



**BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY  
GOVERNMENT OF THE DISTRICT OF COLUMBIA**



June 29, 2022

VIA ELECTRONIC MAIL

[REDACTED]  
D.C. Open Government Coalition

[REDACTED]  
Washington, D.C. [REDACTED]

[REDACTED] [@aol.com](mailto:[REDACTED]@aol.com)

**RE: Delays in Freedom of Information Act Administrative Appeal Decisions  
(# OOG-2022-004\_AO)**

Dear [REDACTED]:

This correspondence responds to the D.C. Open Government Coalition's March 6, 2022, advisory opinion request ("Request") concerning the issuance and publication of administrative appeals by the Mayor's Office of Legal Counsel ("MOLC") processed under the District of Columbia's Freedom of Information Act of 1976<sup>1</sup> ("D.C. FOIA").

Your Request objects that the MOLC has amassed a large backlog of D.C. FOIA appeals and has not been reaching timely decisions and publishing them to the internet for public availability.

As Director of Open Government, I am authorized to "issue advisory opinions on the implementation of [D.C. FOIA]" pursuant to section 205c(d) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011.<sup>2</sup> I am issuing this advisory opinion to (1) provide a full description of the D.C. FOIA appellate process; (2) recognize and describe the MOLC's current backlog; and (3) suggest substantive and technical amendments to increase the MOLC's administrative review period and correct outdated information on the methods of appealing and the mailing address for submitting appeals.

I begin with an overview of the D.C. FOIA administrative-appeals process and how deadlines were suspended by legislation for several months to accommodate delays due to the COVID-19 pandemic.

---

<sup>1</sup> Effective March 29, 1977 (added to Pub. L. 90-614 by D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*).

<sup>2</sup> Effective October 30, 2018 (D.C. Law 19-124; D.C. Official Code § 1-1162.05c(d)).

---

The Marion S. Barry, Jr. Building  
441 4<sup>th</sup> Street, N.W., Suite 830 South, Washington, D.C. 20001, Tel. (202) 481-3411

## I. BACKGROUND

### A. *Judicial and administrative relief under D.C. FOIA.*

Any person denied access to a public record may pursue judicial relief by filing a complaint for injunction or declaration in the Superior Court of the District of Columbia (“Superior Court”), or (with two exceptions<sup>3</sup>), may first seek administrative review by petitioning (*i.e.*, sending an appeal to) the Mayor’s designated agent.<sup>4</sup> Since January 2, 2015, that designated agent has been the MOLC.<sup>5</sup>

The MOLC’s administrative-review process is in 1 DCMR § 412:<sup>6</sup>

412.3 An appeal to the Mayor shall be in writing. The appeal letter shall include “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter as well as marked on the outside of the envelope. The appeal shall be mailed<sup>[7]</sup> to:

Mayor’s Correspondence Unit<sup>[8]</sup>  
 FOIA Appeal  
 1350 Pennsylvania Ave[. N.W.]  
 Suite 221  
 Washington, D.C. 20004

The requester shall forward a copy of the appeal to the Freedom of Information Officer, or agency head in the absence of a designated Freedom of Information Officer, of the agency whose denial is the subject of the appeal.

---

<sup>3</sup> Requesters denied access to “public record[s] in the possession of the” Council of the District of Columbia or the Attorney General must appeal directly to the Superior Court. *See* D.C. Official Code § 2-537(a) to (a-2).

<sup>4</sup> *Id.* §§ 2-532(e); 2-537(a)–(b).

<sup>5</sup> The Mayor’s designee “to review and determine administrative petitions or appeals” has been the Mayor’s Office of Legal Counsel since January 2, 2015, as confirmed by Mayor’s Order 2019-067, 66 DCR 008796 (July 26, 2019 (effective *nunc pro tunc* (*i.e.*, retroactively))). While 1 § DCMR 412.3 requires the requester-appellant to mail the petition to the Mayor’s Correspondence Unit, I note that (1) the MOLC accepts appeals by e-mail, [Freedom of Information Act Appeals | molc](#), and via the online Public Access Portal (PAL), [foia-dc.gov/app/PalLogin.aspx](#); and (2) Mayor’s Order 2019-067, § 2, requires that “any appeal . . . mailed to the Mayor’s Correspondence Unit in accordance with 1 DCMR § 412 . . . be forwarded to [the] MOLC.”

