



ETHICS WEEK 2026

TRANSITIONING ETHICALLY

OCTOBER 13-16, 2026



www.bega.dc.gov



ETHICS WEEK 2026

TRANSITIONING ETHICALLY

OCTOBER 13-16, 2026



Introduction to the DC Freedom of Information Act

Presenter: Brandon Lewis, Trial Attorney (OOG)



www.bega.dc.gov

OFFICE OF OPEN GOVERNMENT



The Office of Open Government (OOG) may issue Advisory Opinions on FOIA issues (implementation).

OOG also serves as an advocate to ensure the FOIA process is fair and executed properly.

OOG advises the District government on FOIA, and BEGA's Board issues an annual best practices report that recommends changes to D.C. FOIA.

OOG FOIA RELATED FUNCTIONS

OOG is responsible for training public bodies, including Advisory Neighborhood Commissions (ANCs), on the requirements of D.C. FOIA.

OOG also assists members of the public with filing FOIA requests with the appropriate public agencies.

PRESENTATION CONTENTS

D.C. Public Record Laws

Records under D.C. FOIA

FOIA Exemptions

Requesting Records

Responding to FOIA Requests

Conducting Searches for Records & Fees

Decision Letters

D.C. PUBLIC RECORDS LAWS

INTRODUCTION

- ❑ District of Columbia public policy entitles all persons to full and complete information regarding the affairs of government and the official acts of those who represent them.
- ❑ Enacted in 1976, the District's Freedom of Information Act (D.C. FOIA) is designed to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.”
- ❑ The Act gives any person the right to request records, in any form, that are prepared, owned, used, in the possession of, or retained by a public body.
- ❑ When FOIA requests are submitted, agencies are required to make a reasonable search for records.
- ❑ On an annual basis, District government agencies are required to report FOIA disclosure activities for the previous fiscal year to the Secretary of the District of Columbia and the Council of the District of Columbia.

INTRODUCTION

DC FOIA also requires that DC agencies proactively provide certain information without a FOIA request

DC law requires that the information is available upon request and online and listed on the agency's website under the "FOIA" tab.

DC government has also proactively released hundreds of datasets, available on **opendata.dc.gov**. FOIA information may be here.

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.

MANAGING D.C. FOIA

There is no central body within DC government that handles FOIA requests. Instead, each DC agency processes its own records. The primary point of contact for D.C. FOIA is an agency's FOIA Officer or an agency's Director.

The DC Mayor's Office of Legal Counsel (MOLC) handles FOIA Appeals. The DC Office of the Attorney General (OAG) handles FOIA litigation through its Civil Litigation Division and provides FOIA advice through its Legal Counsel Division.

MANAGING D.C. FOIA

The Mayor of the District of Columbia has also created the District of Columbia “Open Government Advisory Group” (OGAG).

OGAG advises the Mayor on FOIA and other open government and transparency issues. The group includes subject matter experts from the government and members of the public with expertise in open government.

AN AGENCY'S FOIA RESPONSIBILITY

Each agency head must designate an individual as its FOIA Officer.

Each agency must post on its website the name, title, address, telephone number, and email address of its designated FOIA Officer. See 1 DCMR §§ 401.2 – 401.3

A FOIA OFFICER'S RESPONSIBILITY

Agency FOIA Officers are responsible for tracking, managing and responding to FOIA requests for records in their organization's possession and control, and administering their organization's FOIA programs.

The agency's FOIA Officer must conduct or coordinate a reasonable search for records and respond timely to FOIA requests.

**RECORDS UNDER
D.C. FOIA**

PROACTIVE DISCLOSURE AVAILABLE *WITHOUT A* FOIA REQUEST

Records that must be available to the public without the need of a FOIA request include:

- Employee's salary, title and employment dates;
- Contracts Expenditures;
- Budgets;
- Manuals;
- Policies;
- Rules;
- Opinions;
- Orders; and
- Meeting minutes of open proceedings of public Bodies

See (D.C. Official Code § 2-536)

WHAT IS CONSIDERED A PUBLIC RECORD UNDER FOIA?

