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

February 17, 2022

VIA ELECTRONIC MAIL

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D.C. Open Government Coalition

████████████████

Washington, D.C. 20011

███████████@aol.com

RE: **Request for Advisory Opinion on the Functionality of the District of Columbia's Online System for Managing and Processing Freedom of Information Act Requests (#OOG-2021-008-M)**

Dear ████████████:

This correspondence responds to your August 9, 2021 request (on behalf of the D.C. Open Government Coalition ("DCOGC")) for an advisory opinion regarding the District of Columbia Government's (the "District") online system for managing requests for records under the Freedom of Information Act of 1976[1] ("D.C. FOIA"). Your correspondence presents several technical and aesthetic critiques of the online system that the District procured from the vendor-contractor AINS, Inc ("AINS"). Most significantly you assert that the online platforms' features may impede both requesters' ability to submit D.C. FOIA requests and the District's s ability to timely respond to D.C. FOIA requests.[2]

Pursuant to section 205c(d) of the Board of Ethics and Government Accountability Establishment and Comprehensive Reform Amendment Act of 2011, I have authority to "issue advisory opinions on the implementation of [D.C. FOIA]."[3]

This Advisory Opinion concerns whether the District's use of technology to meet its obligations under D.C. FOIA is effective. Upon review of your correspondence and the online system, I conclude that the technology is sufficient to meet the basic requirements of D.C. FOIA processing. However, the Office of the Chief Technology Officer ("OCTO"), the District agency that procured and manages the system, should consider improving the technology's functionality to ensure the product does not hinder submission of requests or the District agency's compliance with D.C. FOIA.

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

[2] D.C. FOIA generally provides, *inter alia*, for the public's entitlement to request public records not already published (subject to exemptions). For request procedure and time limits, *see generally* D.C. Official Code § 2-532(c) ("(1) Except as provided in paragraph (2) . . . , a public body, upon request reasonably describing any public record, shall within 15 [business days] of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor. (2)(A) If the public record requested is a body-worn camera recording . . . , the Metropolitan Police Department . . . shall within 25 [business days] of the receipt of any such request either make the requested recording accessible or notify the person making such request of its determination not to make the requested recording or any part thereof accessible and the reasons therefor.").

[3] D.C. Law 19-124; D.C. Official Code § 1-1162.05c(d) (effective October 30, 2018).

As a preliminary matter I will discuss your request that I review the performance of AINS' online system. With respect to the system's operations and its ability to process D.C. FOIA requests, some of your observations have merit and I discuss them individually below. Still, OCTO and the Office of Contracting and Procurement ("OCP") are the proper District agencies to receive and address technical concerns that must be resolved programmatically respecting AINS' product. To that end, I recommend that you provide OCTO and OCP with your statements to the D.C. Council's Government Operations Committee[4] and that you solicit and provide them with the input of FOIA Officers and other frequent system users (such as journalists). As part of their assessment of the AINS contract for this technology and its effectiveness, OCTO is required to ensure that this technology functions properly and harmoniously with the District's existing systems and complies with the District's laws and regulations, from a technical perspective. If it does not, OCTO must remove or resolve hindrances to transparency and open government that the technology causes under their authority.

The discussion below begins with a description of AINS' system and proceeds with an analysis of the current operation of the AINS' system as an adequate mechanism for D.C. FOIA processing.

I. DESCRIPTION OF THE AINS' FOIA PROCESSING SYSTEM

The AINS' D.C. FOIA processing system is a proprietary system, managed to OCTO. It includes a public-facing web portal and an internal District government FOIA processing and management system. The entire unified product is called "FOIAXpress," while the public-facing portal is a component called "FOIAXpress Public Access Link" or "PAL."[5] District government personnel, and your letter requesting review of the online system,[6] sometimes use the term "FOIAXpress" to mean both: (1) the public-facing portal (foia-dc.gov) through which individuals may submit[7] a D.C. FOIA request; and (2) the internal web-based administrative platform used, by some District FOIA Officers and personnel to process, organize, track deadlines, and otherwise manage D.C. FOIA requests.

For clarity, in this Advisory Opinion, I will refer to "FOIAXpress" as the portion of the AINS' system that is only available and accessible to District government users. I will use "PAL" to mean the public-facing portal.