<sup>6</sup> 1 DCMR § 400 *et seq.* are the D.C. FOIA regulations applicable to “agencies, offices, and departments . . . subject to the administrative control of the Mayor. . . . and all persons (hereinafter “requesters”) requesting records pursuant to [D.C. FOIA].” 1 DCMR § 400.1.

<sup>7</sup> According to the MOLC’s [“Freedom of Information Act Appeals” site](#), the MOLC also accepts (and indeed “prefer[s]”) appeals sent by e-mail to [foia.appeals@dc.gov](mailto:foia.appeals@dc.gov) or via PAL (“Public Access Portal”). PAL is a web-based interface for receiving D.C. FOIA requests (and appeals) developed by contractor AINS, Inc., *see generally* [OCTO FOIASystem AdvisoryOpinion FINAL 2 17 22.pdf](#) (Feb. 17, 2022). But the regulations do not mention any medium or method of submission beyond postal mail. Accordingly, to maximize the options for the requester, I recommend that the Mayor amend 1 DCMR § 412.3 to accept appeals submitted electronically as the MOLC currently does (and, if feasible, in-person).

<sup>8</sup> Mayor’s Order 2019-067, § 2, provides for appeals “mailed to the Mayor’s Correspondence Unit” to “be forwarded to [the] MOLC.” However, this address is no longer accurate and conflicts with the mailing address for appeals on the FOIA Appeals page. That page has a mailing address to the MOLC. I recommend clarifying or technical amendments to the regulations to update this information.

- 412.4 An appeal to the Mayor shall include:
- (a) Statement of the circumstances, reasons or arguments advanced in support of disclosure;
  - (b) Copy of the original request, if any;
  - (c) Copy of any written denial issued under § 407.2; and
  - (d) Daytime telephone number, email address or mailing address for the requester.
- 412.5 Within five . . . days (excluding Saturdays, Sundays, or legal public holidays) of receipt of its copy of the FOIA appeal the agency shall file a response with the [MOLC<sup>9</sup>]. The response shall include . . . :
- (a) The agency’s justification for its decision not to grant review of records as requested, to the extent not provided in the agency’s letter of denial . . . ;
  - (b) Any additional documentation as may be necessary and appropriate to justify the agency’s decision . . . ; and
  - (c) A copy of the public record or records in dispute on the appeal; provided, that if the public record or records are voluminous, the agency may provide a representative sample; and provided further, that if the public record contains personal, sensitive, or confidential information, the public body may redact such information . . . in a manner that makes clear that the agency has made redactions.
- 412.6 An agency may request additional time to file documentation required by § 412.5 by filing a . . . request . . . with a copy to the requester. The request . . . must be filed within five (5) days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the appeal. The [MOLC<sup>11</sup>] will respond to the request . . . with a copy to the requester. An agency that does not file the information required by § 412.5 within the time provided . . . shall be deemed to have waived its right to respond to the appeal.
- 412.7 A written determination with respect to an appeal shall be made within ten (10) days (excluding Saturdays, Sundays and legal public holidays) of the filing of the appeal.
- 412.8 If the records, or any segregable part thereof, are found to have been improperly withheld, the [MOLC<sup>11</sup>] shall order the agency to make them available. If the

---

<sup>9</sup> Substituted for “Secretary.” 1 DCMR § 412.2.

agency continues to withhold the records, the requester may seek enforcement of the order in the Superior Court.

