

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

DISTRICT OF COLUMBIA



Sixth Edition  
2011



OPEN GOVERNMENT GUIDE  
OPEN RECORDS AND MEETINGS LAWS IN  
DISTRICT OF COLUMBIA

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# OPEN GOVERNMENT GUIDE

Access to Public Records and Meetings in

## DISTRICT OF COLUMBIA

**SIXTH EDITION  
2011**

Previously Titled  
Tapping Officials' Secrets

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## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



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**FOREWORD**

The first provision of the District of Columbia Freedom of Information Act of 1974, D.C. Code Ann. § 2-531 *et seq.* (“D.C. Act”), emphasizes the public policy of open government that underlies the law. The D.C. Act provides that 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 this subchapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

D.C. Code Ann. § 2-531.

This provision was included in the D.C. Act “to make clear that any actions should serve the purpose of access and that any restriction on that access should be construed narrowly.” Comm. on the Judiciary and Criminal Law, Report on Bill No. 1-119, the “D.C. Freedom of Information Act of 1975,” at 6 (Sept. 1, 1976) (“Comm. on Judiciary Report”). This policy of openness requires courts to construe all exemptions narrowly and to resolve all doubts in favor of disclosure. *Newspapers Inc. v. Metro. Police Dep’t*, 546 A.2d 990, 993 (D.C. 1988); *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987).

The D.C. Act has been the subject of few reported cases, discussed *infra*. See *Donabue v. Thomas*, 618 A.2d 601 (D.C. 1992); *McReady v. Dep’t of Consumer & Regulatory Affairs*, 618 A.2d 609 (D.C. 1992); *Hines v. Board of Parole*, 567 A.2d 909 (D.C. 1989); *Washington Post v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517 (D.C. 1989); *Wolf v. Regardie*, 553 A.2d 1213 (D.C. 1989); *Newspapers Inc. v. Metro. Police Dep’t*, 546 A.2d 990 (D.C. 1988); *Barry v. Washington Post Co.*, 529 A.2d 319 (D.C. 1987); *Dunhill v. Dir., D.C. Dep’t of Transp.*, 416 A.2d 244 (D.C. 1980). The D.C. Act, however, is patterned on and construed in accordance with the federal Freedom of Information Act, 5 U.S.C.A. § 552. See *Barry v. Washington Post Co.*, 529 A.2d at 321. Thus, when litigating a question involving the D.C. Act, reliance upon applicable federal law is appropriate.

**Open Records****I. STATUTE — BASIC APPLICATION****A. Who can request records?****1. Status of requestor.**

Any “person” has a right to inspect or copy any public record not exempted from disclosure. § 2-532(a).

**2. Purpose of request.**

The statute does not require a requester to state or explain the purpose of the request. The purpose of the request may be considered, however, in the context of certain exemptions. When privacy rights are pitted against the requester’s interest in disclosure of information, a request for material may be more likely to fail if the requester is acting for “private” purposes. For example, the Mayor’s office has ruled that when an individual seeks personnel files of police officers to use in a civil action against the officers, disclosure serves no public purpose that would outweigh the officers’ privacy rights in the files. *Emily Yinger, Esq. v. Metro. Police Dep’t*, FOIA App. No. 93-25 (Office of the Mayor, Oct. 5, 1994) (upholding the police department’s invocation of the § 2-534(a)(2) privacy exemption); *accord Velrey Props. Inc. v. Dep’t of Human Servs.*, FOIA App. No. 94-45 (Office of the Mayor, May 17, 1995).

**3. Use of records.**

The fact that a person seeks information for a commercial use does not bar disclosure. See, e.g., *Dunhill v. Dir., D.C. Dep’t of Transp.*, 416 A.2d 244 (D.C. 1980) (fact that individual sought information to sell as mailing list of elderly citizens did not prohibit disclosure). However, § 2-534(a)(1), exempting disclosure of trade secrets and confidential commercial or financial information obtained from outside the government, assumes that FOIA should not be used as a “private discovery tool.” *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 522 (D.C. 1989).

**B. Whose records are and are not subject to the act?****1. Executive branch.****a. Records of the executives themselves.**

The D.C. Act requires disclosure of records of any “public body.” D.C. Code Ann. § 2-532(a). The D.C. Administrative Procedure Act, from which many definitions in the D.C. FOIA are taken, see D.C. Code Ann. § 2-539, defines a “public body” as including the Mayor, an agency or the Council of the District of Columbia. *Id.* at § 2-502(18A). “Agency” includes both subordinate and independent agencies. *Id.* at § 2-502(3). “Subordinate agency” is defined as “any officer, employee, office, department, division, board, commission or other agency of the government of the District, other than an independent agency or the Mayor or the Council, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of law.” *Id.* at § 2-502(4).

“Independent agency” is defined as “any agency of the government of the District of Columbia to which the Mayor and the Council are not authorized by law, other than this subchapter, to establish administrative procedures but does not include the several courts of the District and the Tax Division of the Superior Court.” *Id.* at § 2-502(5). Intergovernmental agencies would probably not be considered “agencies” for the purposes of the D.C. Act. See *Latimer v. Joint Comm. on Landmarks*, 345 A.2d 484, 486-87 (D.C. 1975) (construing § 2-502 definitions); *KiSKA Constr. Corp.-U.S.A. v. Washington Metro. Area Transit Auth.*, 167 F.3d 608, 611-12 (D.C. 1999) (holding that WMA-TA is not an agency within the meaning of the D.C. FOIA).

The Office of the Secretary (which has been delegated the authority vested in the Mayor to render final decisions on appeals under the

D.C. FOIA) has issued an opinion concluding that an agency under the administrative control of a court-ordered general receiver is not an “agency” to which the FOIA requirements applied. *See In re Appeal of Claire M. Riley*, Matter No. 00-08806, 47 D.C. Reg. 6287 (July 24, 2000) (concluding that the Child and Family Services Division of the Department of Human Services was not an “agency” because it was under the exclusive administrative control of the court); *In re Appeal of The Washington Post*, Matter No. 00-105900, 47 D.C. Reg. 7229 (August 25, 2000) (same).

#### **b. Records of certain but not all functions.**

The D.C. Act applies to all “public records.” D.C. Code Ann. § 2-532. The following records are *specifically required* to be disclosed under D.C. Code Ann. § 2-536:

1. The names, salaries, title and dates of employment of all employees and officers of a public body;
2. Administrative staff manuals and instructions to staff that affect a member of the public;
3. Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
4. Those statements of policy and interpretations of policy, acts and rules that have been adopted by a public body;
5. Correspondence and materials referred to therein, by and with a public body, relating to any regulatory, supervisory or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public or any private party;
6. Information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public or other funds by public bodies;
7. Budget requests, submissions and reports available electronically that agencies, boards and commissions transmit to the Office of Budget and Planning during the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports and strategic plans and performance-based budget submissions;
8. The minutes of all proceedings of all public bodies;
9. All names and mailing addresses of absentee real property owners and their agents. “Absentee real property owners” means owners of real property located in the District that do not reside at the real property.
10. All pending applications for building permits and authorized building permits, including the permit file;
11. Copies of all records, regardless of form or format, that have been released to any person under the D.C. Act and which, because of the nature of their subject matter, the public body determines have become or are likely to become the subject of subsequent requests for substantially the same records.
12. A general index of the foregoing records, unless the materials are promptly published and copies offered for sale.

For records in the categories listed above created on or after November 1, 2001, each public body shall make records available on the Internet or, if a Web site has not been established by the public body, by other electronic means. *See* § 2-536(b).

#### **2. Legislative bodies.**

The Act applies to any “public body,” including the Council of the District of Columbia. *See* D.C. Code Ann. § 2-502(18A) (defining “public body” as including the Council).

#### **3. Courts.**

The act is not applicable to courts in the District of Columbia. *See* D.C. Code § 2-502(5).

#### **4. Nongovernmental bodies.**

##### **a. Bodies receiving public funds or benefits.**

There appears to be no case law or statutory provision directly addressing this issue; a court may examine whether the documents at issue are “controlled” by a governmental body, and whether the body could reasonably expect to come within the D.C. FOIA’s ambit. *See Belth v. Dep’t of Consumer & Regulatory Affairs*, 115 Daily Washington Legal Rptr. 2281 (D.C. Super. Ct. 1987).

##### **b. Bodies whose members include governmental officials.**

Although there appears to be no case law or statutory provision directly addressing this issue, the statutory definition of “public body” limits its inclusion to the Mayor, agencies and the D.C. Council.

#### **5. Multi-state or regional bodies.**

The D.C. Circuit, applying D.C. Law, has held that the D.C. Act does not cover agencies created by interstate compact, such as the Washington Metropolitan Area Transit Authority. *KiSKA Constr. Corp.-U.S.A.*, 167 F.3d at 611-12; *see also Latimer*, 345 A.2d at 486-87 (Joint Committee on Landmarks was not an agency of the District of Columbia).

#### **6. Advisory boards and commissions, quasi-governmental entities.**

If the documents at issue are under the control of an agency by virtue of its relationship with an advisory board, a claimant could argue the documents are covered by FOIA. *See Belth*, 115 Daily Washington Legal Rptr. at 2281.

### **C. What records are and are not subject to the act?**

#### **1. What kind of records are covered?**

The D.C. Act applies to all “public records.” D.C. Code Ann. § 2-532. Public records include “all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form characteristics prepared, owned or used in the possession of, or retained by a public body.” D.C. Code Ann. § 2-502(18); *id.* at § 2-539 (adopting the definition of public record provided in § 2-502). Certain records are specifically required to be disclosed, *see id.* at § 2-536, and some are subject to discretionary statutory exemptions, *see id.* at § 2-534(a). Like the federal courts, the D.C. courts have adopted a “control standard” instead of a “possession standard” to determine the definition of “agency records” for FOIA purposes when the records were not created by an agency. *Belth*, 115 Daily Washington Legal Rptr. at 2281 (holding that records created by the National Association of Insurance Commissioners and used by the Dep’t of Consumer & Reg. Affairs were covered by the D.C. Act because the documents were in the agency’s physical and legal control, and used by the agency to regulate insurers). The D.C. Act also provides that a public body must make available records produced or collected pursuant to a contract with a private contractor to perform a public function. § 2-532(a-3).

#### **2. What physical form of records are covered?**

Public records include “all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form characteristics prepared, owned or used in the possession of, or retained by a public body.” D.C. Code Ann. § 2-502(18); *id.* at § 2-539. Public records include information stored in an electronic format. *Id.* at § 2-502(18).

### 3. Are certain records available for inspection but not copying?

The D.C. Act states that any person “has a right to inspect, *and at his or her discretion, to copy* any public record of a public body.” D.C. Code Ann. § 2-532(a) (emphasis added). A public body may set “reasonable rules” for time and place of access to documents through notice and comment proceedings. *Id.*

#### D. Fee provisions or practices.

##### 1. Levels or limitations on fees.

The D.C. Act is to be construed to minimize the costs associated with obtaining public information. D.C. Code Ann. § 2-531. Search, review and copying fees cannot exceed the actual costs of searching, reviewing and/or copying records. D.C. Code Ann. § 2-532(b). The fee schedules that may be adopted by a public body vary depending on the purpose of the request and the identity of the requester. When records are not sought for commercial use and the request is made by a representative of the news media or by an educational or non-commercial scientific institution for scholarly or scientific research, fees are limited to reasonable standard charges for document duplication. When records are requested for commercial use, fees are limited to reasonable standard charges for searching, duplication and review. For all other requests, fees are limited to reasonable standard charges for document search and duplication. § 2-532(b).

A public body must provide a requested record in any form or format requested by the person, provided that the person pays the costs of reproducing the record in that form or format. D.C. Code Ann. § 2-532(a-1).

##### 2. Particular fee specifications or provisions.

###### a. Search.

Search, review and copying fees cannot exceed the actual costs of searching, reviewing and/or copying records. D.C. Code Ann. § 2-532(b). The fee schedules that may be adopted by a public body vary depending on the purpose of the request and the identity of the requester. When records are not sought for commercial use and the request is made by a representative of the news media or by an educational or non-commercial scientific institution for scholarly or scientific research, fees are limited to reasonable standard charges for document duplication. When records are requested for commercial use, fees are limited to reasonable standard charges for searching, duplication and review. For all other types of requests, fees are limited to reasonable standard charges for document search and duplication. § 2-532(b).

###### b. Duplication.

Reasonable standard charges for duplication may be charged. § 2-532(b).

###### c. Other.

Review costs shall include only the direct costs incurred during the initial examination of a document to determine whether it must be disclosed or withheld in part. Review costs may not include costs incurred to determine issues of law or policy related to the request. § 2-532(b).

##### 3. Provisions for fee waivers.

All search and copying fees can be waived or reduced, if furnishing the information requested can be considered as primarily benefiting the general public. D.C. Code Ann. § 2-532(b). As a matter of practice, a member of the media should state in a request that furnishing the requested information can be considered as primarily benefiting the general public and specifically request a waiver of fees as being in the public interest. If a waiver of fees is requested, however, it should also be stated that the requester is prepared to pay the reasonable fees incurred, at least up to some stated amount, should the waiver be denied.

### 4. Requirements or prohibitions regarding advance payment.

No agency public body may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency or public body has determined that the fee will exceed \$250. D.C. Code Ann. § 2-532(b-3).

### 5. Have agencies imposed prohibitive fees to discourage requesters?

Only one case seems to indicate so, where a requester asked for audio tapes instead of transcripts of a series of meetings and was refused, even though transcripts were considerably more expensive. *Cornrows*, FOIA App. No. 95-27.

#### E. Who enforces the act?

All employees of the District government are responsible for compliance with the provisions of the D.C. Act. D.C. Code Ann. § 2-537(e). Each public body also must designate a Freedom of Information Officer who is to receive a minimum of 8 hours of training regarding implementation and compliance with the D.C. Act. § 2-538(d). Each year, the Mayor requests from each public body and submits to the D.C. Council a report covering the public record disclosure activities of each public body during the preceding fiscal year. § 2-538(a).