Under D.C. FOIA, D.C. Government must provide the public with access to “public records” to maintain an open and transparent government.

The term “public record” is defined in D.C. Official Code § 2-502(18).

PUBLIC RECORDS INCLUDE:

“Public Record” includes 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.

Public records include information stored in an electronic format. Electronic format includes text messages and some applications.

See D.C. Official Code §§ 2-539(10); 2-502(18); 2-1701(13).

PUBLIC RECORDS INCLUDE:

Public records include certain private contractors' records.

Public records include any records produced or collected pursuant to a contract with a private contractor to perform a public function (D.C. Official Code § 2-532(a-3)).

FOIA EXEMPTIONS
D.C. OFFICIAL CODE § 2-534

EXEMPT?

Exempt means that certain records or information held by government agencies are not required to be disclosed to the public, even in the face of an appropriate or complete FOIA request.

EXEMPTION 1 – TRADE SECRETS

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.

EXEMPTION 2 – PERSONAL PRIVACY

(2) Personal privacy: Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy

A person is paragliding over a vast mountain range. The paraglider's wing is a vibrant red and orange color, contrasting with the blue sky and the hazy, blue-toned mountains in the background. The person is silhouetted against the sky, and the overall scene conveys a sense of adventure and freedom.

PERSONAL PRIVACY EXCEPTION BALANCING TEST

The FOIA Officer must perform a balancing test under this exemption: the individual's privacy interest in the material at issue must be balanced against the public 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."

PRIVACY EXEMPTION BALANCING TEST EXAMPLES

In Re Appeal of the Washington Post Co.

- The privacy interests of students and teachers under investigation for the consumption of alcohol substantially outweighs the public interest in their identifying information

In Re Appeal of Walter Thomas

- May disclose names, professional qualifications, and work experiences of successful job applicants, but refuse to disclose other private information, such as home telephone numbers and addresses, Social Security numbers, marital status and personal references, or any information regarding unsuccessful job applicants.

EXEMPTION 2A – BODY WORN CAMERAS

- ☐ Any body-worn camera recordings recorded by the Metropolitan Police Department:
- ☐ (A) Inside a personal residence; or
- ☐ (B) Related to an incident involving domestic violence, stalking or sexual assault as defined by the D.C. Code

EXEMPTION 3 – LAW ENFORCEMENT

(3) Investigatory records compiled for law enforcement purposes including records of Council investigations and investigations conducted by the Office of Police Complaints.

Disclose investigative techniques and procedures not generally known outside the government; or endanger the life or physical safety of law-enforcement personnel.

EXEMPTION 4 – AGENCY COMMUNICATION

Inter-agency or intra-agency memorandums or letter which would not be available by law to a party other than an agency in litigation with the agency.

LITIGATION-BASED EXEMPTION

D.C. Official Code § 2-534(a)(4) provides an exemption from disclosure for privileges which could be asserted in litigation

- ☐ Deliberative Process Privilege
- ☐ Attorney-Client Privilege
- ☐ Attorney Work Product Privilege

AGENCY COMMUNICATION: LITIGATION-BASED PRIVILEGES

D.C. FOIA (D.C. Official Code § 2-534(e)) expressly provides that the deliberative process privilege, the attorney work product privilege, and the attorney-client privilege are incorporated into the exemption in D.C. Official Code § 2-534(a)(4).

DELIBERATIVE PROCESS PRIVILEGE

The two elements of Deliberative Process Privilege are:

- ❑ Predecisional; and
- ❑ Deliberative

DELIBERATIVE PROCESS PRIVILEGE

- ❑ Predecisional communications precede the adoption of an agency policy.
- ❑ For the predecisional element to be found, the agency must be able to identify a decision-making process that led to the creation of the withheld documents. A document is deliberative if it is a part of the agency give-and-take process by which the decision itself is made.
- ❑ Note, final agency decision is not required. Concerning federal FOIA, courts have recognized that agencies sometimes decide not to decide.