- 412.9 A denial in whole or in part of a request on appeal shall set forth the exemption relied upon, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it. The denial shall also inform the requester of the right of judicial review.
- 412.10 If no determination has been dispatched at the end of the ten-day period, the requester may deem [the] appeal denied, and exercise [the requester's] right to judicial review of the denial.

Next, I will discuss the exceptions that the Council of the District of Columbia (“D.C. Council”) made to the ten-business-day disposition period for D.C. FOIA appeals during the first year of the COVID-19 pandemic.

*B. COVID-19 tolling of the deadline for the MOLC’s disposition of appeals.*

As a general practice, the MOLC must issue a written determination, including “a statement of reasons therefor,” within ten business days of the submission of the petition (in the language of 1 DCMR § 412.7, “the filing of the appeal”). However, during the initial period of the COVID-19 public health emergency, the D.C. Council legislatively tolled the MOLC’s deadline for disposition of appeals.<sup>10</sup>

From March 11, 2020, through January 15, 2021, six similar and overlapping acts (all temporary or emergency) of the D.C. Council suspended the MOLC’s ten-business-day allotment for deciding FOIA appeals.<sup>11</sup> All appeals submitted on or after January 15, 2021, were once again due for

---

<sup>10</sup> For discussion of similar provisions extending the deadlines for initial agency responses to D.C. FOIA requests, see generally the [Advice Memorandum to Freedom of Information Officers](#) that I issued on October 14, 2021.

<sup>11</sup> These amendatory acts were:

- The COVID-19 Response Emergency Amendment Act of 2020 (D.C. Act 23-247), Mar. 17, 2020, §§ 503, 701, 67 DCR 003093, 003108, 003110 (Mar. 20, 2020 issue) (**applicable as of Mar. 11, 2020**) (repealed May 27, 2020) (excluded days of a public health emergency<sup>11</sup> from calculation of the ten-business-day deadline for disposition of D.C. FOIA appeals).
- The Coronavirus Support Emergency Amendment Act of 2020 (D.C. Act 23-326), May 27, 2020, § 808, 67 DCR 007045, 007118 (June 12, 2020 issue) (expired Aug. 25, 2020) (same).
- The Coronavirus Support Congressional Review Emergency Amendment Act of 2020 (D.C. Act 23-328), June 8, 2020, § 808, 67 DCR 007598, 007671 (June 19, 2020 issue) (could not be executed until Aug. 26, 2020, due to redundancy with amendment by D.C. Act 23-326) (expired Sept. 6, 2020) (same).
- The Coronavirus Support Second Congressional Review Emergency Amendment Act of 2020 (D.C. Act 23-405), Aug. 19, 2020, § 808, 67 DCR 010235, 010307 (Aug. 28, 2020 issue) (could not be executed until Sept. 7, 2020, due to redundancy with amendments by D.C. Acts 23-326 and -328) (expired Nov. 16, 2020) (same).
- The Coronavirus Support Temporary Amendment Act of 2020 (D.C. Act 23-334; D.C. Law 23-130), Oct. 9, 2020, § 808, 67 DCR 008622, 008697 (July 17, 2020 issue) (could not be executed until Nov. 17, 2020 due to redundancy with amendment by D.C. Act 23-405) (repealed Dec. 22, 2020) (same).

disposition within ten business days and, by February 2, 2021, there should have been no open appeals on the MOLC's docket older than ten business days.

Below, I quantify the extent of the MOLC's backlog (including the MOLC Director's testimony and reporting about the delay and the reasons for the delay) and the apparent lack of publicly posted opinions since November 1, 2019.