##### 1. Attorney General's role.

The Corporation Counsel must submit an annual report listing the number of cases which arose under the D.C. Act in the previous fiscal year, the exemption involved, disposition, and costs assessed in each case. D.C. Code Ann. § 2-538(c).

##### 2. Availability of an ombudsman.

The D.C. Act contains no provision regarding the availability of an ombudsman.

##### 3. Commission or agency enforcement.

The D.C. Act contemplates appeals of adverse decisions by individual petitioners, not commission or agency enforcement. D.C. Code Ann. § 2-537(a).

#### F. Are there sanctions for noncompliance?

Any person who arbitrarily or capriciously violates the D.C. Act can be found guilty of a misdemeanor and punished by a fine not to exceed \$100. D.C. Code Ann. § 2-537(d).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

##### a. General or specific?

Statutory exemptions are specific and are to be strictly construed; courts do not have the power to create additional exemptions. *See* D.C. Code Ann. § 2-537(b); *Barry v. Washington Post Co.*, 529 A.2d at 321. A government agency that wishes to withhold information has the burden of showing an exemption to the D.C. Act applies. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521 (D.C. 1989).

##### b. Mandatory or discretionary?

The language of the D.C. Act provides that the listed categories of information “may be exempt.” D.C. Code Ann. § 2-534(a). The exemptions, therefore, should be viewed as discretionary. *See also* 1 D.C. Mun. Reg. (“DCMR”) § 406.1 (no requested record may be withheld unless it both comes within a statutory exemption and there is a need in the public interest to withhold it); 1 DCMR § 400.4 (records exempt from mandatory disclosure shall be made available as a matter of discretion when disclosure is not prohibited by law or is not against

the public interest). Information gathered under the Vital Records Act, however, is excluded from the D.C. Act altogether, and, as discussed below, can only be disclosed pursuant to the terms of the Vital Records Act. § 2-534(d). The D.C. Act exemptions do not authorize nondisclosure of information when disclosure is authorized or mandated by other law. D.C. Code Ann. § 2-534(c). See *Dunhill v. Director*, 416 A.2d at 247-48 (holding that even if information sought was exempt under privacy exemption, nondisclosure was improper because the information was available under another law and accompanying regulations).

### c. Patterned after federal Freedom of Information Act?

The exemptions under the D.C. Act are patterned and have been construed in accordance with federal law. See *Barry v. Washington Post Co.*, 529 A.2d at 321. Three exemptions that appear in the federal act do not appear in the D.C. Act: (1) internal personnel rules and practices of an agency; (2) reports of and information gained during examinations of financial institutions; and (3) geological and geographical data regarding wells. 5 U.S.C.A. § 552(b)(2), 552(b)(8)-(9). Exemptions appearing in the D.C. Act that do not appear in the federal act are discussed *infra*.

## 2. Discussion of each exemption.

a. *Trade Secrets and Commercial or Financial Information* (D.C. Code Ann. § 2-534(a)(1)) — Like the federal statute, the D.C. Act contains a provision exempting disclosure of trade secrets and confidential commercial or financial information obtained from outside the government. The language of the D.C. Act, however, more greatly restricts what material may be withheld by an agency. See *Food and Allies Services Traders, AFL-CIO v. Barry*, No. 3809-88, slip. op. at 5-7 (D.C. Super. Ct. Jan. 9, 1987). Under the D.C. Act, this exemption applies only if “the party from whom the information was obtained faces actual competition.” *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d at 522.

In addition, the D.C. Act exempts such information only “to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained.” D.C. Code Ann. § 2-534(a)(1). Under the D.C. Act, an association that does not itself engage in business, and therefore cannot show harm to its competitive position, cannot claim that documents it prepared for a D.C. government agency fall within the trade secrets exemption. *Belth*, 115 Daily Washington Legal Rptr. at 2281 (ordering disclosure of insurance reports prepared by the National Association of Insurance Commissioners).

Accordingly, opinions from the Mayor’s office pursuant to FOIA appeals have held that:

A party asserting that its competitive position would be harmed by the disclosure of commercial information must show a specific likelihood of injury; a generalized invocation of the language of the statute is not enough to justify nondisclosure. *Shaw Coalition Redevelopment Corp. v. Office of the Assistant City Administrator for Economic Dev.*, FOIA App. No. 90-20 (Office of the Mayor, July 17, 1994).

Certain financial terms and conditions, including rental fee amounts, rental deposit amounts, electrical fee amounts, and an estimate of total kilowatt consumption, between the Washington Convention Center and promoters do not fall within the trade secret exemption because fee amounts are “unique for each particular live event” and do not affect the competitive bargaining power of other promoters. *In re Appeal of John R. Risher, Esq., for Disclosure of Certain Rental Agreements and Related Documents*, FOIA App. No. 90-1 (Office of the Mayor, Aug. 1, 1991).

The D.C. Act’s language was based on the Judiciary Committee’s reading of the D.C. Circuit’s opinion in *National Parks & Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Comm. on Judiciary Report at 8. In *National Parks*, however, the D.C. Circuit

held that information was “confidential” within the meaning of the federal FOIA’s exemption 4 not only if its disclosure would harm a person’s competitive position, but also if disclosure would impair the government’s interest in obtaining information in the future. See *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d at 523. In addition, *National Parks* left open the question whether governmental interests other than obtaining future information would justify withholding information under exemption 4. See *National Parks*, 498 F.2d at 770 n.17. Although this question was answered in the affirmative in *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 830 F.2d 278, 282-87 (D.C. Cir. 1987), that decision would not appear to affect the interpretation of the D.C. Act.

b. *Privacy* (D.C. Code Ann. § 2-534(a)(2)) — The D.C. Act exempts information of a personal nature, when disclosure would constitute a clearly unwarranted invasion of privacy. For example, the Act exempts the release of presentence reports, academic records, mental health assessments and other records pertaining to prison inmates’ applications for minimum sentence reductions. See *Hines v. Board of Parole*, 567 A.2d 909, 913 (D.C. 1989). D.C. courts have held that when this privacy exemption does not apply and the D.C. statute authorizes disclosure of information, litigants cannot then base an invasion of privacy claim upon the government’s dissemination of information. See *Wolf v. Regardie*, 553 A.2d 1213, 1218-19 & n.10 (D.C. 1989).

The language of the D.C. Act’s privacy exemption is broader than that of federal law. Unlike the language of the federal statute, which limits its comparable exemption to personnel, medical and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, see 5 U.S.C.A. § 552(b)(6), the D.C. Act exempts *all* information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy. However, when information collected for law enforcement purposes is at issue, this difference between the privacy exceptions of the two statutes diminishes. The federal statute exempts disclosure of investigatory records compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C.A. § 552(b)(7)(C). The Supreme Court has interpreted this privacy exemption covering information relating to law enforcement as more expansive than the federal statute’s personnel, medical and similar files privacy exemption. See *United States v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 755-56 (1989) (exempting disclosure of FBI rap sheets).

The Mayor’s office (and now the Office of the Secretary) has consistently relied on the *Reporters Committee* rule in performing the requisite 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.” *Foster v. Univ. of the District of Columbia*, FOIA App. No. 92-8 (Office of the Mayor, Oct. 30, 1995) (refusing to release the personnel records and curriculum vitae of a U.D.C. employee because disclosure would impinge upon the employee’s privacy rights and serve no “core” public purpose); see also *In re Appeal of The Washington Post Co.*, Matter No. 01-170008, 48 D.C. Reg. 8629 (Office of the Secretary, Sept. 7, 2001) (holding that the privacy interests of students and teachers under investigation for the consumption of alcohol substantially outweighs the public interest in their identifying information); *Emily Yinger, Esq. v. Metro. Police Dep’t*, FOIA App. No. 93-25 (Office of the Mayor, Oct. 5, 1994) (holding that no “core” public purpose is served when individual seeks police officers’ personnel records for use in a civil suit against officers); *Velrey Props. Inc. v. Dep’t of Human Servs.*, FOIA App. No. 94-45 (Office of the Mayor, May 17, 1995) (refusing to disclose address of district resident who has not otherwise made her address and telephone number public, where plaintiff wanted address for use in a civil lawsuit); *In re Appeal of Walter Thomas*, Matter No. 04-409467, 51 D.C. Reg. 6969 (Office of the Secretary, June 21, 2004) (ordering disclosure of names, professional qualifications, and work experiences of successful job applicants, but refusing to disclose other private information, such as home telephone numbers and addresses, Social Secu-

rity numbers, marital status and personal references, about successful applicants or any information regarding unsuccessful job applicants).

In accordance with other jurisprudence pertaining to corporations, the Mayor's office has ruled that corporations have no privacy rights under exemption (a)(2). *Washington Post Co. v. Metro. Police Dep't*, FOIA App. No. 92-5 (Sept. 24, 1993) (refusing to disclose on privacy grounds names and addresses of registered gun owners, but agreeing to release information regarding licensed gun dealers because corporations have no privacy interests).

Information required to be made public versus the privacy exemption: D.C. Code Section 2-536, discussed *infra*, specifically makes certain information public, but does so "without limiting the meaning of other sections of this subchapter." Despite what appear to be specific and mandatory disclosure requirements under § 2-536, the Mayor's office has construed this limiting language to mean that if the privacy exemption is implicated by a record that falls within § 2-536, the record can be withheld. Thus, in the view of the Mayor's office, the names of members of the police department, although required to be made public under § 2-536, do *not* have to be released because "by virtue of the nature of their work, MPD personnel have substantial privacy interests that militate against public revelation of their names." *Mike R. Atracchi v. Metro. Police Dep't*, FOIA App. No. 94-17 (Office of the Mayor, July 28, 1994).

*c. Investigatory and Law Enforcement Records* (D.C. Code Ann. § 2-534(a)(3)) — Like the federal law, the D.C. Act exempts certain investigatory records compiled for law enforcement purposes (including the records of Council investigations). The exemption allows nondisclosure when disclosure would interfere with enforcement proceedings or Council investigations, deprive a person of a fair trial, constitute an unwarranted invasion of privacy, disclose the identity of a confidential source, disclose investigation techniques or endanger the lives of law enforcement officers. § 2-534(a)(3). The exemption applies only to investigatory records that are compiled in the course of specific investigations and that focus on specific individuals and acts. See *Barry v. Washington Post Co.*, 529 A.2d at 321-22. Such records are exempt, however, only if their release would also result in the interference with enforcement proceedings or cause one of the other results described in § 2-534(a)(3). See *In re Appeal of Ernest Middleton*, Matter No. 01-171746, 48 D.C. Reg. 9022 (Office of the Secretary, Sept. 19, 2001); *In re Appeal of Mark W. Howes, Esq.*, Matter No. 00-10587, 48 D.C. Reg. 7827 (Office of the Secretary, Aug. 13, 2001). The D.C. Act "seeks to strike a balance for maximum disclosure even of law enforcement information, but not in cases where the information would endanger people, interfere with due process or severely hamper law enforcement effort." Comm. on Judiciary Report, at 7. The Mayor's office has ruled that investigatory records in a 6-year-old murder case are exempt from disclosure if charges and criminal litigation are still possibilities. *Glenn A. Stanko, Esq. v. Metro. Police Dep't*, FOIA App. No. 92-24 (Feb. 24, 1995).

The Mayor's office appears to be highly deferential to departments or agencies that invoke this exemption. The Office has held that: the privacy interests of police and the crime victim's family militate against releasing a videotaped murder confession that was never admitted into evidence against the accused when the tape was sought by a news reporter, *In re Appeal of Molly Pauker, Esq.*, (unnumbered FOIA appeal) (Office of the Mayor, Nov. 3, 1989). The Office has also held that disclosing a police officer's records regarding an investigation into her alleged drug abuse, when no disciplinary charges were brought and absent allegations that the investigation was mishandled, would serve no public purpose, *Pretext Services Inc. v. Metro. Police Dep't*, FOIA App. No. 92-10 (Office of the Mayor, March 8, 1995).

It should be noted that another D.C. statute, D.C. Code Ann. § 5-113.06, provides that all complaints and other specific police records shall be open for inspection. See also § 2-534(c) ("This section shall not operate to permit nondisclosure of information of which disclosure is authorized or mandated by other law."). Therefore, the names of some

70 police officers and information about criminal charges filed against them were required to be disclosed under § 5-113.06 [formerly D.C. Code § 4-135]. *Washington Post v. Metro. Police Dep't*, FOIA App. No. 93-15 (Office of the Mayor, March 11, 1994).

*d. Interagency Memos and Letters* (D.C. Code Ann. § 2-534(a)(4)) — This exemption is virtually identical to the exemption in the federal statute, exempting inter-agency and intra-agency memorandums or letters (including memorandums or letters generated or received by the staff or members of the Council), which would not be available by law to a party in litigation with a public body. Compare § 2-534(a)(4) with 5 U.S.C.A. § 552(b)(5). As a matter of policy, reports and analyses prepared by an organization outside the government, even if they are used in an agency's deliberative process, do not fall within the exemption. *Beltb*, 115 Daily Washington Legal Rptr. at 2281 ("To hold otherwise would be to rule that the independently initiated, prepared and funded reports of a private organization . . . which that organization desires to withhold from public scrutiny and discussion but to have used by a governmental agency as the basis for important public policy decisions, would be immunized from disclosure . . .").

The D.C. Act expressly provides that the deliberative process privilege, the attorney work product privilege, and the attorney-client privilege are incorporated into the exemption in § 2-534(a)(4). D.C. Code Ann. § 2-534(e). Prior to this language being added to the statute, the Mayor's office and the Office of the Secretary had already relied on the common law deliberative process privilege to find documents are exempt from disclosure under § 2-534(a)(4) because they would not be available to a party in litigation with the agency. *Shaw Coalition Redevelopment Corp. v. Office of the Assistant City Adm'r for Econ. Dev.*, FOIA App. No. 90-20 (Office of the Mayor, July 17, 1994) (withholding documents related to an executive decision about real estate development); *Alonzo L. Williams v. Office of Superintendent*, FOIA App. No. 95-10 (Office of the Mayor, Aug. 11, 1995) (withholding memoranda from a hearing examiner whose recommendation was rejected by the Superintendent of Schools, the final arbiter of the decision at issue); see also *In re Appeal of the ACLU (National Prison Project)*, Matter No. 00-118630, 48 D.C. Reg. 2407 (Office of the Secretary, Mar. 6, 2001) (remanding case to D.C. Department of Corrections to determine whether requested memorandum is of a "predecisional" and "deliberative" character).