THIRD-PARTY COMMUNICATIONS & THE DELIBERATIVE PROCESS PRIVILEGE

- ❑ The deliberative process does not generally apply to communications that include third-parties. D.C. Official Code § 2-534(a)(4) applies only to inter/intra agency documents.
- ❑ Communications that include third-parties may be withheld under the deliberative process privilege, under the consultant corollary: if the third party has no independent interest (i.e. their interest is aligned with the government).

EXEMPTIONS CONTINUED

(5) Test questions and answers to be used in future license, employment, or academic exams.

(6) Information specifically exempted from disclosure by statute.

(7) Information that is classified to protect national security.

(8) Anti-trust investigations (D.C. Official Code § 28-4505).

(9) Arson investigations (D.C. Official Code § 5-417).

(10) Emergency response plans.

(11) Social Security and Federal Employer ID numbers (FEIN) (D.C. Official Code § 47-2851.06).

(12) Whistleblowers, unless the name of the employee is already known to the public (D.C. Official Code §§ 1-615.51; 2-233.01 *et seq.*).

EXEMPTIONS CONTINUED

(13) Homeland Security Records (D.C. Official Code § 7-2271.04).

(14) Sealed criminal records, Chapter 8 of Title 16.

(15) Critical infrastructure information (applies only to entities regulated by the Public Service Commission).

(16) Teacher evaluations (D.C. Official Code § 38-2615(a)).

(17) Certain information for private vehicles for hire (D.C. Official Code § 50-301.29a)

(18) Information and records of the Clemency Board (D.C. Official Code § 24-481.07(a))

EXEMPTIONS CONTINUED

(19) Records in the custody of the Unclaimed Property Administrator (D.C. Official Code § 41-164.01 *et seq.*)

(20) Work order data regarding deficiencies and vulnerabilities of public schools, parks and recreational facilities (D.C. Official Code § 10-551.07e(e)(2))

(21) Medical records, order for fitness to practice evaluations, or other types of physical and mental evaluations, and the resulting reports (D.C. Official Code § 3-1205.25)

(22) Information or data provided by any court, federal agency, or federally established agency to the Criminal Justice Coordinating Council (D.C. Official Code § 22-4231, *et seq.*)

(23) Information or data provided by any court, federal agency, or federally established agency to the District of Columbia Sentencing Commission (D.C. Official Code § 3-101, *et seq.*)

**REQUESTING
RECORDS**

APPLICABLE REGULATIONS

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>

WHO MAY REQUEST RECORDS?

ANY person has a right to inspect, and at his or her discretion, to copy ANY public record of a public body except as expressly provided by the FOIA exemptions. (D.C. Official Code § 2-532(a)).



REQUEST

HOW MAY REQUESTS BE SUBMITTED?

1. A request for a record of an agency may be made orally or in writing and must be directed to the particular agency (1 DCMR § 402.1).
2. A requester may be asked to submit in writing a request for records (1 DCMR § 402.2).
3. Requests may be mailed, faxed or e-mailed (1 DCMR § 402.3).

THE FOIA REQUEST MUST BE SPECIFIC

A request must reasonably describe the desired record(s). If possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied (1 DCMR § 402.4).