II. ANALYSIS

Some aspects of the user experience that your complaint discusses (such as PAL's performance across different web-browsers, and the aesthetics of the default typeface) are purely technical and fall outside of the scope of my charge to advise on the implementation of D.C. FOIA. These are purely technical issues and are exclusively the focus of OCTO and OCP in their evaluation of AINS' performance of their contractual obligations. However, some operational issues you describe concerning FOIAXpress' and PAL's negative impact on D.C. FOIA processing, impede upon the public's statutory right to request records and the District's ability to delivery of them. This Advisory Opinion focuses on

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[4] Hearing Before Comm. on Gov't Ops. (Feb. 28, 2019), Committee on Government Operations, Performance Oversight Hearing, Brandon Todd, Chairperson - Feb 28th, 2019 (granicus.com) (testimony begins at 48:39); Coalition-OCTO-testimony-2-29-19.docx (live.com).

[5] *See* AINS, Inc., "Fact Sheet," *available at* Fact Sheet: FOIAXpress Public Access Link (PAL) - AINS | Low-Code Platform & Case Management Solutions (last visited Jan. 13, 2022); AINS, Inc., "Brochure," *available at* Brochure: FOIAXpress - AINS | Low-Code Platform & Case Management Solutions (last visited Jan. 13, 2022).

[6] Mulhauser Req. at 1 (requesting "review of the online [D.C.] FOIA request portal, called 'FOIAXpress' [sic]").

[7] For a requestor, the portal is optional. Requests through other media such as direct e-mail are acceptable as well. *E.g.*, 1 DCMR § 402.3.

those operational issues because they impact the delivery of "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees."[8] To the extent that FOIAXpress and PAL are held out to the public as aids to transparency, but instead function as impediments, the District is improperly implementing the D.C. FOIA requirements. This Advisory Opinion provides a path to correcting those issues.

An issue-by-issue discussion of the arguments you raise concerning the delivery of the District's records requested through AINS' platform is next.

A.   Background: User's initial registration and submission of a D.C. FOIA request.

When a public user visits PAL's welcome page[9] to file a D.C. FOIA request, the public user must first create an account with, at a minimum, the user's name, postal and e-mail addresses, and requester category. The available categories are commercial, educational or scientific, news media, or private individual. After registration, the user's home screen includes options to "Submit a FOIA Request" or "Submit an Appeal." Upon selecting "Submit a FOIA Request," the first drop-down menu requires a choice among "Request Type[s]": "FOIA", "FOIA-OIG", or "Body-Worn Camera."

Once the request is submitted through PAL, the District agency electronically receives notification and must "assign" the request in FOIAXpress. When the District agency receives the request, the public user sees the "Request #" in PAL change from "TBD" to an assigned number. The public user will also see the "Status" change from "To be Processed" to "Assigned for Processing." The public user will eventually have their request fulfilled or denied by the District agency and be notified of the same through PAL.

B.   Representation of deadlines and progress status.

You assert that PAL lacks thorough, helpful information for users about the *status* of their requests.[10] Specifically, after a request is logged and its initial 15 business-day[11] deadline ascertained (25 business days in the case of body-worn-camera ("BWC") requests to the Metropolitan Police Department), late responses are "never" supplemented by additional details or a revised "Estimate [sic] delivery date," instead just delivering "standard text[]" like "in progress" or "received,"[12] as I describe above.

Indeed, PAL currently reflects the D.C. FOIA statutory deadlines, which do not provide a substantial amount of time to respond to D.C. FOIA requests, so an additional notification flag would not add to the system. From a purely legal standpoint, if a D.C. FOIA request is not completed within the statutory timeframe, it is deemed a denial. So, whenever a request *does* warrant an extension, based on a statutorily defined *unusual circumstance*, the agency must give "written notice to the [requestor] setting forth the reasons for the extension and expected date for determination."[13] In other words, even where a delay in responding to a request is justified by an unusual circumstance;[14] the agency must

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[8] D.C. Official Code § 2-531 (section 201 of D.C. FOIA).
[9] DC Government FOIA Portal-Home (foia-dc.gov).
[10] Mulhauser Req. at 4, 5.
[11] I will use "business day" to mean any day that is not a Saturday, Sunday, or legal public holiday.
[12] Mulhauser Req. at 4, 5.
[13] *See* D.C. Official Code § 2-532(d)(1) (section 202(d)(1) of D.C. FOIA).
[14] *Id.* subsec. (d)(2).

provide a longer, descriptive, message to the requestor. A more-detailed status phrase on PAL, absent more, would not satisfy that requirement.