*e. Test Questions and Answers* (D.C. Code Ann. § 2-534(a)(5)) — This exemption does not appear in the federal act. It exempts test questions and answers to be used in future license, employment or academic examinations. It does not exempt previously administered exams or answers thereto.

However, if information regarding an exam — for example, a job applicants' test answers and general scoring protocols — would "compromise the legitimacy and fairness of an examination process by revealing test answers to be used in future exams," such information will fall within this exemption. *Francesca A. Clark v. Metro. Police Dep't*, FOIA App. No. 94-43 (Office of the Mayor, Sept. 29, 1995).

*f. Information Exempted by Other Statutes* (D.C. Code Ann. § 2-534(a)(6)) — This exemption is identical to the federal exemption. Compare § 2-534(a)(6) with 5 U.S.C.A. § 552(b)(3). It requires that information be specifically exempted from disclosure by another statute. Such exemption will not be inferred. *Barry v. Washington Post Co.*, 529 A.2d at 322. The exemption does not apply to certain ordinances, or other laws that are not "statutes." *Newspapers Inc.*, 546 A.2d at 997-1001; see also *In re Appeal of Grayson & Assocs., P.C.*, Matter No. 00-00240, 47 D.C. Reg. 4585 (Office of the Secretary, May 16, 2000) (Section 42-231 of the D.C. Unclaimed Property Act qualifies as a nondisclosure statute under § 2-534(a)(6)); *Velrey Props. Inc. v. Dep't of Human Servs.*, FOIA App. No. 94-45 (Office of the Mayor, May 17, 1995) (federal regulations are not statutes within the meaning of the Act); *In re Appeal of Clifton Jackson for Release of Inheritance Tax Return Form FR-19*, FOIA App. No. 90-7 (Office of the Mayor, May 19, 1991) (Inheritance and Estate Tax Revision Act, D.C. Code Ann. § 45-3719(a) & (c), is a stat-

ute within the meaning of the act, requiring nondisclosure of certain tax records).

*g. Information Exempted By Federal Law Because Of National Defense Or Foreign Policy Concerns* (D.C. Code Ann. § 2-534(a)(7)) — This exemption is virtually identical to the exemption in the federal act. Compare D.C. Code Ann. § 2-534(a)(7) with 5 U.S.C.A. § 552(b)(1)(A).

*h. Information Gained in Civil Antitrust Actions* (D.C. Code Ann. § 2-534(a)(8)) — This provision does not appear in the federal act. It exempts certain information gained by the D.C. Government during discovery or investigations carried out pursuant to local antitrust laws, D.C. Code Ann. § 28-4505.

*i. Information Disclosed In Arson Investigations* (D.C. Code Ann. § 2-534(a)(9)) — This exemption also does not appear in the federal act. It exempts information gained pursuant to local arson reporting laws, D.C. Code Ann. § 5-417.

*j. Specific Response Plans and Vulnerability Assessments* (D.C. Code Ann. § 2-534(a)(10)) — The D.C. Act exempts specific response plans for public emergency preparedness and prevention and specific vulnerability assessments that are intended to prevent or to mitigate an act of terrorism.

*k. Information Submitted to Business License Center* (D.C. Code Ann. § 2-534(a)(11)) — Information submitted to the Business License Center within the Department of Consumer and Regulatory Affairs, such as applications for business licenses, are exempted by the D.C. Act. A person, however, may be provided with information submitted to the Business License Center for one registrant based upon the submission of either the name or address of the registrant; persons are limited to one such request per day. Federal Employer Identification numbers and Social Security numbers shall not be released except if requested by a law enforcement agency or directed by court order.

*l. Information That Would Disclose the Identity of a Whistleblower* (D.C. Code Ann. § 2-534(a)(12)) — Information, the disclosure of which would reveal the name of an employee providing information under the whistleblower protection provisions of the D.C. Code, § 1-615.51 *et seq.* and § 2-223.01 *et seq.*, is exempt unless the name of the employee is already known to the public.

*m. Vital Records* (D.C. Code Ann. § 2-534(d)) — This exemption is unique to the D.C. Act. It provides that the provisions of the D.C. Act do not apply to the Vital Records Act of 1981, D.C. Code Ann. § 7-201. Unlike other exemptions, this exemption is not discretionary. Vital records include certificates or reports on birth, death, marriage, divorce, annulment and data related thereto. § 7-201(15). The Vital Records Act prohibits disclosure of those records except as provided by that chapter. § 7-219(a). Under the Vital Records Act, disclosure is permissible only to a person with a direct, tangible interest in the record. Such a person is defined as (1) a person about whom the information is gathered, and his or her immediate family, guardian or legal representative; or (2) a person who needs the information to determine or protect a personal or property right. The Vital Records Act contains criminal penalties for violations of its provisions. § 7-225.

#### **B. Other statutory exclusions.**

None.

#### **C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.**

Courts do not have the power to create additional exemptions. *Barry v. Washington Post Co.*, 529 A.2d at 321. Common law privileges are incorporated in D.C. Code Ann. § 2-534(a)(4) (allowing nondisclosure of documents that would not otherwise be available to a party in litigation).

#### **D. Are segregable portions of records containing exempt material available?**

Reasonably segregable portions of nonexempt information must be disclosed. D.C. Code Ann. § 2-534(b). See also *Washington Post Co. v.*

*Minority Bus. Opportunity Comm'n*, 560 A.2d at 522 (applying segregability requirement).

Interpreting the term “reasonably,” the Mayor’s office has ruled that the police department need not release 95,000 gun registration records with names and addresses redacted, as required by the Act’s privacy exemption, because doing so is “unreasonable.” *Washington Post Co. v. Metro. Police Dep’t*, FOIA App. No. 92-5 (Office of the Mayor, Sept. 24, 1995).

However, when material rendered nondisclosable by the privacy and trade secret exemptions can be redacted through reasonable efforts, the records must be released. *Susan J. Clain v. Educ. Licensure Comm’n*, FOIA App. No. 93-24 (Office of the Mayor, Oct. 3, 1993) (ordering release of evaluations of two for-profit schools, with unaudited financial statements and certain personnel information redacted).

When segregable portions of a public record are provided, the justifications for deleting portions of the record must be fully explained in writing. The extent of the deletion must be indicated on the portion of the record that is made available or published, unless including that indication would harm the interest protected by the statutory exemption. When technically feasible, the extent of the deletion and the specific exemptions shall be indicated at the place in the record where the deletion was made. D.C. Code Ann. § 2-534(b).

#### **E. Homeland Security Measures.**

The D.C. Act exempts specific response plans for public emergency preparedness and prevention and specific vulnerability assessments that are intended to prevent or to mitigate an act of terrorism. D.C. Code Ann. § 2-534(a)(10). The D.C. Act also exempts information exempted by federal law because of national defense or foreign policy concerns. D.C. Code Ann. § 2-534(a)(7).

### **III. STATE LAW ON ELECTRONIC RECORDS**

#### **A. Can the requester choose a format for receiving records?**

A public body making electronic records available must provide the records in any form or format requested, provided that the person requesting the records pays the costs of reproducing the record in that form or format. D.C. Code Ann. § 2-532(a-1).

#### **B. Can the requester obtain a customized search of computer databases to fit particular needs?**

A public body must make “reasonable efforts” to search for records in electronic form or format, except when the efforts would significantly interfere with the operation of the public body’s automated information system. D.C. Code Ann. § 2-532(a-2). “Reasonable efforts” means that a public body shall not be required to expend more than 8 hours of personnel time to reprogram or reformat records. *Id.* at § 2-532(f)(1).

#### **C. Does the existence of information in electronic format affect its openness?**

Information stored in an electronic format is expressly included in the definition of “public record” under the D.C. Act. D.C. Code Ann. § 2-502(18).

#### **D. How is e-mail treated?**

Although e-mail is not specifically addressed by the statute, it should fall within the definition of “public record,” which “includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics prepared, owned, used in the possession of, or retained by a public body” and expressly includes “information stored in an electronic format.” D.C. Code Ann. § 2-502(18).

##### **1. Does e-mail constitute a record?**

Not specifically addressed.

**2. Public matter on government e-mail or government hardware**

Not specifically addressed.

**3. Private matter on government e-mail or government hardware**

Not specifically addressed.

**4. Public matter on private e-mail**

Not specifically addressed.

**5. Private matter on private e-mail**

Not specifically addressed.

**E. How are text messages and instant messages treated?**

Not specifically addressed.

**1. Do text messages and/or instant messages constitute a record?**

Not specifically addressed.

**2. Public matter message on government hardware.**

Not specifically addressed.

**3. Private matter message on government hardware.**

Not specifically addressed.

**4. Public matter message on private hardware.**

Not specifically addressed.

**5. Private matter message on private hardware.**

Not specifically addressed.

**F. How are social media postings and messages treated?**

Not specifically addressed.

**G. How are online discussion board posts treated?**

Not specifically addressed.

**H. Computer software**

Not specifically addressed.

**1. Is software public?**

Not specifically addressed.

**2. Is software and/or file metadata public?**

Not specifically addressed.

**I. How are fees for electronic records assessed?**

Not specifically addressed.

**J. Money-making schemes.**

Not specifically addressed.

**1. Revenues.**

Not specifically addressed.

**2. Geographic Information Systems.**

Not specifically addressed.

**K. On-line dissemination.**

Not specifically addressed.

**IV. RECORD CATEGORIES — OPEN OR CLOSED**

**A. Autopsy reports.**

Under D.C. laws governing the medical examiner, any person with a “legitimate interest” may gain access to autopsy reports. D.C. Code Ann. § 5-1412(c). This right can be enforced by court order. *Id.* Although the government may attempt to protect autopsy reports by asserting the privacy, investigatory records or Vital Records Act exemptions, those exemptions do not permit nondisclosure if the Medical Examiner’s statute requires disclosure. D.C. Code Ann. § 2-534(c); *Dunhill v. Director*, 416 A.2d at 247-48.

**B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)**

Under D.C. Code § 2-534 (a)(3), “[i]nvestigatory records compiled for law-enforcement purposes” may be exempt from disclosure, “only to the extent that production of such records” could interfere with enforcement proceedings, deprive a person of an impartial adjudication, invade personal privacy, disclose a confidential source, disclose investigative techniques, or endanger the life or physical safety of law enforcement personnel.

**1. Rules for active investigations.**

Not specifically addressed.

**2. Rules for closed investigations.**

Not specifically addressed.

**C. Bank records.**

To the extent disclosure is prohibited by federal or other D.C. law, information may be withheld under D.C. Code Ann. § 2-534(a)(6). The financial information and trade secret exemption, D.C. Code Ann. § 2-534(a)(1), also might apply.

**D. Budgets.**

D.C. Code § 2-534 (a)(3) requires disclosure of “[b]udget requests, submissions and reports available electronically that agencies, boards and commissions transmit to the Office of Budget and Planning during the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports and strategic plans and performance-based budget submissions.”

**E. Business records, financial data, trade secrets.**

Trade secrets and commercial or financial information are specifically exempted under D.C. Code Ann. § 2-534(a)(1). Under the D.C. Act, this exemption applies only if “the party from whom the information was obtained faces actual competition.” *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d at 522. In addition, the D.C. Act exempts such information only “to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained.” § 2-534(a)(1).

**F. Contracts, proposals and bids.**

Information in or taken from any contract dealing with the receipt or expenditure of public or other funds by public bodies must be disclosed in accordance with D.C. Code Ann. § 2-536(a)(6). In other instances, the financial information and trade secret exemption, D.C. Code Ann. § 2-534(a), may come into play. *Shaw Coalition Redevelopment Corp. v. Office of the Assistant City Adm’r for Econ. Dev.*, FOIA App. No. 90-20 (Office of the Mayor, July 17, 1994).

A public body must make available for inspection and copying any record produced or collected pursuant to a contract with a private

contractor to perform a public function. The public body with programmatic responsibility for the contractor shall be responsible for making such records available to the same extent as if the records were maintained by the public body. D.C. Code Ann. § 2-532(a-3).

#### G. Collective bargaining records.

The financial data and trade secret exemption, D.C. Code Ann. § 2-534(a)(1), may apply. Generally, however, under D.C. Code Ann. § 2-536(a)(6), information in or taken from any contract dealing with the receipt or expenditure of public or other funds by public bodies must be disclosed.

#### H. Coroners reports.

Even though the government may attempt to protect these records by asserting the privacy, investigatory records or Vital Records Act exemptions, those exemptions do not permit nondisclosure if the Medical Examiner's statute requires disclosure. D.C. Code Ann. § 2-534(c); *Dunhill v. Director*, 416 A.2d at 247-48.

#### I. Economic development records.

Not specifically addressed.

#### J. Election records.

Not specifically addressed by any exemption. Certain election records are specifically available under D.C. law governing elections, D.C. Code Ann. § 1-1001.01 *et seq.*, and D.C. laws governing campaigns and lobbying, D.C. Code Ann. § 1101.01 *et seq.*

##### 1. Voter registration records.

Not specifically addressed.

##### 2. Voting results.

D.C. Code Ann. § 1-1001.09(k) requires the D.C. Board of Elections and Ethics to implement a "voting system" through which voting results are publicized.

#### K. Gun permits.

The privacy exemption, § 2-534(a)(2) or the investigatory records exemption, § 2-534(a)(3), may apply. *See Washington Post Co. v. Metro. Police Dep't*, FOIA App. No. 92-5 (Sept. 24, 1993) (refusing to disclose on privacy grounds names and addresses of registered gun owners, but agreeing to release information regarding licensed gun dealers because corporations have no privacy interests).