RECORDS SUBJECT TO D.C. FOIA

E-mail Messages

Text Messages

Notes

Databases

Files

Other Communications

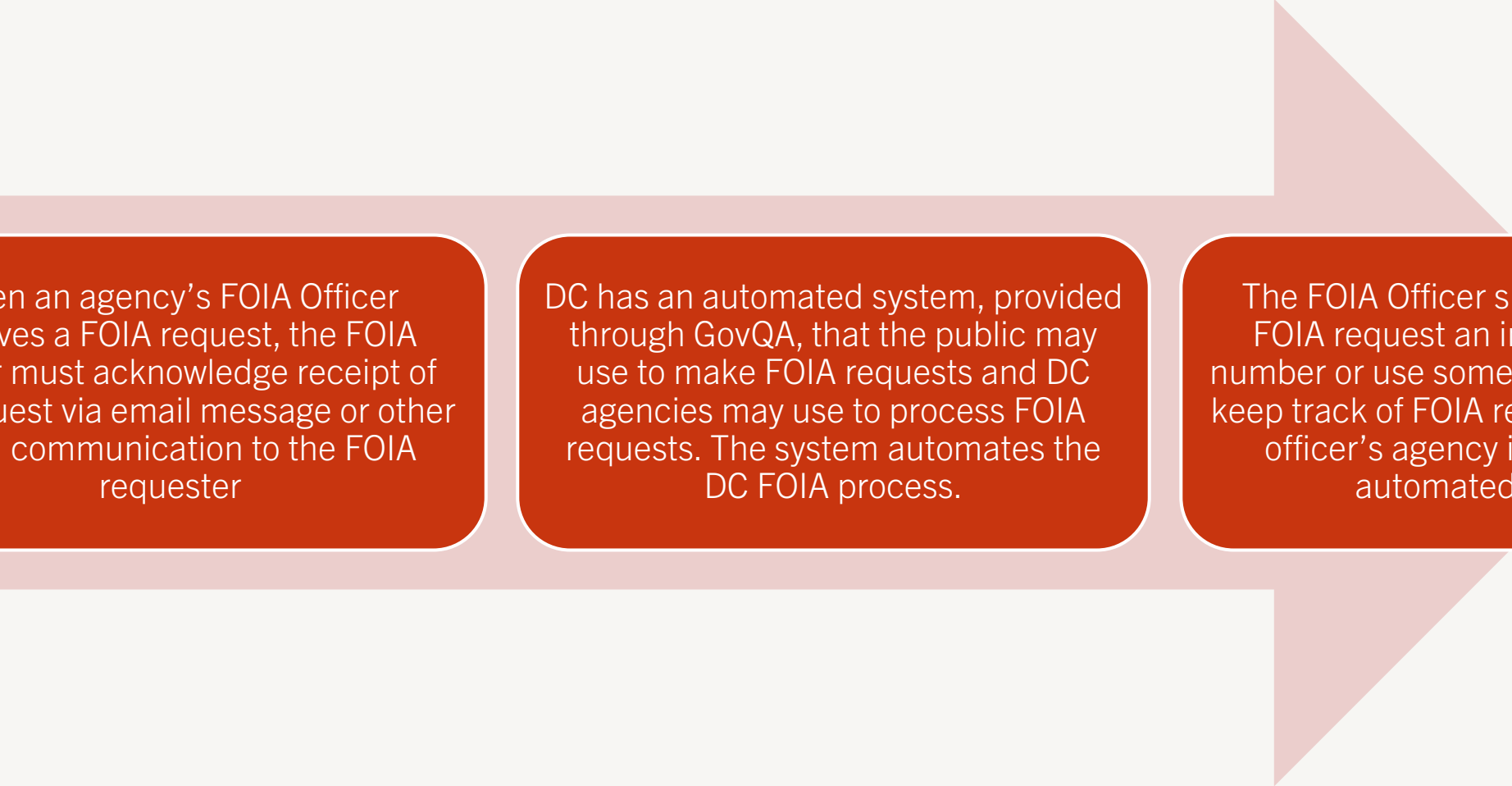
Camera Footage

Video Footage

Photographs

RESPONDING TO FOIA REQUESTS

FOIA RESPONSE STEPS



When an agency's FOIA Officer receives a FOIA request, the FOIA Officer must acknowledge receipt of the request via email message or other initial communication to the FOIA requester

DC has an automated system, provided through GovQA, that the public may use to make FOIA requests and DC agencies may use to process FOIA requests. The system automates the DC FOIA process.

The FOIA Officer should assign the FOIA request an internal tracking number or use some internal system to keep track of FOIA requests if the FOIA officer's agency is not using the automated system.