However, what you seem to describe is what actually occurs in D.C. FOIA processing—that the time to process the request usually takes *longer* than the statutory timeframe. The District has demonstrated a "chronic inability to comply with its legal obligations under FOIA" and produce records in a timely manner, especially when the records requested are voluminous, "due to lack of funding from the D.C. Council" for FOIA processing.[15] So, having some indication in PAL of the status of your request, when the processing is taking longer than the time allowed in D.C. FOIA makes practical sense.

The courts have also instructed the District to keep records of its "good faith effort" to respond to FOIA requests and even have suggested that the District's FOIA Officers prepare affidavits detailing their diligence in searching for records and complying with D.C. FOIA.[16] As a best practice, when a request calls for the review of voluminous records such as email, OOG encourages D.C. FOIA Officers to work out a schedule with the requestor for producing the record, and make a good faith effort to produce the first set of records within the statutory timeframe. When these email productions are occurring through PAL, having a status feature would indeed be helpful. Furthermore, when the request and production involve email and OCTO's Email Search Request system, it would be helpful to users if the systems communicated with each other respecting production time concerning OCTO's provision of the email to agencies. This aspect is solely within OCTO's prerogative, but if it is possible, it would be helpful in facilitating District agencies' ability communicate accurately with requesters concerning the timing of their review and delivery of responsive emails. This would also provide evidence of the District's diligence in its effort to respond to FOIA requests.

In summary, the time for an agency to disclose records is currently reflected in PAL, so additional adjustments to the system to alert users of the fast-approaching D.C. FOIA deadlines for responses would not be a useful adjustment. Adjusting FOIAXpress to permit FOIA Officers and government users to alert PAL users of the status of the progress of their voluminous FOIA request would be useful and would align with the court's advice to provide evidence of the District's good faith efforts to process FOIA requests.

C.   The "Reading Room" feature.

Section 206 of D.C. FOIA[17] requires agencies to *affirmatively* disclose (*i.e.*, without the need for anybody to request) twelve categories of public records "on the Internet or, if a website has not been established by the public body, by other electronic means."[18] There is a "FOIA Reading Room" component of PAL[19] that ostensibly houses such records. You note that the PAL "Reading Room" is dysfunctional because it is only sparsely used by agencies/public bodies and falls far short of the full scope of disclosure required by section 206.[20]

A recent check of the Reading Room's[21] entire database of the agencies and other public bodies that are included, reflects a *total* of 283 documents. In other words, the District-wide "Reading Room"

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[15] *FOP v. District of Columbia*, 113 A.3d 195, 201(D.C. 2015).

[16] *Id.*

[17] D.C. Official Code § 2-536.

[18] *Cf. id.* subsecs. (a), (b). The twelve categories included frequently requested and/or generally applicable records that are automatically designated "public information" that ought not require a member of the public to go through the steps and delay that would attend "a written request for information." *See id.* subsec. (a).

[19] DC Government FOIA Portal-Home (foia-dc.gov).

[20] *See* Mulhauser Req. at 5 & n.7.

[21] Last visited Jan. 18, 2022 by OOG Legal Staff.

is virtually empty. The current appearance of PAL, as you note, could mislead a casual or first-time user into assuming that the "Reading Room" *is* (1) complete, (2) maintained, and (3) "the" official clearinghouse for affirmative disclosures District-wide. This is not the case, and the District has maintained other websites on DC.GOV that do provide extensive information.

In its 2021 Best Practices Report ("BPR"), the Board of Ethics and Government Accountability (the "Board") pointed to the District's Open Data Portal[22] as a significant source of information concerning completed D.C. FOIA requests. Indeed, OCTO considers completed D.C. FOIA requests as a data set that should always be included in the Open Data Portal.[23] The Board recommended in the BPR that datasets provided by District agencies to OCTO should include the information those agencies have provided to FOIA requestors and the information should reside in the PAL "Reading Room" and the Open Data Portal.[24] In fact, PAL does direct public users to the "Reading Room" and "Open Data DC" on its landing page and indicates that "public information released under FOIA" reside at both locations.

While I agree that the "Reading Room" is redundant, underutilized, and outdated, it does not interfere with the D.C. FOIA process. "Open Data DC" could and probably should replace the "Reading Room" entirely because of redundancy. However, since PAL clearly points public users to both sources of FOIA information at the top of the landing page, it is currently sufficient.

D. **PAL's Consent field has no current applicability under D.C. FOIA and must be removed to eliminate confusion.**

PAL currently has an option to add consent that is confusing to public users and OCTO should instruct AINS to remove the field. On the "Submit a FOIA Request" page,[25] PAL tacitly instructs users to "Attach Consent Here," with no further context offered. AINS originally built the system that the District uses to process FOIA requests for the federal government. The "Attach Consent Here" label was derived from federal privacy law requirements that do not exist in the District.