Weapons dealers must be licensed under the District's business licensing system to sell firearms, see D.C. Code § 22-4510. Under § 2-534(a)(11), information submitted to the Business License Center, such as applications for business licenses, is exempted by the D.C. Act. A person, however, may be provided with information submitted to the Business License Center for one registrant based upon the submission of either the name or address of the registrant; persons are limited to one such request per day. Federal Employer Identification numbers and Social Security numbers shall not be released except if requested by a law enforcement agency or directed by court order.

#### L. Hospital reports.

The privacy exemption, D.C. Code Ann. § 2-534(a)(2), may apply.

#### M. Personnel records.

Certain personnel records are arguably exempt under the privacy exemption, D.C. Code Ann. § 2-534(a)(2). *Cf. In re Appeal of Walter Thomas*, Matter No. 04-409467, 51 D.C. Reg. 6969 (Office of the Secretary, June 21, 2004) (ordering disclosure of names, professional qualifications and work experiences of successful job applicants but refusing to disclose other private information, such as home telephone numbers and addresses, Social Security numbers, marital status and personal references, about successful applicants or any information regarding unsuccessful job applicants).

#### 1. Salary.

Not specifically addressed.

#### 2. Disciplinary records.

Not specifically addressed.

#### 3. Applications.

Not specifically addressed.

#### 4. Personally identifying information.

In general, under D.C. Code Ann. § 2-534(a)(2), "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy" is exempt from disclosure.

#### 5. Expense reports.

Not specifically addressed.

#### N. Police records.

The privacy exemption, D.C. Code Ann. § 2-534(a)(2), investigatory records exemption, *id.* at § 2-534(a)(3), and arson reporting exemption, *id.* at § 2-534(a)(9), may apply. Complaints and other specified police records shall be open for public inspection under D.C. Code Ann. § 5-113.06.

The Mayor's office has ruled that when a defendant has pleaded guilty to a charge and a videotaped confession was never used against him in court, the privacy rights of the police officers involved (absent allegations of police misconduct) and the victim's family bring the videotape under the privacy exemption of the D.C. Act. The defendant was found to have forfeited his privacy rights, and parts of the tape could be made public that merely identified him as the perpetrator. The Mayor's office did, however, recognize that the police officers' privacy interests must be weighed on a case-by-case basis against the public interest served by releasing their identities and information about their practices and tactics. *In re Appeal of Molly Pauker, Esq.*, (un-numbered FOIA App.) (Office of the Mayor, Nov. 3, 1989).

No sex offender registration information is available as a public record except those records made public by regulations promulgated by the Mayor. D.C. Code Ann. § 22-4017.

#### 1. Accident reports.

D.C. Code Ann. § 5-113.06(c) permits disclosure of motor vehicle accident reports under certain conditions. To obtain report of a motor vehicle accident, one must not be prohibited from obtaining the information to solicit business, pursuant to D.C. Code Ann. § 22-3225.14. In addition, the person seeking information within 21 days of an accident must produce a photo ID and provide a signed statement identifying the requested report, the name of the requester, and states that the requester is not prohibited from obtaining the information.

#### 2. Police blotter.

Not specifically addressed.

#### 3. 911 tapes.

Not specifically addressed.

#### 4. Investigatory records.

Under D.C. Code § 2-534 (a)(3), "[i]nvestigatory records compiled for law-enforcement purposes" may be exempt from disclosure, "only to the extent that production of such records" could interfere with enforcement proceedings, deprive a person of an impartial adjudication, invade personal privacy, disclose a confidential source, disclose investigative techniques, or endanger the life or physical safety of law enforcement personnel.

**a. Rules for active investigations.**

Not specifically addressed.

**b. Rules for closed investigations.**

Not specifically addressed.

**5. Arrest records.**

Arrest books are open to public inspection under D.C. Code Ann. § 5-113.06(a).

**6. Compilations of criminal histories.**

Not specifically addressed.

**7. Victims.**

Not specifically addressed.

**8. Confessions.**

Not specifically addressed.

**9. Confidential informants.**

Not specifically addressed.

**10. Police techniques.**

Not specifically addressed.

**11. Mug shots.**

Not specifically addressed.

**12. Sex offender records.**

D.C. Code Ann. § 22-4011 gives the Court Services and Offender Supervision Agency for D.C. the authority to maintain registration of sex offenders, to affirmatively inform persons (through electronic notification, media release, or telephone calls, for example) regarding sex offenders, and to make information about sex offenders available for public inspection or in response to inquiries. The Code gives the Metropolitan Police Department authority and control over the system of public inspection by means of the Internet.

**13. Emergency medical services records.**

Not specifically addressed.

**O. Prison, parole and probation reports.**

The privacy exemption, D.C. Code Ann. § 2-534(a)(2), or the investigatory records exemption, *id.* at § 2-534(a)(3), may apply. *See also Hines v. Board of Parole*, 567 A.2d at 913 (exempting disclosure of inmates' pre-sentence reports, mental health assessments, academic records and records of progress within prison). The court generally should attempt to balance the privacy interests of those who are the subjects of the documents in question, or those harmed by their release, with the public interest in the release of the documents. *See id.* at 912. However, disclosure of certain portions may be required pursuant to D.C. Code Ann. § 2-536(a)(3) if those portions reflect the final opinion in an adjudicatory proceeding.

**P. Public utility records.**

Not specifically addressed. Depending on the records, could fall within one or more exemptions.

**Q. Real estate appraisals, negotiations.**

D.C. Code Ann. § 42-1206 provides that “[a]ll public records which have reference to or in any way relate to real or personal property in the District of Columbia, whether the same be in the office of the Recorder of Deeds or in some other public office in the District of Columbia, shall be open to the public for inspection free of charge.”

**R. School and university records.**

Not specifically addressed.

**1. Athletic records.**

Not specifically addressed.

**2. Trustee records.**

Not specifically addressed.

**3. Student records.**

Not specifically addressed.

**4. Other.**

Not specifically addressed.

**S. Vital statistics.**

Information gathered under the Vital Records Act is excluded from the D.C. Act altogether, and can only be disclosed pursuant to the terms of the Vital Records Act. § 2-534(d). The Vital Records Act prohibits disclosure of the records noted below except as provided by that chapter. § 7-219(a). Under the Vital Records Act, disclosure is permissible only to a person with a direct, tangible interest in the record. Such a person is defined as (1) a person about whom the information is gathered, and his or her immediate family, guardian or legal representative; or (2) a person who needs the information to determine or protect a personal or property right.

**V. PROCEDURE FOR OBTAINING RECORDS****A. How to start.****1. Who receives a request?**

The D.C. Act requires a “public body” to act on a FOIA request reasonably describing any public record. FOIA requests under the D.C. Act should be directed to the Freedom of Information Officer of the public body or agency that maintains the requested records or, if there is no FOIA Officer, to the head of the public body or agency that maintains the requested records.

**2. Does the law cover oral requests?**

Although the D.C. Act does not expressly address oral requests as a general matter, it seems to allow for oral requests, although a requester may be asked to submit in writing a request for records. *See* 1 DCMR §§ 402.1 & 402.2. In order for there to be a record of what was requested, it may be prudent to submit requests in writing. In addition, § 2-536 specifically provides that the records described in that section are public information “and do not require a written request for information.”

**a. Arrangements to inspect & copy.**

The D.C. Act provides that a person has a right to inspect “at his or her discretion,” and copy “any public record of a public body” unless otherwise exempted “in accordance with reasonable rules that shall be issued by a public body after notice and comment, concerning the time and place of access.” § 2-532(a).

**b. If an oral request is denied:**

Although the D.C. Act does not expressly address the question of procedure after an oral request is denied, after receiving a formal denial, or a denial by operation of the fact that no determination is made within the statutory time period, a requester may appeal the decision to the Mayor. D.C. Code Ann. § 2-537(a).

**(1). How does the requester memorialize the refusal?**

Not specifically addressed.

**(2). Do subsequent steps need to be in writing?**

Not specifically addressed.

**3. Contents of a written request.**

**a. Description of the records.**

The public body must act on any request “reasonably describing any public record.” D.C. Code Ann. § 2-532(c). Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation or other identifying information should be supplied. The Mayor’s office has ruled that a requester does not have a right to receive an answer to a general interrogatory, and that an agency does not have to respond to a request if it requires investigation or creating a new record. Therefore, it would seem that a requester should identify specific records to which he or she desires access. *D.C. Action for Children v. Dep’t of Human Serv.*, FOIA App. No. 95-16 (Office of the Mayor, Oct. 2, 1995).

**b. Need to address fee issues.**

The D.C. Act allows public bodies to collect fees for the actual costs of searching, reviewing and/or copying records. D.C. Code Ann. § 2-532(b). As discussed above, the fee schedules that may be adopted by a public body vary depending on the purpose of the request and the identity of the requester. Requesters may include in their request letters a specific statement limiting the amount of fees they are willing to pay.

Requesters may also request a waiver or reduction of fees in their request letters. To request a waiver or reduction of fees, requesters should include in their request letters a description of how the requested records will be used to benefit the general public. *See* D.C. Code Ann. § 2-532(b). As a matter of practice, a member of the media should state in a request that furnishing the requested information can be considered as primarily benefiting the general public and specifically request a waiver of fees as being in the public interest. If a waiver of fees is requested, however, it should also be stated that the requester is prepared to pay the reasonable fees incurred, at least up to some stated amount, should the waiver be denied.

**c. Plea for quick response.**

The D.C. Act does not contain a provision for requesting expedited consideration. Under the D.C. Act, disclosure must be made, or denied, within 15 days, excluding weekends and legal holidays. D.C. Code Ann. § 2-532(c). In unusual circumstances, defined by the statute, an agency may extend the deadline up to 10 days, excluding weekends and holidays. *Id.* at § 2-532(d).

**d. Can the request be for future records?**

Not specifically addressed.

**e. Other.**

The request itself and the outside of the envelope it is in, or the subject line of the fax cover page or e-mail with which it is sent, should indicate that it is a Freedom of Information Act Request. Requesters should include a daytime telephone number, e-mail address or mailing address so that they can be contacted regarding their request.

**B. How long to wait.**

**1. Statutory, regulatory or court-set time limits for agency response.**

Disclosure must be made, or denied, within 15 days, excluding weekends and legal holidays. D.C. Code Ann. § 2-532(c). In unusual circumstances, defined by the statute, an agency may extend the deadline up to 10 days, excluding weekends and holidays. *Id.* § 2-532(d).

**2. Informal telephone inquiry as to status.**

There is no prohibition against, or specific allowance for, telephone inquiries as to status of a request.

**3. Is delay recognized as a denial for appeal purposes?**

Failure to respond within the statutory time frame is considered a denial and an exhaustion of remedies, unless an appeal to the Mayor is brought. D.C. Code Ann. § 2-532(e).

**4. Any other recourse to encourage a response.**

An appeal to the Mayor’s office draws the attention of the agency, or the agency’s FOIA officer, to a neglected FOIA request, and the matter may thereby be resolved. *See, e.g., E7D Assocs. Inc. v. Office of the D.C. Controller*, FOIA App. No. 95037 (Office of the Mayor, Sept. 26, 1995) (appeal of constructive denial dismissed because request was addressed).

**C. Administrative appeal.**

**1. Time limit.**

After receiving a formal denial, or a denial by operation of the fact that no determination is made within the statutory time period, a requester may appeal the decision to the Mayor. D.C. Code Ann. § 2-537(a).

*Note:* The Secretary of the District of Columbia has been delegated the authority vested in the Mayor to render final decisions on appeals under the D.C. FOIA.

A person denied the right to inspect a public record in the possession of the Council need not appeal to the Mayor and may institute court proceedings. D.C. Code Ann. § 2-537(a-1).

**2. To whom is an appeal directed?**

An appeal should be directed to the Mayor. D.C. Code Ann. § 2-537(a). A copy of the appeal should be provided to the public body whose denial is being appealed.

**3. Fee issues.**

There is no specific provision regarding the appeal of fees. The language of D.C. Code § 2-537(a) — “[a]ny person denied the right to inspect a public record of a public body may petition the Mayor . . .” — may give a requester room to argue that his or her “right to inspect a public record” has been effectively denied by the imposition of an unaffordably high fee.

**4. Contents of appeal letter.**

The appeal should be as specific as possible and present the arguments, circumstances or reasons in support of disclosure. It should also include copies of the request and denial. Recorded appeal decisions often refer to submissions filed by the appealing requester which include case citations and legal argument.

The appeal letter itself and the outside of the envelope it is in should indicate that it is a Freedom of Information Act Appeal.

**a. Description of records or portions of records denied.**

The appeal should be as specific as possible and present the arguments, circumstances or reasons in support of disclosure. It should also include copies of the request and denial.

**b. Refuting the reasons for denial.**

The appeal should be as specific as possible and present the arguments, circumstances or reasons in support of disclosure. It should also include copies of the request and denial. Recorded appeal decisions often refer to submission filed by the appealing requester which include case citations and legal argument.

**5. Waiting for a response.**

The Mayor has 10 days, not including weekends and holidays, in which to act on the appeal. D.C. Code Ann. § 2-537(a).

## 6. Subsequent remedies.

If the Mayor denies the appeal, or fails to act within 10 working days, court review is possible. D.C. Code Ann. § 2-537(a)(1).

### D. Court action.

#### 1. Who may sue?

Other than with respect to documents in the possession of the D.C. Council, any individual may commence court proceedings to challenge the withholding of documents if: (a) no response is made within the statutory time period following the initial request; (b) the Mayor denies an appeal; (c) the Mayor fails to act on an appeal within the statutory time period; or (d) an agency has failed to release documents, even though the Mayor has authorized the documents to be released. D.C. Code Ann. § 2-537(a)(1), (2).

Any person denied the right to inspect a public record in the possession of the D.C. Council may initiate court proceedings to challenge the withholding. D.C. Code Ann. § 2-537(a-1).

#### 2. Priority.

There is no statutory priority given to FOIA suits.

