline for publishing data; include in compliance plans the reasons why certain data may not be made available and steps

and address protocols for inter-agency and intra-agency access to restricted data.[9] Accordingly, the OOG recommends that legislation (1) memorialize the policy set out in the Directive; (2) require agencies to submit full inventories of data; (3) create a process for ensuring data quality; (4) require all published data to be made available to the public free of licensing restrictions; (5) create a process for ensuring data quality and requiring public notice when data is modified; (6) define clearly the means by which the legislation will be regulated; (7) establish criteria for inter-agency and intra-agency sharing of data through memoranda of understanding; and (8) ensure agency document retention schedules are properly modified to include agency data and the archival of agency data.[10]

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to be taken to publish the data; description of agency changes to source data, and notations regarding why the data was modified.

In effect for nearly three years, the city of New York adopted in February 2012, Local Law  11 of 2012 – Publishing Open Data, requiring the adoption of technical standards for publishing data; agency compliance plans to include an inventory of data for publication; and an explanation of why certain datasets may not be published.

See http://sunlightfoundation.com/policy/opendatamap/ for a more exhaustive list of open data legislation and policies currently in place at state, local, and municipal levels.

[8] As the District contemplates open government legislation, it must also ensure that open data mandates are included in agency document retention schedules.  See 1 DCMR § 1508 (Disposition of Public Records).  Document retention schedules must address documents maintained in hard, electronic, and data formats.  Data formats should be reviewed every two years to ensure maintenance schedules correspond with data publication and technical standards.  Additionally, documents currently maintained by agencies in hard copy must be properly archived and digitized.

[9] The OOG does not recommend that all data be made available.  Restricted data encompasses the body of records maintained by an agency, but may be exempt from disclosure under D.C. Official Code § 2-534.  Open government legislation must align with FOIA allowing for expansive disclosure, while aiming to protect from release personal identifying information and other records that are exempt under FOIA.

[10] See The LOCKSS (Lots of Copies Keep Stuff Safe) Program.  The program is based at Stanford University Libraries and provides low-cost, open source tools to preserve digital content.  The Directive established the Mayor's Open Government Advisory Group to make recommendations

**Demystify the Data**

The collection and release of data is more than the mere reduction of data to zeroes and ones and colorful graphic displays. Data is the collection of agency, city, neighborhood, and community information that should be used not only to promote transparency, but to be of equal value to agency personnel to aid in better decision-making and policy implementation.  Personnel should be properly trained on how to analyze the data generated by their respective agencies.  Further, for the larger data mining tasks, the District would do well to incorporate into its transparency program an Analytics Division at the mayoral level and charge the unit with mining large data sets with the aim of improving city services.[11]

**Transparency Legislation Should Incorporate Amendments to the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA)**

The policy of the District leans heavily in favor of full transparency.  The operative intent of FOIA and the OMA is that the public is entitled to know what decisions are being made in the interest of residents by District government employees and elected officials who are in a position to consider, conduct, or advise on District government matters.[12]  Until recently, the systems in place for the public to access records that

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on transparency and Open Government.  The Advisory Group should be broadened to include the executive director of the D.C. Public Library.

[11] *See* Data for Better State and Local Policymaking, available at
http://www.datainnovation.org/2014/12/data-for-better-state-and-local-policymaking/.

[12] *See* D.C. Official Code § 2-572 ("The public policy of the District is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them."). The same statement of policy is reiterated in FOIA (*see* D.C. Official Code § 2-531) and in Mayor's Memorandum 2011-1.

The District has long-recognized the important role ANCs play in the operation of city government. *See, e.g.,* 10-A DCMR § 2507.1 (noting that ANCs " provide a unique forum for seeking local input and  expressing priorities on a range of land use issues").

should be mandatorily and proactively disclosed were fraught with bureaucratic delays and backlogs.[13]

In an attempt to streamline the process for requestors and agencies, the city now employs a central web portal for submitting, processing, and supplying documents in response to FOIA requests.  Currently, approximately 70% of agencies have licenses to use FOIAXpress.[14]  The OOG recommends that all agencies, both subordinate and independent, be required to process all FOIA requests through the FOIAXpress portal and that proper budget allocations be made to procure the licenses.  Those agencies which process a small number of requests will have the ability to share concurrent licensing with other similarly situated agencies to reduce costs.

Further, the OOG recommends that D.C. Official Code § 2-531 be amended to require all agencies to process all FOIA requests through the FOIAXpress portal, and that all documents provided in response to requests be made available through the Public Access Library (PAL) – provided that all documents are properly scrubbed for confidential and/or other personally identifying information.  Such proactive disclosure should be consistently reviewed as part of agency record management systems.[15]

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[13] In FY 2014, the District of Columbia Processed approximately 7,000 FOIA requests.

