

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY  
OFFICE OF OPEN GOVERNMENT



September 25, 2019

**VIA ELECTRONIC MAIL**

Commissioner Mark Eckenwiler  
ANC 6C04



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Ernest Chrappah, Director  
Department of Consumer and  
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**RE: DCRA District of Columbia Freedom of Information Act Compliance Update  
OOG-002\_1.29.16\_AO**

Dear Commissioner Eckenwiler:

On February 5, 2019, you contacted the Office of Open Government (“OOG”) and requested that the OOG revisit its January 29, 2016 Advisory Opinion (OOG-002\_1.26.16\_AO) and conduct a new inquiry into the Department of Consumer and Regulatory Affairs’ (“DCRA”) compliance with D.C. Official Code §§ 2-536(a)(8A) and 2-536(b). Your e-mail request stated as follows:

Three years ago, OOG issued an [opinion letter](#) finding that DCRA is "woefully out of compliance with FOIA" (specifically, DC Official Code § 2-536(a)(8A)). I'm writing to request that OOG conduct a new inquiry and issue a new opinion letter. In 2016, the Council appropriated \$3 million for DCRA to cure this failure and establish a public website offering access to the relevant documents. As described in ANC 6C's written testimony (attached) to the Council last year, DCRA has failed to satisfy its legal obligations. The criticisms we noted in March 2018 remain equally true today.

In response to your request, the OOG conducted an inquiry into DCRA’s compliance with the legal requirement that District of Columbia government agencies must make certain

information available on the Internet. This opinion letter serves as an update to OOG-002\_1.26.16\_AO, and that non-binding Advisory Opinion is incorporated into this opinion letter by reference.

The OOG concluded its inquiry on July 11, 2019, and the results of the OOG's inquiry are as follows. The OOG's review of DCRA's website revealed that it is not in full compliance with the mandatory disclosure provisions of D.C. FOIA, as alleged. As a result, the Director of Open Government met with the DCRA Director and his staff to discuss the status of its provision of documents on the Internet. When questioned about its current compliance with the mandatory disclosure provisions of D.C. FOIA, DCRA stated that it is committed to having all required documents publicly available online. The agency also stated that it has made considerable progress in making its building permits and permit files, including plans, available on the Internet. DCRA shared that it has made approximately 62,158 permit applications, permits, and plans available via its e-Records application at <https://records.dcr.dc.gov/e-records>. DCRA summarized the process as follows:

Approved plans submitted through ProjectDox are available on e-Records the first business day following approval ... plans submitted in person are scanned within 24 hours and are publicly available within 48 hours. Older plans not in e-Records are now being scanned as part of the daily workflow.

DCRA also received approval for \$848,000 in FY20 for document digitization. With respect to the assertion that DCRA received \$3,000,000 in 2016 "to cure this failure and establish a public website offering access to the relevant documents," the agency denied that it received funds for that purpose. The "FY16 Operating Budget" and "FY2016 Capital Improvement Projects" links below provide detail of the funds DCRA received and the purpose of those funds. DCRA revealed that there was a \$2,000,000 approved for FY20 for an information technology systems modernization project in the approved FY16 capital Improvement Projects. According to DCRA, it was later reduced to \$1,800,000 in the FY20 approved budget. Please see the project description of this capital project referred to in the last page of the document in the "FY16 Capital Improvement Projects" link below. It is not a capital project for the document digitalization effort that is the subject of this inquiry.

FY2016 Operating Budget

[https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/cr\\_dcr\\_chapter\\_2016j.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/cr_dcr_chapter_2016j.pdf)

FY2016 Capital Improvement Projects

[https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/cr\\_dcr\\_capital\\_2016j.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/cr_dcr_capital_2016j.pdf)

## **Conclusion**

Information subject to D.C. FOIA's mandatory disclosure requirement was once maintained in paper format, stored in files and boxes, and made available to the public in paper format. This information is now required by D.C. FOIA to be made available in digital format on the Internet. The digital conversion of the information subject to D.C. FOIA's mandatory disclosure provision has taken considerable time, but progress has been made in making it available on the Internet. While I find that DCRA has made a significant effort to comply with D.C. Official Code §§ 2-536(a)(8A) and 2-536(b) in FY20, the agency still is non-compliant with these provisions as of the date of this opinion letter.

Sincerely,

/s/

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NIQUELLE M. ALLEN, ESQ.  
Director of Open Government  
Board of Ethics and Government Accountability

cc:

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