## II. ANALYSIS

### A. *The MOLC's docket includes a substantial number of overdue FOIA appeals.*

D.C. FOIA and its regulations<sup>12</sup> require recordkeeping and reporting to enable oversight of the appeals mechanism. The reporting requirements follow: "On or before February 1 of each year, the Mayor [or her designated agent] shall request from each public body and submit to the Council[] a report covering the public-record-disclosure activities of each public body during the preceding fiscal year. The report shall include: . . . [13] (4) The number of appeals made pursuant to section 207(a),[14] the result of the appeals, and the reason for the action upon each appeal that results in a denial of information . . . ."<sup>15</sup>

Your Request states that the number of incoming appeals since Fiscal Year 2020 was unavailable as the Mayor's Fiscal Year 2021 FOIA report, due February 1, 2022, was late. After I received your Request, the Mayor submitted the FY2021 report<sup>16</sup> to the D.C. Council (though untimely) on March 11, 2022. This report included FY2021 FOIA Appeal Summaries and a FOIA Appeal Log.

The Mayor's reports state that, of the 519 appeals submitted to the MOLC in FY2020 and FY2021, **46% (239 out of 519) were overdue at the end of FY2021**, (*i.e.*, as of October 1, 2021).<sup>17</sup>

Also, while there are summaries in the Mayor's annual FOIA reports, it does not appear that the full text of any recent FOIA-appeal decision by the MOLC is available on-line. I agree with you that ensuring that "the D.C. public records access process . . . works well" demands the "key executive responsibility" of "publishing the result[s] so there is no secret law—everyone can keep up with the executive view of the law."

It appears that the MOLC has not affirmatively released FOIA-appeal opinions in the *D.C. Register* since the November 1, 2019, issue, which published many decisions at once.<sup>18</sup> On its

- 
- The FOIA Tolling Emergency Amendment Act of 2020 (D.C. Act 23-555), Dec. 22, 2020, § 2, 68 DCR 000136, 000136 (Jan. 1, 2021 issue) (extended tolling **through Jan. 15, 2021**).

<sup>12</sup> 1 DCMR § 415.1.

<sup>13</sup> D.C. Official Code § 2-538(a).

<sup>14</sup> D.C. Official Code § 2-537(a).

<sup>15</sup> D.C. Official Code § 2-538(a)(4).

<sup>16</sup> Available at [os.dc.gov/page/annual-reports](https://os.dc.gov/page/annual-reports).

<sup>17</sup> See [FY2020 Final-FOIA-Report](#) at 178–98; [FY-2021-District-of-Columbia-FOIA-Report](#) at 207–16. Of course, not all FOIA requests are equally complex, so not all appeals are equally time-consuming to evaluate and decide.

<sup>18</sup> See 66 DCR 014580–014799 (Nov. 1, 2019) ("FOIA Appeals" numbers 2019-51 to 2019-162 (not entirely inclusive)).

FOIA Appeals page,<sup>19</sup> the MOLC invites the reader to a link that produces FOIA decisions as a search result, but that search (last viewed on June 21, 2022) yields no decisions more recent than FOIA Appeal 2018-078, decided on March 7, 2018. To be sure, D.C. FOIA and its regulations do not require that MOLC decisions appear in the *D.C. Register*, but the MOLC must at least post them to its website.<sup>20</sup>

Next, I will discuss the MOLC Director's response to the D.C. Council concerning the backlog of D.C. FOIA appeals.

B. *The MOLC's explanation for not timely issuing and publishing appeals.*

When explaining the delay in processing D.C. FOIA appeals, the MOLC stated in its FY2022 performance-oversight written responses that (1) it was "awaiting the agenc[ies'] response[s]" in 184 out of the 307 pending appeals; (2) the agencies' responses had been delayed due to "the Executive grant[ing] a stay on agency FOIA processing"; and (3) the shifting of resources "to support the government's ongoing response to the health emergency" had contributed.<sup>21</sup>

In his performance-oversight hearing testimony, MOLC's Director, Eugene A. Adams, added that the backlog "is partly a resource issue; it is partly a timing issue; it is . . . partly attributable to the pandemic."<sup>22</sup> He said the MOLC "should be able to handle the" backlog, "with a little bit of extra help, either on a short-term or on a slightly longer-term basis."<sup>23</sup>

Director Adams also identified a specific problem with "getting [timely] responses from" the custodial agencies.<sup>24</sup> The agencies are not timely delivering their position on its denial of requests, including copies of withheld records, for the MOLC to examine.<sup>25</sup> As I will discuss further in Part III, waiting for an agency to be notified of, and fairly respond to, a requester's petition on appeal may easily exhaust most or all of the MOLC's ten-business-day review period.