RESPONDING TO FOIA REQUESTS

An initial response correspondence typically includes:

- ☐ An introduction and acknowledgement;
- ☐ Any clarifying questions (if needed);
- ☐ A discussion of fees (if warranted);
- ☐ Contact information for questions; a complimentary close (for example, “Sincerely”);
- ☐ A written signature; and
- ☐ A typed name, agency, and your title.

TIMING FOR FINAL RESPONSES TO FOIA REQUESTS

1. For records other than body-worn camera recordings: 15 business days (D.C. Official Code § 2-532(c)(1))
2. For body-worn camera recordings: 25 business days (D.C. Official Code § 2-532(c)(2)(A))

EXTENDING THE TIME TO RESPOND

In *unusual circumstances*, the agency may invoke an additional 10 days extension for records requested under subsection (c)(1) and 15 days extension for body-worn camera recording by written notice to the requester setting forth the reasons for the extension and the expected date for the determination (D.C. Official Code § 2-532(d)(1)).

WHAT IS AN UNUSUAL CIRCUMSTANCE?

Unusual circumstances are defined in D.C. Official code § 2-532(d)(2) as:

- ☐ The need to search for, collect, and appropriately examine a **voluminous amount of separate and distinct records** that are demanded in a single request;
- ☐ The **need for consultation**, which shall be conducted with all practicable speed, with **another public body** having a substantial interest in the determination of the request or among 2 or more components of a public body having substantial subject-matter interest therein; or
- ☐ (c) For body-worn camera recordings covered by subsection (c)(2) of this section, the inability to procure a vendor that is able to perform the redactions within the 25-day time period provided under subsection (c)(2) of this section.

HOW TO TAKE THE EXTENSION

- ❑ If using the automated system, the feature is included.
- ❑ If outside of the system, contact the requester with written correspondence (email or letter) that details the specific statutory justification for the extension.



WHAT IS THE CONSEQUENCE OF NOT RESPONDING TO A FOIA REQUEST ON TIME?

- ❑ D.C. Official Code § 2-532(e) provides that failure to timely respond to a FOIA request is **deemed a denial** of the request.
- ❑ A requester can appeal the denial to the Mayor (Administrative Appeal) or to Superior Court. [D.C. Official Code § 2-537; 1 DCMR 412.1.]

**CONDUCTING
SEARCHES FOR
RECORDS**

Involves ALL
who maintain
records

ALL AGENCY EMPLOYEES WHO MAINTAIN RECORDS MUST ASSIST THE DESIGNATED FREEDOM OF INFORMATION OFFICER, AS APPROPRIATE, WITH THE IDENTIFICATION AND SEARCH OF RESPONSIVE RECORDS (1 DCMR § 401.5).



WHERE DO I START?

Each agency should have a “Records Officer” or a person that is designated or responsible for an agency’s records. That employee should assist you with locating the record requested.

Examine your agency’s organizational chart, as it may provide details as to who may possess a particular record.

If the request is for email or other electronic record that the Office of the Chief Technology Officer maintains, you may have to request it through your General Counsel.

Examine the agency Record Retention Schedule to make sure the record requested has not been archived.

WHAT IS THE FOIA OFFICER REQUIRED TO DO?

- ❑ A FOIA officer must conduct an adequate search for records responsive to the FOIA request.
- ❑ In assessing whether a District agency conducted an adequate search in response to a FOIA request, courts look not to the “fruits of the search,” but to the “appropriateness of the methods used to carryout the search.” —*Iturralde v. Comptroller of Currency*, 315 F.3d 311 (D.C. Cir. 2003).
- ❑ The issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but whether the search for those documents was adequate.

HOW TO CONDUCT AN ADEQUATE SEARCH

- ❑ An agency's search conducted in response to a FOIA request "need not be perfect, only ADEQUATE," and adequacy is measured by the reasonableness of the effort in light of the specific request. *Fraternal Order of Police, Metro. Police Labor Comm. v. District of Columbia*, 79 A.3d 347, 360 (D.C. 2013).
- ❑ The search must be "reasonably calculated to uncover all relevant documents." *Weisberg v. Dept. of Justice* 745 F.2d 1476, 1485 (D.C. Cir. 1984), quoting *Weisberg v. Dept. of Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983).