#### 3. Pro se.

A requester may proceed *pro se*. A requester proceeding *pro se* is not entitled to attorneys' fees if he or she ultimately prevails on the claim. *Donabue v. Thomas*, 618 A.2d 601 (D.C. 1992).

#### 4. Issues the court will address:

The court reviews the matter *de novo*, D.C. Code § 2-537(b), and should provide a decision that is sufficiently detailed to demonstrate that such review has occurred. The decision should articulate the precise relationship between each claim for exemption and the contents of the specific documents held to be exempt. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d at 523. In addition, the court is permitted to examine any withheld documents *in camera* to determine whether they should be exempt. D.C. Code Ann. § 2-537(b). However, requests for *in camera* inspection must be relatively focused. When a party has simply requested a mass of documents, many of which are clearly exempt from release, the court has no obligation to review the documents to determine whether they contain some parts that may be disclosed. *Hines v. Board of Parole*, 567 A.2d at 913.

#### 5. Pleading format.

The Superior Court rules apply.

#### 6. Time limit for filing suit.

No time limit is provided in the D.C. Act.

#### 7. What court.

Suits should be filed in the Superior Court for the District of Columbia. D.C. Code Ann. § 2-537(b).

## 8. Judicial remedies available.

The D.C. Act specifically authorizes injunctive or declaratory relief. D.C. Code Ann. § 2-537(a)(1). In any suit brought under the D.C. Act, the government has the burden of proof. *Id.* at § 2-537(b).

### 9. Litigation expenses.

A requester who prevails in a court action may be awarded reasonable attorneys' fees and costs. D.C. Code Ann. § 2-537(c). A requester proceeding *pro se* is not entitled to attorney fees. *Donabue v. Thomas*, 618 A.2d 601 (D.C. 1992). A requester who prevails in his or her request is entitled to costs only for documents released pursuant to the action before the court. *McReady v. Dep't of Consumer & Regulatory Affairs*, 618 A.2d 609 (D.C. 1992); *see also Donabue*, 618 A.2d at 605 (remanding issue of costs for trial court to resolve conflicting rulings about which party in fact prevailed in the action).

### 10. Fines.

Any person who commits an arbitrary or capricious violation of the provisions of the D.C. Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100. D.C. Code Ann. § 2-537(d). All employees of the D.C. government are responsible for compliance with the provisions of the D.C. Act. D.C. Code Ann. § 2-537(e).

### 11. Other penalties.

Not addressed.

### 12. Settlement, pros and cons.

The dearth of reported cases in the District and anecdotes from reporters suggest that most disputed requests are settled through the Mayor's (now the Office of the Secretary's) FOIA officer. The obvious point is that settling has no precedential value for other similar disputes that arise, and it may be worthwhile to establish clear rules for new and potentially highly contested areas.

## E. Appealing initial court decisions.

### 1. Appeal routes.

The rules governing appeals from the District of Columbia Superior Court apply.

### 2. Time limits for filing appeals.

The rules governing appeals from the District of Columbia Superior Court apply.

### 3. Contact of interested amici.

The Reporters Committee for Freedom of the Press has a substantial interest in reporters' right of access to government information and frequently files friend-of-the court briefs on open records issues.

## F. Addressing government suits against disclosure.

The D.C. Act does not address government suits against disclosure.

# Open Meetings

## I. STATUTE — BASIC APPLICATION.

### A. Who may attend?

The District of Columbia “Open Meetings Act,” D.C. Code Ann. § 1-207.42, provides access to “the public.” *Id.* § 1-207.42(a).

### B. What governments are subject to the law?

The Open Meetings Act, which replaced the previous Sunshine Act, was signed into law in January 2011 and has yet to be the subject of any reported cases. The Act provides that “[a]ll meetings (including hearings) of any department, agency, board or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public.” D.C. Code Ann. § 1-207.42(a).

#### 1. State.

Not applicable

#### 2. County.

Not applicable

#### 3. Local or municipal.

The Act provides that “[a]ll meetings (including hearings) of any department, agency, board or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public.” D.C. Code Ann. § 1-207.42(a).

### C. What bodies are covered by the law?

The Open Meetings Act provides that “[a]ll meetings (including hearings) of any department, agency, board or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public.” D.C. Code Ann. § 1-207.42(a). “Meeting” is defined as “any gathering of a quorum of the members of a public body... at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless of whether held in person, by telephone, electronically, or by other means of communication.” *Id.* § 2-573(1). The Act then defines “public body” to *include* only the boards that supervise or control agencies and the boards of directors of instrumentalities, and to *exclude* any District agency or instrumentality itself. D.C. Code Ann. § 2-573(3).

#### 1. Executive branch agencies.

The Open Meetings Act provides that “[a]ll meetings (including hearings) of any department, agency, board or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public.” D.C. Code Ann. § 1-207.42(a). For purposes of the open meeting rule, the Act defines a “meeting” as “any gathering of a quorum of the members of a public body...at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless of whether held in person, by telephone, electronically, or by other means of communication.” *Id.* § 2-573(1). The Act then defines “public body” to *include* only the boards that supervise or control agencies and the boards of directors of instrumentalities, and to *exclude* any District agency or instrumentality itself. D.C. Code Ann. § 2-573(3).

#### b. Are certain executive functions covered?

The Act does not restrict its application only to certain executive functions.

### c. Are only certain agencies subject to the act?

The Act does not restrict its application only to “meetings,” as defined in the statute of particular agencies.

#### 2. Legislative bodies.

The D.C. Council is subject to the Open Meetings Act. D.C. Code Ann. § 1-207.42(a); *id.* § 2-573(3).

#### 3. Courts.

The Open Meetings Act does not apply to District of Columbia courts. For purposes of the open meeting requirement, the Act defines a “meeting” as “any gathering of a quorum of the members of a public body...at which the members consider, conduct, or advise on public business.” D.C. Code Ann. § 2-573(1). The Act excludes District of Columbia courts from the definition of a “public body.” *Id.* § 2-573(3).

#### 4. Nongovernmental bodies receiving public funds or benefits.

The Open Meetings Act does not apply to “[g]overning bodies of individual public charter schools.” D.C. Code Ann. § 2-573(3). Like District of Columbia courts, governing bodies of individual charter schools are excluded from the definition of “public body.” *Id.* The Act otherwise does not discuss its applicability to nongovernmental bodies receiving public funds or benefits.

#### 5. Nongovernmental groups whose members include governmental officials.

Not specifically addressed.

#### 6. Multi-state or regional bodies.

Not specifically addressed.

#### 7. Advisory boards and commissions, quasi-governmental entities.

The Open Meetings Act applies to meetings of an “advisory body that takes official action by the vote of its members convened for such purpose.” D.C. Code Ann. § 2-573(3). The Act does not apply to meetings of Advisory Neighborhood Commissions, provided that those meetings comply with the requirements set forth in D.C. Code Ann. § 1-309.11.

#### 8. Other bodies to which governmental or public functions are delegated.

The Open Meetings Act applies to meetings of “a board of directors of an instrumentality.” D.C. Code Ann. § 2-573(3).

#### 9. Appointed as well as elected bodies.

Not specifically addressed.

### D. What constitutes a meeting subject to the law.

The Open Meetings Act defines a meeting as “any gathering of a quorum of the members of a public body, including hearings and roundtables, whether formal or informal, regular, special, or emergency, at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless of whether held in person, by telephone, electronically, or by other means of communication.” D.C. Code Ann. § 2-573(1). A public body is “any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, or an advisory body that takes official action by the vote of its members convened for such purpose.” *Id.* § 2-573(3). Section 2-573(3) also lists several bodies that do not fall within the definition of “public body” and thus are exempt from the open meetings requirements:

(A) A District agency or instrumentality (other than the board which supervises or controls an agency or the board of directors of an instrumentality);

(B) The District of Columbia courts;

(C) Governing bodies of individual public charter schools;

(D) The Mayor's cabinet;

(E) The professional or administrative staff of public bodies when they meet outside the presence of a quorum of those bodies; or

(F) Advisory Neighborhood Commissions; provided, that this subchapter shall not affect the requirements set forth in § 1-309.11.

### 1. Number that must be present.

A "quorum" of the members of a given public body must be present in order for a gathering to constitute a meeting subject to the Act. D.C. Code Ann. § 2-573(1).

#### a. Must a minimum number be present to constitute a "meeting"?

A "quorum" of the members of a given public body must be present in order for a gathering to constitute a "meeting" subject to the Act. D.C. Code Ann. § 2-573(1).

#### b. What effect does absence of a quorum have?

Absent a quorum, a gathering of a public body presumably does not constitute a "meeting" subject to the Act. D.C. Code Ann. § 2-573(1).

### 2. Nature of business subject to the law.

The Open Meetings Act applies to all meetings "at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting." D.C. Code Ann. § 2-573(1).

#### a. "Information gathering" and "fact-finding" sessions.

The Open Meetings Act applies to information gathering sessions. D.C. Code Ann. § 2-573(1).

#### b. Deliberations toward decisions.

The Open Meetings Act applies to meetings involving deliberations over public business. D.C. Code Ann. § 2-573(1).

### 3. Electronic meetings.

Electronic meetings are subject to the Open Meetings Act. D.C. Code Ann. § 2-573(1).

#### a. Conference calls and video/Internet conferencing.

Meetings held by telephone "or by other means of communication" are subject to the Open Meetings Act. D.C. Code Ann. § 2-573(1)..

#### b. E-mail.

The Act contains a specific exemption for e-mail exchanges. It states that e-mail exchanges "shall not constitute an electronic meeting." D.C. Code Ann. § 2-576(c).

#### c. Text messages.

Although the Open Meetings Act does not specifically address meetings conducted by text message, it applies to meetings held by any "means of communication." D.C. Code Ann. § 2-573(1). This catch-all category may include text messages, especially when read in light of the instruction to construe the Act broadly to maximize public access to meetings. *Id.* § 2-572. No reported case in the District of Colum-

bia has considered whether text messages are sufficiently analogous to e-mails to come within the statute's exemption for e-mail exchanges.

#### d. Instant messaging.

Although the Open Meetings Act does not specifically address meetings conducted by instant messaging, it applies to meetings held by any "means of communication." D.C. Code Ann. § 2-573(1). This catch-all category may include instant messages, especially when read in light of the instruction to construe the Act broadly to maximize public access to meetings. *Id.* § 2-572. No reported case in the District of Columbia has considered whether instant messages are sufficiently analogous to e-mails to come within the statute's exemption for e-mail exchanges.

#### e. Social media and online discussion boards.

Although the Open Meetings Act does not specifically address meetings conducted by social media or online discussion boards, it applies to meetings held by any "means of communication." D.C. Code Ann. § 2-573(1). This catch-all category may include social media and online discussion boards, especially when read in light of the instruction to construe the Act broadly to maximize public access to meetings. *Id.* § 2-572. No reported case in the District of Columbia has considered whether social media and online discussion boards are sufficiently analogous to e-mails to come within the statute's exemption for e-mail exchanges.

### E. Categories of meetings subject to the law.

The Open Meetings Act applies to all meetings "whether formal or informal, regular, special, or emergency." D.C. Code Ann. § 2-573(1). Although the District of Columbia Court of Appeals has not yet had an opportunity to consider the Act's impact on its interpretations of D.C.'s previous open meetings statute, the Act appears to have been intended to "broaden" the prior statute, *see* Council of the D.C. Comm. on Gov't Operations and Env't, Report on Bill 18-716, the "Open Meetings Act of 2010," at 5 (D.C. 2010) [hereinafter Committee Report], *available at* <http://tinyurl.com/3d48m9z>, and reverse the D.C. Court of Appeals' practice of interpreting the open meetings requirement narrowly. *See* D.C. Code Ann. § 2-572 (instructing that the Act "shall be construed broadly to maximize public access to meetings"); Committee Report, *supra*, at 3 (blaming the previous statute's "failure to create clear definitions, clear procedures, and specific exemptions" for District bodies' tendency "to interpret the law narrowly").

#### 1. Regular meetings.

Open meeting requirements apply to regular meetings. D.C. Code Ann. § 2-573(1).

##### a. Definition.

Not specifically addressed.

##### b. Notice.

Notice must be provided "when meetings are scheduled and when the schedule is changed." The Act requires public bodies to establish and continually update an annual schedule of its meetings so as to provide maximum possible notice. D.C. Code Ann. § 2-575(1).

##### (1). Time limit for giving notice.

The Open Meetings Act requires a public body to provide notice "as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting." D.C. Code Ann. § 2-575(1).

##### (2). To whom notice is given.

Notice shall be posted 1) in the office of the public body or a location that is readily accessible to the public, and 2) on the website of the public body or the District government. D.C. Code Ann. § 2-575(2). Notice also must be published in the District of Columbia register "as timely as practicable." *Id.* § 2-575(3).

**(3). Where posted.**

Notice shall be posted 1) in the office of the public body or a location that is readily accessible to the public, and 2) on the website of the public body or the District government. D.C. Code Ann. § 2-575(2). Notice also must be published in the District of Columbia register “as timely as practicable.” *Id.* § 2-575(3).

**(4). Public agenda items required.**

Each meeting notice must include the date, time, location, and planned agenda to be covered in the meeting. D.C. Code Ann. § 2-575(5).

**(5). Other information required in notice.**

If the meeting or any portion of the meeting is to be closed, the notice also must, if feasible, provide a notice of intent to close the meeting and citations to the reason for closure under § 2-574(b), discussed *infra*. D.C. Code Ann. § 2-575(5).

**(6). Penalties and remedies for failure to give adequate notice.**

Section 2-578 of the Open Meetings Act specifies several remedies and penalties for failure to give adequate notice:

- 1) If the court finds that a resolution, rule, act, regulation, or other official action was taken, made, or enacted in violation of the Act, the court may order an appropriate remedy, including requiring additional forms of notice, postponing a meeting, or declaring action taken at a meeting to be void. Actions shall not be declared void unless the court finds that the balance of equities compels the action or the court concludes that the violation was not harmless.
- 2) If the court finds that a public body plans to hold a closed meeting or portion of a meeting in violation of the Act, the court may a) enjoin the public body from closing the meeting or portion of the meeting; b) order that future meetings of the same kind be open to the public; or c) order that the record of a meeting be made public.
- 3) If the court finds that a member of a public body engages in a pattern or practice of willfully participating in one or more closed meetings in violation of the provisions of the Open Meetings Act, the court may impose a civil fine of not more than \$ 250 for each violation.
- 4) The Act also authorizes courts to grant “such additional relief as it finds necessary to serve the purposes” of the Act.