Next, I opine that the delay in disposing of appeals is in part due to the statutory deadline being too short. As a remedy, I suggest an amendment to the FOIA statute to enlarge the MOLC's administrative review period.

---

<sup>19</sup> [Freedom of Information Act \(FOIA\) - Appeals](#).

<sup>20</sup> D.C. Official Code § 2-536(a)(3), (b) (section 206 (a)(3) and (b), of D.C. FOIA) (requiring affirmative posting of certain "records created on or after November 1, 2001," including "[f]inal opinions" and "orders, made in the adjudication of cases").

<sup>21</sup> See [POH-FY22-MOLC-Pre-Hearing-QuestionsFINAL.FINAL\\_.pdf](#) at 21.

<sup>22</sup> [youtube.com/watch?v=EGa6sVzR0oc](#). The MOLC segment of the hearing starts at timestamp 4:09:05. Director Adams begins testifying at 4:29:35.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> However, under the regulations, an agency's failure to respond within the allotted time constitutes a waiver of a right to respond to the appeal. 1 DCMR § 412.6 states: "an agency that does not file the information required by § 412.5 within the time provided herein or such further time as the [MOLC] may provide in response to written or e-mail request shall be deemed to have waived its right to respond to the appeal." So the MOLC is authorized to issue its determination in such cases.

### III. RECOMMENDATION: ENLARGE THE TEN-DAY DEADLINE

As discussed below, I find D.C. FOIA’s absolute ten business day limit for a final decision is impractical in many scenarios and differs from its federal counterpart and the corresponding laws or practices of surrounding jurisdictions.

- A. *Before D.C. FOIA, the board responsible for reviewing denials of public record requests had over five calendar weeks to decide appeals.*

Before the enactment of D.C. FOIA, a series of Commissioners’ and Mayor’s Orders governed the maintenance and release of records. For the former appellate body, known as the Public Information Review Board, Commissioner’s Order 71-370<sup>26</sup> (renewed by Mayor’s Order 76-109<sup>27</sup>) provided “ten days”<sup>28</sup> for the Board to send its decisions. Nevertheless, those “ten days” did not begin until after the Board “convene[d],” and the Board could wait to convene for up to “twenty working days” after the appeal was filed.<sup>29</sup> So, in practice the Board actually could use *over five calendar weeks* to declare its decision, provided it did not “start the countdown” by formally assembling in the meantime.

In enacting D.C. FOIA, the Council adopted a firm ten-day appeal review period (excluding business days). As Director Adams testified, this period no longer appears workable due to the variable circumstances that the MOLC now confronts across its varied docket, such as unreliable timeliness of responses from the custodial agencies.<sup>30</sup>

- B. *The agencies’ response period occupies much of the MOLC’s review period.*

The Mayor’s FOIA regulations give the custodial agency at least five business days to respond to an appeal, so the result is that the agency’s response-time cuts through at least 50% of the MOLC’s ten-business-day review-time.

Not only do the regulations permit agencies five business days (they may request more<sup>31</sup>) to respond as a matter of course, but the clock does not begin until the agency’s “receipt of its copy of the FOIA appeal.” There is no explicit requirement that the MOLC inform the agency immediately, but even if the MOLC does notify the custodial agency immediately, and even if the agency uses only the standard five business days, the MOLC has only a week to examine a full record and perform the requisite research, analysis, writing, and review. In the worst-case scenario, the MOLC does not have

---

<sup>26</sup> The Office of Open Government has posted much of the printed legislative and administrative history at [open-dc.gov/news/dc-foia-legislative-history](https://open-dc.gov/news/dc-foia-legislative-history). The Commissioner’s Order (Nov. 2, 1971 (eff. Dec. 2, 1971)) is available at page 3 of this legislative history compilation: [drive.google.com/file/d/1-MMpdANFd0UiegbirRvS0NqqB8Abi-HG/view](https://drive.google.com/file/d/1-MMpdANFd0UiegbirRvS0NqqB8Abi-HG/view).