FOIA FEES

FEES

D.C. Official Code § 2-532(b) –(b-3) & 1 DCMR § 408

- ☐ Make sure that each person assisting with the search for records keeps a log or other documentation of the time spent searching for records.
- ☐ Agencies may charge fees for conducting record searches and producing records in response to a FOIA request (D.C. Official Code § 2-532(b)).
- ☐ There is no fee to submit a FOIA request. However, you may require a requester to pay fees in advance, if they have not paid past FOIA-related fees (unpaid FOIA fees – D.C. Official Code § 2-532(b-3)).
- ☐ May grant a public interest waiver of fees (D.C. Official Code § 2-532(b); 1 DCMR § 408.9).

FEES CONTINUED

- ☐ Searching for records/review of records: hourly rate based on the pay grade of the personnel who perform the search (1 DCMR § 408.1).
- ☐ Photocopies: \$0.25 per page (1 DCMR § 408.1(c)).
- ☐ Document certification: \$1.00 per document to certify a document as true copy of an agency record (1 DCMR § 408.4).
- ☐ The direct cost of any service or material for which no fee has been established, but the requester must be notified of the fees before incurred (1 DCMR § 408.2).
- ☐ A requester may have to pay search fees even if the search does not locate any responsive records or if the records are located but are withheld as exempt.

DECISION LETTERS

WHAT IS REQUIRED IN AN AGENCY'S DECISION LETTER?

The agency decision letter should contain the following information:

- ☐ Whether the record was released in full, partially released (redacted), or withheld in full;
- ☐ The name and contact information of the person who made the decision concerning the release of records;
- ☐ A reference to the D.C. Code provision that is the basis of the decision; and
- ☐ A statement advising the requester of appeal rights.

DECISION LETTERS

“DO NOT DO”

- ❑ Do not use the language “if construed as a denial” when you are very clearly denying the request.
 - ❑ It is confusing; make sure your boilerplate is accurate!
- ❑ Do not withhold multiple records using multiple exemptions, with a single omnibus sentence.
 - ❑ i.e. “Agency is withholding all responsive records pursuant to Exemptions 1, 2, and 3.”
 - ❑ The DCMR requires that you identify which exemptions apply to which records. 1 DCMR § 407.2(b).

SUMMARY OF THE FOIA PROCESS

STEP 1

- RECEIVE FOIA REQUEST

STEP 2

- PROCESS FOIA REQUEST
 - Log Request Internally
 - Create Case File
 - Estimate Fees
 - Send Acknowledgement Letter

STEP 3

- RETRIEVE RECORDS
 - Search for Responsive Records
 - Request Records
 - Review Records

STEP 4

- PROCESS RECORDS
 - Make Redactions
 - Apply Exemptions
 - Calculate Fees

STEP 5

- APPROVE RELEASE OF RECORDS OR DENY
 - Draft Response Letter that Includes Fees or Grant of Fee Waiver
 - Release Records (after receiving fees, if invoking paid in full prior to issuance rule)

CONTACT INFORMATION FOR THE OFFICE OF OPEN GOVERNMENT (OOG)

OOG provides advice to agencies, members of public bodies, and the public on the Freedom of Information Act and Open Meetings Act. For assistance, please contact us via telephone at **202-481-3411** or via email at opengovoffice@dc.gov

Office of Open Government Staff

Niquelle Allen, Director

Louis L. Neal, Jr., Chief Counsel

Anthony Scerbo, Attorney Advisor

Brandon Lewis, Trial Attorney

Joan Lelma, Attorney Advisor

Kimberly Brown, Paralegal Specialist

Kevin Brown, IT Specialist

Physical Office Address

1030 15th Street, NW, Suite 700 West, Washington, DC 20005



*The
End*

THANK YOU!



CONTACT BEGA

bega@dc.gov

(202) 481-3411

BEGA Hotline (202) 535-1002



www.bega.dc.gov