**c. Minutes.**

All meetings, whether open or closed, must be recorded electronically, unless a recording is not feasible, in which case detailed minutes must be kept. D.C. Code Ann. § 2-577.

**(1). Information required.**

At a minimum, public bodies must keep detailed minutes of their meetings. However, whenever feasible, they must record their meetings electronically. D.C. Code Ann. § 2-577(a).

**(2). Are minutes public record?**

Records of a meeting are available to the public unless the records, or a portion of the records, may be withheld under the standard established for closed meetings in § 2-574(b), discussed *infra*. Records of the minutes of a meeting must be available for public inspection no later than three business days after the meeting. Full records of a meeting must be available for public inspection no later than seven business days after the meeting. D.C. Code Ann. § 2-577(b).

**2. Special or emergency meetings.**

Open meeting requirements apply to both special and emergency

meetings, subject to particular exceptions discussed *infra*. D.C. Code Ann. § 2-573(1).

**a. Definition.**

Not specifically addressed.

**b. Notice requirements.**

Special meetings are subject to the same notice requirements as regular meetings. However, the Act provides distinct notice requirements for emergency meetings and requires that when an emergency meeting is convened, the presiding officer must open the meeting with a statement explaining, among other things, how public notice was provided. D.C. Code Ann. § 2-576(d).

**(1). Time limit for giving notice.**

A public body must give public notice of an emergency meeting at the same time it provides notice to its members. D.C. Code Ann. § 2-575(4). Thus, emergency meetings are exempt from the minimum notice period applicable to regular and special meetings.

**(2). To whom notice is given.**

A public body may give notice of an emergency meeting by posting in the office of the public body, in a location readily accessible to the public, *or* on the website of the public body or the district government. D.C. Code Ann. § 2-575(4). The posting requirement for emergency meetings is relaxed in comparison to that for regular and special meetings, for which notice must be posted in multiple venues.

**(3). Where posted.**

A public body may give notice of an emergency meeting by posting in the office of the public body, in a location readily accessible to the public, *or* on the website of the public body or the district government. D.C. Code Ann. § 2-575(4). The posting requirement for emergency meetings is relaxed in comparison to that for regular and special meetings, for which notice must be posted in multiple venues.

**(4). Public agenda items required.**

Each meeting notice must include the date, time, location, and planned agenda to be covered in the meeting. D.C. Code Ann. § 2-575(5).

**(5). Other information required in notice.**

If the meeting or any portion of the meeting is to be closed, the notice also must, if feasible, provide a notice of intent to close the meeting and citations to the reason for closure under § 2-574(b), discussed *infra*. D.C. Code Ann. § 2-575(5).

**(6). Penalties and remedies for failure to give adequate notice.**

The penalties and remedies for failure to give adequate notice of special or emergency meetings are the same as those for failure to give adequate notice of regular meetings, D.C. Code Ann. §§ 2-578(c)-(f):

- 1) If the court finds that a resolution, rule, act, regulation, or other official action was taken, made, or enacted in violation of the Act, the court may order an appropriate remedy, including requiring additional forms of notice, postponing a meeting, or declaring action taken at a meeting to be void. Actions shall not be declared void unless the court finds that the balance of equities compels the action or the court concludes that the violation was not harmless.
- 2) If the court finds that a public body plans to hold a closed meeting or portion of a meeting in violation of the Act, the court may a) enjoin the public body from closing the meeting or portion of the meeting; b) order that future meetings of the same kind be open to the public; or c) order that the record of a meeting be made public.

- 3) If the court finds that a member of a public body engages in a pattern or practice of willfully participating in one or more closed meetings in violation of the provisions of the Open Meetings Act, the court may impose a civil fine of not more than \$ 250 for each violation.
- 4) The Act also authorizes courts to grant “such additional relief as it finds necessary to serve the purposes” of the Act.

### c. Minutes.

Special and emergency meetings are subject to the same records-keeping requirements as regular meetings, discussed *supra*. See D.C. Code Ann. § 2-577.

#### (1). Information required.

At a minimum, public bodies must keep detailed minutes of their meetings. However, whenever feasible, they must record their meetings electronically. D.C. Code Ann. § 2-577(a).

#### (2). Are minutes a public record?

Records of a meeting are available to the public unless the records, or a portion of the records, may be withheld under the standard established for closed meetings in § 2-574(b), discussed *infra*. Records of the minutes of a meeting must be publicly available no later than three business days after the meeting. Full records of a meeting must be publicly available no later than seven business days after the meeting. D.C. Code Ann. § 2-577(b).

### 3. Closed meetings or executive sessions.

The Open Meetings Act creates limited exceptions to the open meetings rule. Section 2-574(b) specifies the following reasons justifying the closing of a meeting:

- (1) A law or court order requires that a particular matter or proceeding not be public;
- (2) To discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the public body;
- (3) To discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;
- (4) (A) To consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements; provided, that, upon request, the public body may decide to waive the privilege.  
(B) But nothing in the Act shall be construed to permit a public body to close a meeting that would otherwise be open merely because the attorney for the public body is a participant;
- (5) Planning, discussing, or conducting specific collective bargaining negotiations;
- (6) Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;
- (7) To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award;
- (8) To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if

and when the public would not be endangered by that disclosure;

- (9) To discuss disciplinary matters;
- (10) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials;
- (11) To discuss 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;
- (12) To train and develop members of a public body and staff;
- (13) To deliberate upon a decision in an adjudication action or proceeding by a public body exercising quasi-judicial functions; and
- (14) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation.

#### a. Definition.

The Open Meetings Act does not specifically define what makes a meeting “closed.” However, the Act states that a meeting shall be deemed *open* to the public if 1) the public is permitted to be physically present; 2) the news media, as defined in D.C. Code Ann. § 16-4701, is permitted to be physically present; or 3) the meeting is televised. D.C. Code Ann. § 2-574(a). Presumably, any meeting that does not satisfy at least one of those conditions is considered closed.

#### b. Notice requirements.

##### (1). Time limit for giving notice.

Closed meetings are subject to the same notice requirements as open meetings, discussed *supra*. See D.C. Code Ann. § 2-575(1).

##### (2). To whom notice is given.

Closed meetings are subject to the same notice requirements as open meetings, discussed *supra*. See D.C. Code Ann. § 2-575(1).

##### (3). Where posted.

Closed meetings are subject to the same notice requirements as open meetings, discussed *supra*. See D.C. Code Ann. § 2-575(1).

##### (4). Public agenda items required.

Closed meetings are subject to the same notice requirements as open meetings, discussed *supra*. See D.C. Code Ann. § 2-575(1).

##### (5). Other information required in notice.

Closed meetings are subject to the same notice requirements as open meetings, discussed *supra*. See D.C. Code Ann. § 2-575(1).

##### (6). Penalties and remedies for failure to give adequate notice.

In addition to their general authority to order appropriate remedies for violations of the Open Meetings Act, courts have special authorities related to closed meetings. First, if a court finds that a member of a public body engages in a pattern or practice of willfully participating in one or more closed meetings in violation of the provisions of the Open Meetings Act, —presumably including those related to adequate notice—the court may impose a civil fine of not more than \$ 250 for each violation. See D.C. Code Ann. § 2-578(e). Second, if a court finds that a public body plans to hold a closed meeting in violation of the Act, it may enjoin the public body from closing the meeting, order that future meetings of the same kind be open, or order that the record of a meeting be made public. *Id.* § 2-578(c).

### c. Minutes.

#### (1). Information required.

Closed meetings are subject to the same record-keeping requirements as open meetings. Thus, all closed meetings must be recorded electronically, unless a recording is not feasible, in which case detailed minutes must be kept. *See* D.C. Code Ann. § 2-577(a).

#### (2). Are minutes a public record?

Minutes may be withheld from the public record under the standards established for closed meetings in D.C. Code Ann. § 2-574(b).

### d. Requirement to meet in public before closing meeting.

Before closing a meeting or portion of a meeting, a public body must meet in public session and a majority of members present must vote in favor of closure. D.C. Code Ann. § 2-574(c)(1).

### e. Requirement to state statutory authority for closing meetings before closure.

Before closure, the presiding officer must make a statement providing the reason(s) for closure, citing the relevant authority in D.C. Code Ann. § 2-574(b), and providing the subjects to be discussed in closed session. *Id.* § 2-574(c)(2).

### f. Tape recording requirements.

Whenever feasible, meetings must be recorded electronically. Whenever recording is not feasible, detailed minutes of the meeting must be kept. D.C. Code Ann. § 2-577.

## F. Recording/broadcast of meetings.

Whenever feasible, meetings must be recorded by electronic means. Any recording or transcript of an open meeting must be made available to the public for inspection. D.C. Code Ann. § 2-577.

The Open Meetings Act states that televising a meeting is sufficient to have it deemed open to the public. D.C. Code Ann. § 2-574(a). However, no provision specifically requires or permits the broadcasting of meetings.

In part because the law does not specifically address the taping of meetings, two reporters were arrested in June 2011 for filming a D.C. Taxicab Commission meeting. Commission Chairwoman Dena C. Reed initially defended the arrests on the grounds that the Commission had banned videotaping of its proceedings because it found television cameras to be disruptive. *See* Mike DeBonis, *D.C. Taxicab Commission Says It Banned “Disruptive” Videotaping*, Wash. Post, June 23, 2011, [http://www.washingtonpost.com/blogs/mike-debonis/post/dc-taxicab-commission-says-it-banned-disruptive-videotaping/2011/06/23/AGzLMdhH\\_blog.html?wprss=mike-debonis](http://www.washingtonpost.com/blogs/mike-debonis/post/dc-taxicab-commission-says-it-banned-disruptive-videotaping/2011/06/23/AGzLMdhH_blog.html?wprss=mike-debonis).

The Commission subsequently reversed its policy to permit “a member of the public, including any representative of the media, [to] record or photograph the proceedings of the Commission at an open meeting by means of a tape recorder or any other recording device so long as the person does not impede the orderly conduct of the meeting.” Under the new policy, the Commission may restrict the movement of a person using a recording device if such restriction is necessary to maintain the orderly conduct of the meeting. The Commission also is not responsible for providing a power source or staging accommodations for any recording devices or cameras. *See* Press Release, D.C. Taxicab Comm’n, Open Meetings Policy and Protocol (Aug. 1, 2011), *available at* <http://newsroom.dc.gov/show.aspx/agency/dctaxi/section/2/release/22219/year/2011>.

### 1. Sound recordings allowed.

Not specifically addressed.

### 2. Photographic recordings allowed.

Not specifically addressed.

### G. Are there sanctions for noncompliance?

The Open Meetings Act does not create a private cause of action for violations of the statute. It instead entrusts enforcement to D.C.’s Open Government Office. D.C. Code Ann. § 2-578(a). Section 2-578 of the Act specifies several remedies and penalties for noncompliance:

- 1) If the court finds that a resolution, rule, act, regulation, or other official action was taken, made, or enacted in violation of the Act, the court may order an appropriate remedy, including requiring additional forms of notice, postponing a meeting, or declaring action taken at a meeting to be void. Actions shall not be declared void unless the court finds that the balance of equities compels the action or the court concludes that the violation was not harmless.
- 2) If the court finds that a public body plans to hold a closed meeting or portion of a meeting in violation of the Act, the court may a) enjoin the public body from closing the meeting or portion of the meeting; b) order that future meetings of the same kind be open to the public; or c) order that the record of a meeting be made public.
- 3) If the court finds that a member of a public body engages in a pattern or practice of willfully participating in one or more closed meetings in violation of the provisions of the Open Meetings Act, the court may impose a civil fine of not more than \$ 250 for each violation.
- 4) The Act also authorizes courts to grant “such additional relief as it finds necessary to serve the purposes” of the Act.

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open meetings statute.

#### 1. Character of exemptions.

##### a. General or specific.

The Open Meetings Act, D.C. Code Ann. § 2-574(b), specifies fourteen reasons why a meeting, or portion of a meeting, may be closed:

- (1) A law or court order requires that a particular matter or proceeding not be public;
- (2) To discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the public body;
- (3) To discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;
- (4) (A) To consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements; provided, that, upon request, the public body may decide to waive the privilege.  
(B) But nothing in the Act shall be construed to permit a public body to close a meeting that would otherwise be open merely because the attorney for the public body is a participant;
- (5) Planning, discussing, or conducting specific collective bargaining negotiations;
- (6) Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;

(7) To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award;

(8) To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure;

(9) To discuss disciplinary matters;

(10) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials;

(11) To discuss 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;

(12) To train and develop members of a public body and staff;

(13) To deliberate upon a decision in an adjudication action or proceeding by a public body exercising quasi-judicial functions; and

(14) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation.

#### **b. Mandatory or discretionary closure.**

The statutory provision governing closure is discretionary; it states that a meeting “may” be closed pursuant to the specified reasons. D.C. Code Ann. § 2-574(b).

#### **2. Description of each exemption.**

Section 2-574(b) of the Open Meetings Act lists fourteen reasons why a meeting, or portion of a meeting, may be closed, discussed *su- pra*. It does not provide additional description. The Act allows a public body to seek an advisory opinion from the Open Government Office regarding compliance with the Act. D.C. Code Ann. § 2-578(g).

#### **B. Any other statutory requirements for closed or open meetings.**

A public body that meets in closed session may not discuss or consider matters other than those specified as a reason for closing the session. D.C. Code Ann. § 2-574(d).

#### **C. Court mandated opening, closing.**

If a court finds that a public body plans to hold a closed meeting or portion of a meeting in violation of § 2-578(d) of the Open Meetings Act, it may enjoin the public body from closing the meeting or portion of the meeting; order that future meetings of the same kind be open to the public; or order that the record of the meeting be made public. D.C. Code Ann. § 2-578(c). There are no provisions allowing a court to order that a meeting be closed.