In many instances, D.C. FOIA is similar to federal FOIA, so AINS' system's inclusion of federal law is harmless. This is not the case in this instance. In the federal "Privacy Act,"[26] a paragraph allows individuals (or their guardians, legal proxies, *etc.*) to obtain records pertaining to *themselves* by effectively superseding privacy-related exemptions that a federal agency might otherwise apply to withhold the records. D.C. FOIA and its regulations do not contain a similar privacy-related exemption for first-party requestors.[27] Moreover, even if the District enacted such a provision, AINS must provide more instructions or context for this kind of link or feature to add value to the District's system. You noted that some individuals, rightly confused by the "Attach Consent Here" link, have called your organization to inquire if District law permits checking requestors' identification[28] and "what use may be made of identity records."[29] These types of inquiries illustrate the actual public confusion that is

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[22] Open Data DC.

[23] 2017-115_District-of-Columbia-Data-Policy.pdf (dc.gov).

[24] BEGA Best Practices Report at 11.

[25] Last visited Jan. 18, 2022 by OOG Legal Staff.

[26] 5 U.S.C. § 552a was enacted by section 3 of the Federal Privacy Act of 1974 but is itself "popularly known as the 'Privacy Act,'" *see* 5 U.S.C. § 552a nt.

[27] An OOG advisory opinion, # OOG-0002_8.23.18_FOIA, noted that, while "[t]here are Mayor's Appeals decisions that recognize [that] the person to whom the first-party record relates may waive privilege . . . , currently under District law there are no statutes or regulations that mirror the Privacy Act's first-party identi[t]y-verification provisions, or which reflect . . . the waiver process." Final B. cunningham.FOIA 10 27 18 (002)_Redacted.pdf (open-dc.gov) at 2 (Oct. 30, 2018).

[28] It generally does not; D.C. FOIA and its regulations do not mandate that requestors identify themselves by name or supply more than minimal contact information (such as an electronic mail address) to receive the response.

[29] *See* Mulhauser Req. at 4.

occurring as a result of this feature and would occur if the feature legally remains without an explanation. OCTO should have AINS remove the "Attach Consent Here" option from the PAL menu.

The existence of this federal remnant in the District's system creates a danger of confusion, or even of dissuading (*i.e.*, chilling) the user from submitting a legitimate request altogether because they may mistakenly believe consent from someone is required to make a FOIA request. It is not. PAL must be adjusted to remove this feature because it interferes with the FOIA process.

I note that OCTO previously required AINS to modify PAL concerning an identity issue. PAL had an identification field that required users to upload their identification to process a FOIA request. The feature was removed on October 1, 2021, when OCTO was informed by this office that no self-identification requirement exists under D.C. FOIA. OCTO had AINS quickly remove the field from PAL as a result. Similarly, OCTO should direct AINS to remove the consent field and accompanying federal citations because they do not comport with D.C. FOIA.

E.   D.C. FOIA does not require the use of specific tools to redact documents.

You further contend that FOIAXpress' redaction feature "may not be optimally used."[30] You opine that "[d]elay and error in redactions may result . . . from inefficiency of tools," and note that "FOIA staff have told the [DCOGC] in past years they choose not to use redaction capabilities in . . . FOIAXpress" but "rely instead on Adobe or other more familiar software which they find easier."[31] To the extent that your argument implies a premise that all of the District's FOIA Officers should *compulsorily* use FOIAXpress to redact records, I disagree. I believe that individual District employees' choice of redaction software often reflects familiarity rather than any software dysfunction that OCTO or AINS should devote resources to curing.

OCTO and OCP will consider the value added by all software features, including redaction, in their review of AINS' performance under their contract with the District. Yet, D.C. FOIA Officers do not need to be limited to only one tool when they have experience with multiple redaction solutions. D.C. FOIA Officers are not required to use FOIAXpress to process D.C. FOIA requests and they certainly are not required to utilize the system to perform redactions. In fact, some D.C. FOIA Officers *still* prefer manual redactions with a black marker, photocopier, and scanner as the most reliable method. I find that the ideals of transparency and efficiency are best served by allowing each D.C. FOIA Officer to redact by any effective means within their own best judgment.