[14] The Executive Office of the Mayor indicated licenses were procured for those agencies that process 10 or more FOIA requests per year.  The numbers of requests were gleaned from the FY 2013 Agency FOIA Reports.

[15] The latest amendment to 1 DCMR § 408 (fees) was published in 2005, and it did not contemplate electronic production of records.  Also, the regulation itself does not address the production of video, audio, and other similar formats.  The regulation should, then, be amended to incorporate electronic processing and various file extensions (*i.e.*, .pdf, .wav, .docx, .xtml, .csv).  The amended language also should correspond with publication criteria in PAL and reflect that, when hard copies are provided, fees should meet current reasonable copy rates.

**OOG Central Calendar Promotes Compliance with the OMA**

The District's policy that all persons are entitled to full and complete information regarding the affairs of government is support by the OOG's implementation of technology that fully discloses the actions of public bodies.

The OOG developed and supports the only tool for 176 boards and commissions to publish meeting dates, agendas, and administrative materials (including audio and video files) to a central location accessible by the public. The implementation of this central calendar [16] in less than a year of opening its doors, the OOG effectively eliminated the barriers to compliance with the OMA.  But it is a mere baseline for engagement.  Public bodies must also have the ability to interact and engage the public using common technology -- such as web streaming and live chatting.   The OOG recommends that the District of Columbia OCTO identify an enterprise solution for real-time public interaction online.  It must be one that is interoperable with Drupal – the common web platform used by all District government agencies.  Additionally, any solution offered by OCTO must be one that can be easily adopted by the more than 2,000 members of District government boards and commissions so that there are no impediments to use.  Just as the city has begun to set the default to open, it must also usher that shift for all public bodies.  These mandates must also be mandated by way of statutory amendment to the OMA.

**Participatory Budgeting**

Last, but certainly not least, the city should seize the opportunity for complete public engagement by including in open government legislation a requirement that the city

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[16] The listing of boards and commissions on the site also includes corresponding enabling statutes.  The statutes are linked through DC Decoded.  The Office of Open Government has partnered with the Open Gov Foundation, joining a national movement, to "open up" the regulations and statutes.  DC Decoded allows viewers the ability to better understand the laws under which they are governed by providing in-line definitions and freeing up regulations so that they may be cut and pasted without risk of copyright infringement.  Much like what is being done on the legislative side with the District's statutes.

adopt Participatory Budgeting (PB).  PB has been proven to increase transparency, promote greater civic engagement, and build trust in government and the services it provides. Although there have been recent efforts to make the city's budget process more transparent,[17] there are no mechanisms (other than an opportunity for public testimony) in place for involving District residents in the decision-making process of public budgeting.  Additionally, and perhaps most importantly, the budget itself is tremendously difficult to navigate and understand in its current structure.  The budget is very difficult to review because it is contained in a completely static document and, as such, represents the antithesis of a machine-readable and searchable record.

The OOG recognizes that moving beyond institutional inhibitions about fiscal transparency to complete public engagement through PB is a monumental vault. However, the District has a wealth of resources[18] upon which to rely to shine a brighter light on its budget so that tax dollars are more efficiently distributed and spent.  The budget is fodder for possible new collaborations with organizations that are right in the District's backyard – the DC Fiscal Policy Institute, the World Bank Group, and the Center for Data Innovation – to name a few. Ultimately, better budgeting data will lead to better management of resources and a government that is truly responsive to its citizenry.

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[17] In 2011, District government agencies followed a "division-based" budget structure to submit agency financials.  The reporting required more detailed information on spending, tying budget allocations to performance management.  Agency fiscal and performance overviews are found on Track DC, but do not provide a means for significant public engagement on where public funds are allocated.

[18] In 2011, New York City began a PB process allowing residents a say in the allocation of capital discretionary funds.  Since then, PB has been extended to 24 districts, giving residents the decision-making power of nearly $25 million toward locally developed projects, proposals, and initiatives. See http://pbnyc.org/.
In 2013, San Francisco launched a pilot program allowing residents in District 3 the ability to decide how to spend $100,000 in discretionary funds.  PB has now been extended to Districts 7 and 10. See http://www.sfpb.net/.

**Conclusion**

The goal of transparency must always be to engage the civic order while balancing the capacity of government agencies to abide by legislative mandates and to adopt sustainable policies that fully support openness. The District of Columbia Government has made significant strides in this regard, but has much to do. Transparency, and any policies around transparency, must consider every sector of our city and the ways in which residents are accessing information. If transparency is done the right way, it will bridge the gap between those who have full access to technology in its many forms, and those whose access is limited, or non-existent. In other words, a transparent and responsive government will meet our citizens wherever they may be whether in the halls of government, or in the comfort of their homes.