

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th Street, NW, Suite 1020  
Washington, DC 20005  
(202)795-9300  
www.rcfp.org  
Bruce Brown  
Executive Director  
bbrown@rcfp.org  
(202)795-9301

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Chairman Phil Mendelson  
Council of the District of Columbia  
1350 Pennsylvania Ave. NW, Suite 504  
Washington, DC 20004

## Re: FOIA Amendment in Budget Support Act

Dear Chairman Mendelson,

The Reporters Committee for Freedom of the Press (“RCFP” or the “Reporters Committee”) writes to express its concerns about the “Freedom of Information Clarification Amendment Act of 2019” proposed as part of the Budget Support Act (the “Proposed FOIA Amendments”). As set forth below, the proposal, if adopted, will unduly restrict the scope of information and records available to the public under the District’s Freedom of Information Act, D.C. Code §§ 2-531-539 (“FOIA”), and impose improper burdens on members of the press and the public making FOIA requests. The Reporters Committee strongly objects to any proposal that will undermine the efficacy of FOIA, as well as the inclusion of the Proposed FOIA Amendments in a budget bill. Any changes to FOIA—a law of fundamental importance to citizens of the District—should not be made without the public being given a meaningful opportunity to be heard.

### I. The proposal unduly narrows FOIA’s definition of a public record subject to disclosure.

Currently, FOIA’s definition of a “public record” includes all forms of information “prepared, owned, used, in the possession of, or retained by a public body. Public records include information stored in an electronic format.” D.C. Code § 2-502(18). The Proposed FOIA Amendments, however, would add the requirement that a record also be “related to the conduct of public business.” D.C. Council Proposed Title COW-D, § 4 (May 2, 2019).

Limiting the records subject to FOIA to only those “related to the conduct of public business” undercuts the public’s right to know what their government—and its employees—are up to. D.C. Council Proposed Title COW-D, § 1 (May 2, 2019). The Proposed FOIA Amendments could prevent journalists and citizens from obtaining records concerning situations in which government officials use public resources for private endeavors. The public is entitled to know when government employees use government resources to conduct private business. FOIA provides the press and public a mechanism to obtain such information, and

a means to hold government officials accountable to the public. It should not be amended to restrict future access to records of this kind. Moreover, by not including any definition of “official conduct,” the Proposed FOIA Amendments do not provide clear guidance to requesters as to what records the Council intends to make subject to public disclosure.

**II. The proposal improperly burdens requesters by requiring them to “describe with particularity” what they are seeking.**

The Proposed FOIA Amendments require requesters to know the names of both the sender and recipient of information they are requesting, and to specify a timeframe for an agency’s search for responsive records. D.C. Council Proposed Title COW-D, § 4 (May 2, 2019). These requirements are facially unreasonable. There are many records subject to FOIA that do not have a sender or recipient. And in many instances where a requester does seek correspondence, they may not know *both* the sender *and* recipient. Likewise, the phrase “timeframe for the search” is ambiguous and, again, requires the requester to specify information they may not have. None of this detail is necessary so long as the agency can determine what records are being sought by a request. Federal and D.C. courts have well-established precedent interpreting the required specificity for FOIA requests, and there is no reason to seek to alter the law. *See, e.g., FOP v. District of Columbia*, 139 A.3d 853 (D.C. 2016).

Moreover, it is inappropriate to limit the scope of a FOIA request, amount of information requested, or otherwise burden requesters with the responsibility of ensuring agencies respond to a FOIA request within the time that the law allows—as the Proposed FOIA Amendments seem to suggest. That provision improperly shifts the burden of ensuring that agencies respond in a timely manner from the agency, where it belongs, to the requester. In addition, the specificity of a FOIA request and the volume of potentially responsive records are separate considerations. It is perfectly permissible to have a very specific FOIA request that requires the agency to search through a relatively large amount of information. *See, e.g., Shapiro v. CIA*, 2017 WL 1216505, (D.D.C., Mar. 31, 2017).

**III. The Proposed FOIA Amendments should not have been included at the end of a 160-page budget document; any changes to FOIA should be proposed in a separate bill subject to a public hearing and comment process.**

The public should have an opportunity to comment on any proposed changes to FOIA. This is particularly true where, as here, the proposed changes will curtail public access to information that would shed light on the use of taxpayer resources by District officials and employees. By including the Proposed FOIA Amendments at the end of a lengthy budget document, the Council is circumventing the full legislative process, and denying the public a meaningful opportunity to weigh in. If the Council seeks to propose changes to FOIA, those changes should be proposed in a standalone bill, not buried in a 160-page budget document.

For all of these reasons, the Reporters Committee respectfully urges the Council to suspend further consideration of the Proposed FOIA Amendments and to ensure the public retains access to information shedding light on the operations of government and the use of taxpayer resources.

We would be happy to work with you in the future to strengthen FOIA. Please feel free to contact the Reporters Committee's Policy Director, Rick Blum, via email at [rblum@rcfp.org](mailto:rblum@rcfp.org).

Sincerely,

Reporters Committee for Freedom of the Press

cc: D.C. Council Members  
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Councilmember Anita Bonds  
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Councilmember Jack Evans  
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and Councilmember Trayon White, Sr.