<sup>27</sup> Effective May 4, 1976 (22 DCR 6351 (May 14, 1976)).

<sup>28</sup> The Commissioner’s Order did not clarify whether the “five days” included weekends and holidays.

<sup>29</sup> Commissioner’s Order 71-370, § 5.

<sup>30</sup> *Supra* pt. II.B.

<sup>31</sup> 1 DCMR § 412.5. However, this rarely provides much time given the MOLC’s time-frame to decide appeals.

an agency response at all, let alone withheld records, to review until after the ten days have already elapsed.

Especially for the more complex appeals, the statutory period of ten business days is impracticable or literally impossible to satisfy.

C. *The federal government and local jurisdictions' comparable administrative-review bodies have longer administrative review periods to review appeals.*

The District's surrounding jurisdictions—Maryland, Virginia, and the federal government—have counterparts to D.C. FOIA, and all of them have longer periods of administrative review than ten business days.

1. *Maryland*

Under Maryland's Public Information Act,<sup>32</sup> there is a two-layer administrative-review procedure.<sup>33</sup> An applicant can apply to the Public Access Ombudsman and then, if the dispute remains unresolved, to the State Public Information Act Compliance Board for a binding decision (accompanied by a written opinion posted on the Compliance Board's website).<sup>34</sup> As of July 1, 2022, the Ombudsman's deadline "to issue a 'final determination' that a dispute has been resolved or not resolved" is *90 calendar days, which may be extended* by mutual agreement of the custodian and requester to continue the mediation.<sup>35</sup> The Compliance Board's outermost deadline will be *120 calendar days* from the date of the complaint, which is of course in addition to the Ombudsman's review period.<sup>36</sup>

2. *Virginia*

The Virginia Freedom of Information Advisory Council issues advisory opinions on request.<sup>37</sup> Though the advisory opinions are not binding, public bodies are required to "cooperate with" the Advisory Council, which "hopes to resolve disputes by clarifying what the law requires and to guide future practices."<sup>38</sup> "Because of the diligence required to respond thoroughly and accurately to each question, response time may vary depending on the number of inquiries received by the office at any

---

<sup>32</sup> Ann. Code of Md., art. General Provisions, title 4.

<sup>33</sup> See generally Office of the (Md.) Attorney General, MARYLAND PUBLIC INFORMATION ACT MANUAL at 5–4 to 5–11 (16th ed. 2021), available at [PIA manual printable.pdf](#).

<sup>34</sup> This process applies as of July 1, 2022; until then, applicants may file a complaint directly with the State Public Information Act Compliance Board and bypass mediation by the Ombudsman. *Id.* at 5–8 (citing Equitable Access to Records Act, effective July 1, 2022 (Laws of Md., 441st Sess., Chap. 658)).

<sup>35</sup> *Id.*

<sup>36</sup> See *id.* at 5–10 ("Generally, the Board will be required to issue a written decision within 30 days of receiving the written response and any additional information it has requested. The Board will continue to have the option of holding an informal conference . . . [and issue its] decision . . . within 30 days after the informal conference. If the Board is unable to resolve a complaint within these time limits, it will have to . . . provide the reason . . . and issue a decision . . . not later than 120 days after the filing of the complaint.").

<sup>37</sup> 21 Va. Code § 30-179.1.

