

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY  
OFFICE OF OPEN GOVERNMENT



May 13, 2019

**Via Electronic Mail**

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
1350 Pennsylvania Avenue, NW, Suite 504  
Washington, D.C. 20004

**Re: Freedom of Information Clarification Amendment**

Dear Chairman Mendelson,

I am writing to respectfully request that you withdraw the current proposed Freedom of Information Act (FOIA) Amendments to the FY20 Budget Support Act and propose the changes in a separate Bill. The public deserves the opportunity to weigh in on this important topic in a public hearing. The substantive changes to FOIA that you are proposing should be thoughtfully considered and the greatest effort should be made to maintain government accountability and transparency.

I am also writing to encourage you to reconsider the current proposed changes to the FOIA law for the reasons that follow. First, the proposed FOIA amendment that would limit FOIA requests to records pertaining to “the affairs of the government and the official acts of public officials and employees” is unnecessary and subjective. If implemented, it would add another layer of complexity to the government’s FOIA analysis that could lead to litigation.

Second, the proposed amendments are apparently in response to a 2016 court decision that makes it necessary to clarify that FOIA requests must reasonably describe the type of public records requested. Again, this language is subjective. What is “reasonable” is subject to interpretation and could also lead to litigation. Further, since the case was decided in 2016, and there has been no action on the holding until now, it is not unreasonable to subject the proposed amendments to a public hearing at a future date. The Office of Open Government (OOG) recommends and encourages FOIA Officers to maintain constant and good communication with FOIA requesters to help narrow voluminous and overbroad requests. Adding a reasonableness requirement to the law would discourage such open communication and cooperation.

Third, the phrase “official acts” is undefined in the measure and it is unclear who makes the determination as to whether a record involves “official acts” and is exempt from release under FOIA. Again, adding these subjective phrases serve to complicate the FOIA process rather than streamline it.

Lastly, the OOG would support making personal devices subject to FOIA law, but not in concert with the current proposed amendment, which limits the release of the record on the personal device to an official act of the official or employee.

Thank you for your consideration and I welcome the opportunity to discuss this matter with you.

Sincerely,



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NIQUELLE M. ALLEN, ESQ.  
Director of Open Government

cc:

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