F.   User support.

Next, you object to PAL's lack of wayfinding and reliable contact information. You state that PAL does not direct users to *which* District agencies are relevant to their area of research or interest, and does not present a reliable directory of D.C. FOIA Officers:

> Undirected requests are not allowed, so . . . a user must have an idea which agency
> has the desired records. Unlike the federal FOIA which requires agencies to publish
> record-finding aids, [PAL] offers little help other than advice to contact . . . FOIA
> officers (and the list offered[[32]] is incomplete). . . .

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[30] *Id.* at 5 (emphasis omitted).

[31] *Id.* at 6.

[32] Agency Open Government and FOIA Contact Information | DC (last visited Jan. 18, 2022). Users are directed there from the "Help" drop-down menu, "Agency Open Government/FOIA Office Contacts" option, on PAL.

Frequent users will be fine; they know their targets and how to reach them. . . . The rest are in trouble; instructions in general on [PAL] are brief and OCTO in 2019 gave their view that other D.C. government sources should bear the burden of explaining the system details. But they don't.[33]

Relatedly, you note that not all District agencies are covered/available to submit requests through PAL, so there is an inconsistent procedure for requestors to deliver their requests to FOIA Officers in the first place.[34]

I agree that any resource authored by a District entity that holds itself out as comprehensive and reliable *should* be comprehensive and reliable. I also agree with you that the "Agency Open Government and FOIA Contact Information" site falls short in both of those respects.[35] The "Agency Open Government and FOIA Contact Information" site should be complete and current, and OCTO should supply a link, via the PAL landing page, that refers requesters to the complete list.

G.   FOIAXpress cannot replace agencies' duty to audit their work.

While it tags the status of *individual* requests, FOIAXpress also purports to aid in collecting and reporting *aggregate* FOIA data, both real-time and in annual reports. You argue that FOIAXpress is not functioning well in this role:

> Effective reporting on the FOIA system has not been enhanced by [FOIAXpress]. . . .
>
> Annual reports by the mayor are routinely late, incomplete, and of uncertain data quality. All may result from the incomplete state of [FOIAXpress] coverage. Reports have never been on time in the last five years. Ten percent of agencies listed in the mayor's 2020 annual FOIA report display no data, just blanks. Beyond requests entered into the FOIAXpress database in real-time [upon entry in PAL], how the rest (some 20 percent of the total) are entered (presumably from emails and letters sent directly to agencies) is unknown. . . . [T]he coverage of non-[PAL] requests and their data quality are of concern. The [DCOGC] several years ago discovered that lack of data editing and quality standards allowed publication of one agency's report showing 10,996 requests received, 38 times more than any prior year. . . . [I]nquiry to the . . . FOIA officer . . . uncovered misunderstandings of the term "FOIA request" . . . .
>
> No FOIA request data access is available to the public outside the annual report, so the availability of the "real-time dashboards and analytics" mentioned in the developer's propaganda is unknown.[36]

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[33] Mulhauser Req. at 3 (hyperlink omitted).
[34] *Id.*
[35] *See Id*. OOG's legal staff's review of the agencies listed revealed some agency links to its homepage rather than its FOIA-specific page and missing staff directories that exclude the FOIA Officer.
[36] Mulhauser Req. at 6.

Indeed, the public is entitled to *at least* annual, accurate, data to ensure the District government's accountability to FOIA requestors.[37] District agencies are not required to use FOIAXpress to process FOIA requests. For agencies using the technology, generating the data required to submit timely, accurate FOIA information to the Executive Office of the Mayor ("EOM") for the annual FOIA report should be much easier. District agencies are encouraged to use FOIAXpress, but are not required to do so. The practices vary from agency to agency.

While D.C. FOIA requires submission of an annual FOIA report, there is no mechanism for independent oversight or penalty for late submission. Each District agency is responsible for any inaccurate data fed into FOIAXpress and the accuracy of the data it contributes to EOM's annual D.C. FOIA Report. EOM has authority over the District agencies under the Mayor's direct authority and must implement controls and schedules to ensure that the FOIA data is received timely and is accurate. Independent agencies that report this data to the EOM should adopt these best practices and timelines, if EOM elects to implement them. Having a mid-year report to EOM could help District agencies begin the process of assembling this data and performing quality control on its accuracy. The final District agency report to EOM could be due one month before EOM is required to submit the report to give District agencies time to receive edits, corrections, and late submissions. I am providing this suggestion as an example of a practice EOM could implement to ensure the annual FOIA report is accurate and timely submitted.

Concerning o AINS' "real time dashboard and analytics," this is a technical feature and aspect of the system that falls under OCTO's and OCP's jurisdiction. If the feature is not being utilized or is be underutilized under the contract, then the District should examine the usefulness and economy of the product in its review of AINS' contract performance.