<sup>38</sup> *Id.* § 30-181; [Advisory Opinions \(Freedom of Information Advisory Council\)](#).



given time as well as the complexity of [a] particular question. Nonetheless, the [Advisory] Council will strive to respond to [a] request within *14 business days*.”<sup>39</sup>

### 3. *The Federal Government*

Under federal FOIA, a requester may appeal from “an adverse determination . . . to the head of the agency,” who has a base period of *20 business days*<sup>40</sup> to decide appeals, plus the *authority to extend* the period under “unusual circumstances.”<sup>41</sup>

#### D. *The D.C. Council should enlarge the time-limit for appeals.*

For the foregoing reasons, I recommend that the D.C. Council consider amending D.C. FOIA to reflect the reality of the MOLC’s resources, its dependence on agency response, the legal complexity of some appeals, and the practices of the federal government, Maryland, and Virginia. For example, the D.C. Council could adopt an “unusual circumstances” extension such as that available for federal FOIA appeals and first-level D.C. FOIA responses.<sup>42</sup>

I realize that a requester may proceed to the Superior Court once the MOLC has taken longer than ten business days to dispose of the appeal, but that is not an adequate safety net. A lawsuit is more procedurally formal, and costly, than administrative review, and it would better execute D.C. FOIA’s purpose of maximizing access to governmental records and minimizing cost and time delays<sup>43</sup> for the free and layperson-friendly MOLC process to function efficiently. Not all states offer an administrative track. In West Virginia, for example, aggrieved requesters must begin in circuit court,<sup>44</sup> and so the District should live up to the assurances of its streamlined-review option.

## IV. CONCLUSION

The number of cases awaiting resolution is in the hundreds. Multiple causes contribute to this delay, and no one institution is entirely to blame. Not all appeals are equally straightforward, and agency-responses generally consume at least the first week of the two-week review period. I strongly recommend that the Mayor seek a legislative remedy through the D.C. Council that would remedy the problem of inadequate processing time. I recommend that the Mayor forward legislation to the D.C.

---

<sup>39</sup> [Advisory Opinions \(Freedom of Information Advisory Council\)](#) (emphasis added).

<sup>40</sup> Federal FOIA was amended, effective 1975, before D.C. FOIA’s enactment, to provide for administrative review that includes the base 20 business days for deciding an appeal.

<sup>41</sup> 5 U.S.C. § 552(a)(6)(A)(i)(III), (ii), (B)(i)–(iii).

<sup>42</sup> *Id.* subpar. (B); D.C. Official Code § 2-532(d) (section 202(d) of D.C. FOIA). In D.C. FOIA and federal FOIA, the enumerated “unusual circumstances” are similar and generally concern examination of voluminous records or retrieval from or with the effort or consultation of third-party agencies or contractors. Also, both statutes require “written notice to” requesters.

<sup>43</sup> “The public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of [D.C. FOIA] shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.” *See* D.C. Official Code § 2-531 (section 201 of D.C. FOIA).

<sup>44</sup> W. Va. Code § 29B-1-5(1); [FOIAHandbook2011.pdf \(wv.gov\)](#) at 2.

Council to consider that would amend D.C. FOIA to increase the time limit for the MOLC to process administrative appeals.

Also, I suggest technical and clarifying amendments to the regulations to reflect the MOLC's acceptance of FOIA appeals submissions via e-mail and PAL, and to update the mailing address in 1 DCMR § 412.3 to agree with the MOLC's FOIA web-page. OOG can provide draft legislation or rulemakings on request.

Finally, the factors that have hindered the MOLC's timely production of written determinations do not explain why it has stopped publishing or posting complete opinions (as opposed to just the summaries in the Mayor's annual FOIA report) on its website. The MOLC should ensure that, at the same time that an opinion is signed and released to the requester(s) and custodian(s), it affirmatively posts the opinion for public viewing.

Sincerely,



---

Niquelle M. Allen, Esq.  
Director of Open Government  
Board of Ethics and Government Accountability

cc:

Eugene A. Adams  
Director,  
Mayor's Office of Legal Counsel

Vanessa Natale  
Deputy Director,  
Mayor's Office of Legal Counsel