### **III. MEETING CATEGORIES — OPEN OR CLOSED.**

The Open Meetings Act specifies limited categories of meetings that may be closed; all other types of meetings must be open.

#### **A. Adjudications by administrative bodies.**

##### **1. Deliberations closed, but not fact-finding.**

Deliberations upon a decision in an adjudication action or proceeding by a public body exercising quasi-judicial functions may be closed. D.C. Code Ann. § 2-574(b)(13). The Act does not specifically address fact-finding.

##### **2. Only certain adjudications closed, i.e. under certain statutes.**

Not specifically addressed.

##### **B. Budget sessions.**

Not specifically addressed.

##### **C. Business and industry relations.**

A meeting, or portion of a meeting, may be closed to discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other business or business activities in the District of Columbia. D.C. Code Ann. § 2-574(b)(3).

##### **D. Federal programs.**

Not specifically addressed.

##### **E. Financial data of public bodies.**

Not specifically addressed.

##### **F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

A meeting, or portion of a meeting, may be closed to discuss 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. D.C. Code Ann. § 2-574(b)(11).

##### **G. Gifts, trusts and honorary degrees.**

A meeting, or portion of a meeting, may be closed to prevent premature disclosure of an honorary degree, scholarship, prize, or similar award. D.C. Code Ann. § 2-574(b)(7).

##### **H. Grand jury testimony by public employees.**

Not specifically addressed.

##### **I. Licensing examinations.**

A meeting, or portion of a meeting, may be closed for the preparation, administration, or grading of scholastic, licensing, or qualifying examinations. D.C. Code Ann. § 2-574(b)(6).

##### **J. Litigation; pending litigation or other attorney-client privileges.**

A meeting, or portion of a meeting, may be closed to consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements; provided, that, upon request, the public body may decide to waive the privilege. However, the mere participation at a meeting of an attorney for the public body is not grounds for closure. D.C. Code Ann. § 2-574(b)(4).

##### **K. Negotiations and collective bargaining of public employees.**

A meeting, or portion of a meeting, may be closed for planning, discussing, or conducting specific collective bargaining negotiations. D.C. Code Ann. § 2-574(b)(5).

##### **1. Any sessions regarding collective bargaining.**

No case law addresses the scope of the collective bargaining exemption. However, the provision is written broadly to encompass both planning for the negotiations and the negotiations themselves.

##### **2. Only those between the public employees and the public body.**

Not specifically addressed.

**L. Parole board meetings, or meetings involving parole board decisions.**

Not specifically addressed.

**M. Patients; discussions on individual patients.**

The Act does not specifically authorize meetings concerning patients to be closed. However, meetings may be closed pursuant to laws that require particular matters not to be made public. Thus, other privacy laws concerning patient health information may be grounds for closure. *See* D.C. Code Ann. § 2-574(b)(1).

**N. Personnel matters.**

In addition to the topics listed *infra*, a meeting, or portion of a meeting, may be closed to discuss the appointment, employment, assignment, promotion, or compensation of government appointees, employees, or officials. D.C. Code Ann. § 2-574(b)(10).

**1. Interviews for public employment.**

Not specifically addressed.

**2. Disciplinary matters, performance or ethics of public employees.**

A meeting, or portion of a meeting, may be closed to discuss disciplinary matters or the performance evaluation of government appointees, employees, or officials. D.C. Code Ann. § 2-574(b)(10).

**3. Dismissal; considering dismissal of public employees.**

A meeting, or portion of a meeting, may be closed to discuss the discipline, demotion, removal, or resignation of government appointees, employees, or officials. D.C. Code Ann. § 2-574(b)(10).

**O. Real estate negotiations.**

A meeting, or portion of a meeting, may be closed to discuss, establish, or instruct the public body's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the public body. D.C. Code Ann. § 2-574(b)(2).

**P. Security, national and/or state, of buildings, personnel or other.**

A meeting, or portion of a meeting, may be closed to discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure. D.C. Code Ann. § 2-574(b)(8).

**Q. Students; discussions on individual students.**

Not specifically addressed.

**IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS**

The Open Meetings Act establishes an Open Government Office, D.C. Code Ann. § 2-592, that may bring a lawsuit in D.C. Superior Court for injunctive or declaratory relief for any violation of the Act before or after the meeting in question takes place. D.C. Code Ann. § 2-578(a). The Act explicitly states that nothing in it shall be construed to create or imply a private cause of action for a violation. *Id.* § 2-578(a)(1). Curiously, the Act also states that nothing in it shall restrict the private right of action citizens have under § 1-207.42. *Id.* § 2-578(a)(2). No court has specifically considered what private rights of action § 1-207.42 creates. However, a line D.C. Court of

Appeals cases interpreting identical language from the Open Meeting Act's predecessor appears to assume, without deciding, that private citizens may bring suits to invalidate official actions that violate the open meetings rule. *See Jordan v. District of Columbia*, 362 A.2d 114, 117-19 (D.C. 1976); *see also Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 820 n.12 (D.C. 1977) (affirming *Jordan*); *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 364 A.2d 610, 613-14 (D.C. 1976) (same).

**A. When to challenge.**

The Open Government Office may bring a lawsuit to enforce the Open Meetings Act before or after the meeting in question takes place. D.C. Code Ann. § 2-578(a).

**1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?**

Not specifically addressed.

**2. When barred from attending.**

Not specifically addressed.

**3. To set aside decision.**

The Act directs courts to declare actions void only if the court finds that the balance of equities compels the declaration or that the violation was not harmless. D.C. Code Ann. § 2-578(d).

**4. For ruling on future meetings.**

A court may order future meetings to be made public if it finds that a public body plans to hold a closed meeting in violation of the Open Meetings Act. D.C. Code Ann. § 2-578(c)(2).

**5. Other.**

Not specifically addressed.

**B. How to start.**

Not specifically addressed.

**1. Where to ask for ruling.**

Not specifically addressed.

**a. Administrative forum.**

Not specifically addressed.

**(1). Agency procedure for challenge.**

Not specifically addressed.

**(2). Commission or independent agency.**

Not specifically addressed.

**b. State attorney general.**

Not specifically addressed.

**c. Court.**

The Open Government Office must file any enforcement lawsuits in D.C. Superior Court. D.C. Code Ann. § 2-578(a).

**2. Applicable time limits.**

Not specifically addressed.

**3. Contents of request for ruling.**

Not specifically addressed.

**4. How long should you wait for a response?**

Not specifically addressed.

**5. Are subsequent or concurrent measures (formal or informal) available?**

Not specifically addressed.

**C. Court review of administrative decision.**

Not specifically addressed.

**1. Who may sue?**

The Open Meetings Act establishes an Open Government Office, D.C. Code Ann. § 2-592, that may bring a lawsuit in D.C. Superior Court for injunctive or declaratory relief for any violation of the Act before or after the meeting in question takes place. D.C. Code Ann. § 2-578(a). The Act explicitly states that nothing in it shall be construed to create or imply a private cause of action for a violation. *Id.* § 2-578(a)(1). Curiously, the Act also states that nothing in it shall restrict the private right of action citizens have under § 1-207.42. *Id.* § 2-578(a)(2). No court has specifically considered what private rights of action § 1-207.42 creates. However, a line D.C. Court of Appeals cases interpreting identical language from the Open Meeting Act's predecessor appears to assume, without deciding, that private citizens may bring suits to invalidate official actions that violate the open meetings rule. See *Jordan v. District of Columbia*, 362 A.2d 114, 117-19 (D.C. 1976); see also *Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 820 n.12 (D.C. 1977) (affirming *Jordan*); *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 364 A.2d 610, 613-14 (D.C. 1976) (same).

**2. Will the court give priority to the pleading?**

Not specifically addressed.

**3. Pro se possibility, advisability.**

Not specifically addressed.

**4. What issues will the court address?**

Courts are authorized to fashion "appropriate remed[ies]" for violations of the Open Meetings Act. D.C. Code Ann. § 2-578(d).

**a. Open the meeting.**

If the court finds that an official action was taken in violation of the Open Meetings Act, it may require the public body to open the meeting. D.C. Code Ann. § 2-578(c)(1).

**b. Invalidate the decision.**

A court may declare action taken at a meeting to be void if it finds that the balance of equities compels that decision or that the violation of the Act was not harmless. D.C. Code Ann. § 2-578(d).

**c. Order future meetings open.**

A court may order future meetings to be made public if it finds that a public body plans to hold a closed meeting in violation of the Open Meetings Act. D.C. Code Ann. § 2-578(c)(2)..

**5. Pleading format.**

Not specifically addressed.

**6. Time limit for filing suit.**

Not specifically addressed.

**7. What court.**

The Open Government Office must file any enforcement lawsuits in D.C. Superior Court. D.C. Code Ann. § 2-578(a)..

**8. Judicial remedies available.**

A court may order "an appropriate remedy" if it finds that a resolution, rule, regulation, or other official action was taken, made, or enacted in violation of the Open Meetings Act. Possible remedies include requiring additional forms of notice, postponing meetings, or declaring action taken at a meeting to be void. D.C. Code Ann. § 2-578(d). In addition, if the court finds that a public body plans to hold a closed meeting in violation of the Act, the court may enjoin the public body from closing the meeting or portion of the meeting; order that future meetings of the same kind be open to the public; or order that the record of the meeting be made public. *Id.* § 2-578(c).

**9. Availability of court costs and attorneys' fees.**

Not specifically addressed.

**10. Fines.**

If the court finds that a member of a public body engages in a pattern or practice of willfully participating in one or more closed meetings in violation of the Act's provisions, it may impose a civil fine of not more than \$250 per violation. D.C. Code Ann. § 2-578(e).

**11. Other penalties.**

Not specifically addressed.

**D. Appealing initial court decisions.**

Not specifically addressed.

**1. Appeal routes.**

Not specifically addressed.

**2. Time limits for filing appeals.**

Not specifically addressed.

**3. Contact of interested amici.**

Not specifically addressed.

**V. ASSERTING A RIGHT TO COMMENT.**

The Open Meetings Act does not address a right to comment during public meetings.

**A. Is there a right to participate in public meetings?**

Not specifically addressed.

**B. Must a commenter give notice of intentions to comment?**

Not specifically addressed.

**C. Can a public body limit comment?**

Not specifically addressed.

**D. How can a participant assert rights to comment?**

Not specifically addressed.

**E. Are there sanctions for unapproved comment?**

Not specifically addressed.

## Statute

### Open Records

*District of Columbia Code*

*Division I. Government of District.*

*Title 2. Government Administration.*

*Chapter 5. Administrative Procedure.*

*Subchapter II. Freedom of Information.*

#### § 2-531. Public policy.

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 this subchapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

#### § 2-532. Right of access to public records; allowable costs; time limits.

(a) Any person has a right to inspect, and at his or her discretion, to copy any public record of a public body, except as otherwise expressly provided by § 2-534, in accordance with reasonable rules that shall be issued by a public body after notice and comment, concerning the time and place of access.

(a-1) In making any record available to a person pursuant to this section, a public body shall provide the record in any form or format requested by the person, provided that the person shall pay the costs of reproducing the record in that form or format.

(a-2) In responding to a request for records pursuant to this section, a public body shall make reasonable efforts to search for the records in electronic form or format, except when the efforts would significantly interfere with the operation of the public body's automated information system.

(a-3) A public body shall make available for inspection and copying any record produced or collected pursuant to a contract with a private contractor to perform a public function, and the public body with programmatic responsibility for the contractor shall be responsible for making such records available to the same extent as if the record were maintained by the public body.

(b) A public body may establish and collect fees not to exceed the actual cost of searching for, reviewing, and making copies of records. For purposes of this subsection, "request" means a single demand for any number of documents made at 1 time to an individual public body. Documents may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(b-1) Any fee schedules adopted by the Mayor, an agency or a public body shall provide that:

(1) Fees shall be limited to reasonable standard charges for document search, duplication, and review when records are requested for commercial use;

(2) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution for scholarly or scientific research, or a representative of the news media;

(3) For any request for records not described in paragraphs (1) or (2) of this subsection, fees shall be limited to reasonable standard charges for document search and duplication; and

(4) Only the direct costs of search, duplication, or review may be recovered.

(b-2) Review costs shall include only the direct costs incurred during the initial examination of a document to determine whether the documents must be disclosed or withheld in part as exempt under this section. Review costs may not include costs incurred to determine issues of law or policy related to the request.

(b-3) No agency or public body may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the

agency or public body has determined that the fee will exceed \$250.

(c) A public body, upon request reasonably describing any public record, shall within 15 days (except Saturdays, Sundays, and legal public holidays) 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.

(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays, and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, "unusual circumstances" are limited to:

(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) 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.

(e) Any failure on the part of a public body to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to § 2-537 to review the deemed denial of the request.

(f) For purposes of this section, the term:

(1) "Reasonable efforts" means that a public body shall not be required to expend more than 8 hours of personnel time to reprogram or reformat records.

(2) "Search" means to review manually or by automated means, public records for the purpose of locating those records which are responsive to a request.

#### § 2-533. Letters of denial.

(a) Denial by a public body of a request for any public record shall contain at least the following:

(1) The specific reasons for the denial, including citations to the particular exemption(s) under § 2-534 relied on as authority for the denial;

(2) The name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) Notification to the requester of any administrative or judicial right to appeal under § 2-537.

(b) Each public body of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.

#### § 2-534. Exemptions from disclosure.

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(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;

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

(3) Investigatory records compiled for law-enforcement purposes, including the records of Council investigations, but only to the extent that the production of such records would:

(A) Interfere with enforcement proceedings, or with Council investigations;

(B) Deprive a person of a right to a fair trial or an impartial adjudication;

(C) Constitute an unwarranted invasion of personal privacy;

(D) Disclose the identity of a confidential source and, in the case of a record compiled by a law-enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(E) Disclose investigative techniques and procedures not generally known outside the government;

(F) Endanger the life or physical safety of law-enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters, including memorandums or letters generated or received by the staff or members of the Council, which would not be available by law to a party other than a public body in litigation with the public body.