H.   FOIAXpress should omit federal citations.

As previously stated, AINS' product was originally designed for the federal government and redesigned for the District. .

While D.C. FOIA was modeled on federal FOIA (5 U.S.C. § 552) and many of its provisions closely parallel those of the federal FOIA,[38] D.C. FOIA manifests some differences, including a completely separate and unique numbering of exemptions.[39] FOIAXpress' report-generating tool currently conflates federal and D.C. citations, resulting in the confusing inclusion of provisions that are never pertinent to the District's FOIA work. For example, when a District employee generates a "Final Action Report" to analyze an agency's breakdown of dispositions by specified criteria, the drop-down list of "Codes Applied" offers the user federal citations ("(b)(5)," "(b)(6)," "(b)(7)(A)," *etc.*). I also provides the District's citations ("2-534(a)(11)," "2-534(a)(12)," etc.). The federal citations are listed first, which increases the risk that lay or inexperienced D.C. FOIA personnel will opt for the wrong citation. The result of this mistake is the FOIA Officer either misses the correct data or even passes along

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[37] *See* D.C. Official Code § 2-538 (section 208 of D.C. FOIA) ("(a) 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. . . . (b) The Mayor [or her designated agent] shall make these reports available to the public . . . by . . . electronic means. (c) The [Attorney General] shall submit an annual report on or before February 1 of each calendar year . . . .").

[38] *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987).

[39] Whereas the federal exemptions have designations (b)(1) through (b)(9), D.C. FOIA's exemptions currently have designations (a)(1) to (a)(19), and even the first (9) do not correspond to each other at all.

incorrect information to the requester. Also note, the drop-down list has not yet been updated to include the latest D.C. FOIA exemption (19), which first took effect on October 1, 2021.[40]

OCTO must undertake a general legal review of the AINS platform and ensure that it lists only D.C. FOIA citation options. OCTO should consult with one of the District's legal experts in D.C. FOIA to review FOIAXpress to ensure that the form letters and legal citations accurately reflect D.C. FOIA and regulations.[41] OCTO must ensure that listings of provisions in FOIAXpress are accurate and reflect only District law. The remnants of the federal product remain in FOIAXpress and make processing D.C. FOIA more challenging for D.C. FOIA Officers than is necessary. Supplanting the federal remnants with D.C. FOIA will make FOIAXpress a better system that is in compliance with District law and regulations.

III.   CONCLUSION AND RECOMMENDATIONS

In summary, several of your points about the design and user experience of FOIAXpress and PAL have threshold validity but are more immediately under the scope of OCTO and OCP. As for those characteristics of FOIAXpress and PAL that *do* directly hinder individuals from receiving "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees,"[42] to improve the functionality of FOIAXpress, I recommend:

> (1) That the "Request type" drop-down menu be removed so that requesters are not confused by the option of "FOIA-OIG."
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> (2) That OCTO continue to promote the "Open Data Portal" and consider replacing the "Reading Room" feature "Open Data Portal" in its entirety to eliminate redundancy.
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> (3) The prompt removal of the "Attach Consent Here" field from the request-submission form.
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> (4) That the "Agency Open Government and FOIA Contact Information" site be complete and current, and that OCTO supply a link, via the PAL landing page, that refers requesters to FOIA Officers' contact information.
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> (5) The prompt removal of references to provisions of 5 U.S.C. § 552 (the federal FOIA statute) and its subdivisions.

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[40] *See* D.C. Official Code § 2-534(a)(19) (section 204(a)(19) of D.C. FOIA) (concerning records held confidential under Part 14 of the Revised Uniform Unclaimed Property Act of 2021 (Title VII of D.C. Law 24-45; D.C. Official Code § 41-164.01 *et seq.*) (effective pursuant to the Fiscal Year 2022 Budget Support Emergency Act of 2021, §§ 7094(b)(4), 9001 (D.C. Act 24-159)). The emergency measure has since expired, but the provision is permanent law pursuant to § 7094(b) of the Fiscal Year 2022 Budget Support Act of 2021, applicable as of October 1, 2021 (D.C. Law 24-45; 68 DCR 012567).

[41] OCTO should consult with the Office of Open Government, Mayor's Office of Legal Counsel, Mayor's Office of General Counsel, or the Office of the Attorney General, which are all considered experts in D.C. FOIA.

[42] D.C. Official Code § 2-531 (section 201 of D.C. FOIA).

Sincerely,

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