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(7) Information specifically authorized by federal law under criteria established by a presidential executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such executive order;

(8) Information exempted from disclosure by § 28-4505;

(9) Information disclosed pursuant to § 5-417;

(10) Any specific response plan, including any District of Columbia response plan, as that term is defined in § 7-2301(1), and any specific vulnerability assessment, either of which is intended to prevent or to mitigate an act of terrorism, as that term is defined in § 22-3152(1);

(11) Information exempt from disclosure by § 47-2851.06; and

(12) Information, the disclosure of which would reveal the name of an employee providing information under subchapter XV-A of Chapter 6 of Title 1 and subchapter XII of Chapter 2 of this title, unless the name of the employee is already known to the public.

(a-1) The Council may assert, on behalf of any public body from which it obtains records or information, any exemption listed in subsection (a) of this section that could be asserted by the public body pertaining to the records or information.

(b) Any reasonably segregable portion of a public record shall be provided to any person requesting the record after deletion of those portions which may be withheld from disclosure pursuant to subsection (a) of this section. In each case, the justification for the deletion shall be explained fully in writing, and the extent of the deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (a) of this section under which the deletion is made. If technically feasible, the extent of the deletion and the specific exemptions shall be indicated at the place in the record where the deletion was made.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit nondisclosure of information of which disclosure is authorized or mandated by other law.

(d) The provisions of this subchapter shall not apply to the Vital Records Act of 1981.

(e) All exemptions available under this section shall apply to the Council as well as executive branch agencies of the District government. The deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege are incorporated under the inter-agency memoranda exemption listed in subsection (a)(4) of this section, and these privileges, among other privileges that may be found by the court, shall extend to any public body that is subject

to this chapter.

§ 2-535. *Recording of final votes.*

Each agency having more than 1 member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

§ 2-536. *Information which must be made public.*

(a) Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information, and do not require a written request for information:

(1) The names, salaries, title, and dates of employment of all employees and officers of a public body;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by a public body;

(5) Correspondence and materials referred to therein, by and with a public body, relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(6A) Budget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports, and strategic plans and performance-based budget submissions;

(7) The minutes of all proceedings of all public bodies;

(8) All names and mailing addresses of absentee real property owners and their agents;

(8A) All pending applications for building permits and authorized building permits, including the permit file;

(9) Copies of all records, regardless of form or format, which have been released to any person under this chapter and which, because of the nature of their subject matter, the public body determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(10) A general index of the records referred to in this subsection, unless the materials are promptly published and copies offered for sale.

(b) For records created on or after November 1, 2001, each public body shall make records available on the Internet or, if a website has not been established by the public body, by other electronic means. This subsection is intended to apply only to information that must be made public pursuant to this subsection.

(c) For the purposes of this section "absentee real property owners" means owners of real property located in the District that do not reside at the real property.

§ 2-537. *Administrative appeals.*

(a) Except as provided in subsection (a-1), any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to

have exhausted his or her administrative remedies pursuant to subsection (e) of § 2-532, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

(a-1) Any person denied the right to inspect a public record in the possession of the Council may institute proceedings in the Superior Court for the District of Columbia for injunctive or declaratory relief, or for an order to enjoin the public body from withholding the record and to compel the production of the requested record.

(b) In any suit filed under subsection (a) or (a-1) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the public agency to sustain its action. In such cases the court shall determine the matter de novo, and may examine the contents of such records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in § 2-534.

(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

(d) Any person who commits an arbitrary or capricious violation of the provisions of this subchapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100.00. A prosecution under this section may only be commenced by the issuance of a citation, which shall be personally served upon the defendant. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may be arrested pursuant to a bench warrant and required to post a bond to secure his or her future appearance.

(e) All employees of the District government are responsible for compliance with the provisions of this subchapter, and this requirement shall be incorporated in section 1803 of Title 6 of the District of Columbia Municipal Regulations.

#### § 2-538. Oversight of disclosure activities.

(a) On or before February 1 of each year, the Mayor 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:

(1) The number of requests for records received by the public body and the number of requests processed;

(2) The number of determinations made by each public body not to comply with requests for records made to the public body pursuant to this subchapter and the reasons for each determination;

(3) The number of requests for records pending before the public body as of September 30 of the preceding year, and the median number of days that the requests had been pending before the public body as of that date;

(4) The number of appeals made pursuant to § 2-537(a), the result of the appeals, and the reason for the action upon each appeal that results in a denial of information;

(5) The number of employees found guilty of a misdemeanor pursuant to § 2-537(d);

(6) The median number of days taken by the public body to process different types of requests, and the number of requests processed within 10 days, the number of requests processed between 11 and 20 days, and the number of requests processed in 21 days or more;

(7) The total amount of fees collected by the public body for processing requests;

(8) The number of hours that staff devoted to processing requests for records pursuant to this section, and the total amount expended by the public body for processing these requests; and

(9) A qualitative description or summary statement, and conclusions drawn from the data regarding compliance with this subchapter.

(b) The Mayor shall make these reports available to the public on the Internet or by other electronic means.

(c) The Corporation Counsel shall submit an annual report on or before February 1 of each calendar year, which shall include for the prior fiscal year, a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of the case, and the costs assessed pursuant to § 2-537(c).

(d) Each public body subject to the provisions of this subchapter shall designate a Freedom of Information Officer. As of November 1, 2001, the Mayor shall provide to these officers on their appointment a minimum of 8 hours of training regarding implementation and compliance with this subchapter.

#### § 2-539. Definitions.

For purposes of this subchapter, the terms “Mayor,” “Council,” “District,” “agency,” “rule,” “rulemaking,” “person,” “party,” “order,” “relief,” “proceeding,” “public record,” and “adjudication” shall have the meaning as provided in § 2-502.

#### § 2-540. Short Title.

This subchapter may be cited as the “Freedom of Information Act”.

### Open Meetings

#### *District of Columbia Code*

#### *Division I. Government of District.*

#### *Title 1. Government Organization.*

#### *Chapter 2. District of Columbia Home Rule.*

#### *Subchapter VII. Referendum; Succession in Government; Temporary Provisions; Miscellaneous; Amendments to District of Columbia Elections Act; Rules of Construction; and Effective Dates.*

#### *Part D. Miscellaneous.*

#### § 1-207.42. Open meetings.

(a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available, upon request, to the public at reasonable cost.

#### *District of Columbia Official Code*

#### *Division I. Government of District.*

#### *Title 2. Government Administration.*

#### *Chapter 5. Administrative Procedure.*

#### *Subchapter IV. Open Meetings.*

#### § 2-571. Statement of Policy.

The public policy of the District is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them.

#### § 2-572. Rules of Construction.

This subchapter shall be construed broadly to maximize public access to meetings. Exceptions shall be construed narrowly and shall permit closure of

meetings only as authorized by this chapter.

§ 2-573. *Definitions.*

For the purposes of this subchapter, the term:

(1) “Meeting” means any gathering of a quorum of the members of a public body, including hearings and roundtables, whether formal or informal, regular, special, or emergency, at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless whether held in person, by telephone, electronically, or by other means of communication. The term “meeting” shall not include:

(A) A chance or social gathering; provided, that it is not held to avoid the provisions of this paragraph; or

(B) A press conference.

(2) “Open Government Office” means the District of Columbia Open Government Office established by § 2-592.

(3) “Public body” means any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, or an advisory body that takes official action by the vote of its members convened for such purpose. The term “public body” shall not include:

(A) A District agency or instrumentality (other than the board which supervises or controls an agency or the board of directors of an instrumentality);

(B) The District of Columbia courts;

(C) Governing bodies of individual public charter schools;

(D) The Mayor’s cabinet;

(E) The professional or administrative staff of public bodies when they meet outside the presence of a quorum of those bodies; or

(F) Advisory Neighborhood Commissions; provided, that this subchapter shall not affect the requirements set forth in § 1-309.11.

§ 2-574. *Open Meetings.*

(a) Except as provided in subsection (b) of this section, a meeting shall be open to the public. A meeting shall be deemed open to the public if:

(1) The public is permitted to be physically present;

(2) The news media, as defined by § 16-4701, is permitted to be physically present; or

(3) The meeting is televised.

(b) A meeting, or portion of a meeting, may be closed for the following reasons:

(1) A law or court order requires that a particular matter or proceeding not be public;

(2) To discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the public body;

(3) To discuss, establish, or instruct the public body’s staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;

(4)(A) To consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements; provided, that, upon request, the public body may decide to waive the privilege.

(B) Nothing herein shall be construed to permit a public body to close a meeting that would otherwise be open merely because the attorney for the public body is a participant;

(5) Planning, discussing, or conducting specific collective bargaining negotiations;

(6) Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;

(7) To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award;

(8) To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure;

(9) To discuss disciplinary matters;

(10) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials;

(11) To discuss 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;

(12) To train and develop members of a public body and staff;

(13) To deliberate upon a decision in an adjudication action or proceeding by a public body exercising quasi-judicial functions; and

(14) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation.

(c)(1) Before a meeting or portion of a meeting may be closed, the public body shall meet in public session at which a majority of the members of the public body present vote in favor of closure.

(2) The presiding officer shall make a statement providing the reason for closure, including citations from subsection (b) of this section, and the subjects to be discussed. A copy of the roll call vote and the statement shall be provided in writing and made available to the public.

(d) A public body that meets in closed session shall not discuss or consider matters other than those matters listed under subsection (b) of this section.

(e) A public body shall not keep the number of attendees below a quorum to avoid the requirements of this section.

(f) Notwithstanding any provision of this chapter, the Council may adopt its own rules to ensure the District’s open meetings policy, as established in § 2-572, is met with respect to Council meetings; provided, that the rules of the Council shall comply with this section and the definition of meeting in § 2-574(1); provided further, that until the Council adopts rules pursuant to this subsection, this subchapter shall apply to the Council.

(g) Within 60 days after March 31, 2011, the relevant committee of the Council with jurisdiction on this issue shall submit a report to the Council that presents recommendations on whether the sections of this subchapter should apply to Advisory Neighborhood Commissions.

§ 2-575. *Notice of Meetings.*

Before meeting in open or closed session, a public body shall provide advance public notice as follows:

(1) Notice shall be provided when meetings are scheduled and when the schedule is changed. A public body shall establish an annual schedule of its meetings, if feasible, and shall update the schedule throughout the year. Except for emergency meetings, a public body shall provide notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting.

(2) Notice shall be provided by posting:

(A) In the office of the public body or a location that is readily accessible to the public; and

(B) On the website of the public body or the District government.

(3) Notwithstanding the notice requirement of paragraph (2) of this subsection, notice of meetings shall be published in the District of Columbia Register as timely as practicable.

(4) When a public body finds it necessary to call an emergency meeting to address an urgent matter, notice shall be provided at the same time notice is provided to members and may be provided pursuant to any method in paragraph (2) of this subsection.

(5) Each meeting notice shall include the date, time, location, and planned agenda to be covered at the meeting. If the meeting or any portion of the meeting is to be closed, the notice shall include, if feasible, a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure under § 2-575(b), and a description of the matters to be discussed.

§ 2-576. *Meeting Procedures.*

(a) A meeting may be held by video conference, telephone conference, or other electronic means; provided, that:

(1) Reasonable arrangements are made to accommodate the public's right to attend the meeting;

(2) The meeting is recorded; and

(3) All votes are taken by roll call.

(b) All provisions of this subchapter shall apply to electronic meetings.

(c) E-mail exchanges between members of a public body shall not constitute an electronic meeting.

(d) When an emergency meeting is convened, the presiding officer shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency, and how public notice was provided.

§ 2-577. *Record of Meetings.*

(a) All meetings of public bodies, whether open or closed, shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept.

(b) Copies of records shall be made available for public inspection according to the following schedule; provided, that a record, or a portion of a record, may be withheld under the standard established for closed meetings pursuant to § 2-575(b):

(1) A copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than 3 business days after the meeting.

(2) A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.

§ 2-578. *Enforcement.*

(a) The Open Government Office may bring a lawsuit in the Superior Court of the District of Columbia for injunctive or declaratory relief for any violation of this subchapter before or after the meeting in question takes place; provided, that the Council shall adopt its own rules for enforcement related to Council meetings. Nothing in this subchapter shall:

(1) Be construed to create or imply a private cause of action for a violation of this subchapter; or

(2) Restrict the private right of action citizens have under § 1-207.42.

(b) In any lawsuit filed under this section, the burden shall be on the public body to sustain its action or proposed action. The court shall determine the matter de novo and may examine the record of a closed meeting to determine whether this section has been violated.

(c) If the court finds that a public body plans to hold a closed meeting or portion of a meeting in violation of subsection (d) of this section, the court may:

(1) Enjoin the public body from closing the meeting or portion of the meeting;

(2) Order that future meetings of the same kind be open to the public; or

(3) Order that the record of a meeting be made public.

(d) If the court finds that a resolution, rule, act, regulation, or other official action was taken, made, or enacted in violation of this subchapter, the court may order an appropriate remedy, including requiring additional forms of notice, postponing a meeting, or declaring action taken at a meeting to be void. Actions shall not be declared void unless the court finds that the balance of equities compels the action or the court concludes that the violation was not harmless.

(e) If the court finds that a member of a public body engages in a pattern or practice of willfully participating in one or more closed meetings in violation of the provisions of this subchapter, the court may impose a civil fine of not more than \$250 for each violation.

(f) The court may grant such additional relief as it finds necessary to serve the purposes of this subchapter.

(g) A public body may seek an advisory opinion from the Open Government Office regarding compliance with this subchapter.

§ 2-579. *Training.*

The Office of Boards and Commissions, established December 19, 2001 (Mayor's Order 2001-189), in coordination with the Open Government Office, shall:

(1) Develop a training manual for members of public bodies; and

(2) Annually advise all members of public bodies of their responsibilities under this subchapter.