

AN ACT

*Codification  
District of  
Columbia  
Code  
2001 Supp.*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the District of Columbia Administrative Procedure Act to provide for disclosure of records in electronic format, to extend coverage to the Council and private contractors performing public functions, to provide disclosure requirements for partially released documents, to clarify categories of information that do not require a written request for information, to provide penalties for arbitrary or capricious violations of the act, to revise the annual reporting requirements, to provide a training requirement for Freedom of Information Officers; and to amend the District of Columbia Campaign Finance Reform and Conflict of Interest Act to provide new guidelines for the maintenance and disposal of records filed with the Office of Campaign Finance.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Freedom of Information Amendment Act of 2000."

Sec. 2. Section 3 of the District of Columbia Administrative Procedure Act is amended as follows:

(a) Paragraph (18) is amended to read as follows:

"(18) The term "public record" 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. Public records include information stored in an electronic format."

(b) A new paragraph (18A) is added to read as follows:

"(18A) The term "public body" means the Mayor, an agency, or the Council of the District of Columbia."

Sec. 3. Title 2 of the District of Columbia Administrative Procedure Act is amended as follows:

(a) The first sentence of section 201 is amended by striking the phrase "Generally the" and inserting the word "The" in its place.

(b) Section 202 is amended as follows:

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(1) Strike the phrase "the Mayor or an agency", the phrase "Mayor or agency", and the phrase "the agency" wherever they appear and insert the phrase "a public body" in their place.

(2) New subsections (a-1), (a-2), (a-3), and (f) are added to read as follows:

"(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."

"(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."

(c) Section 203 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "the Mayor or an agency" and inserting the phrase "a public body" in its place.

(2) Subsection (b) is amended by striking the phrase "The Mayor and each agency of the District of Columbia" and inserting the phrase "Each public body" in its place.

(d) Section 204(b) is amended to read as follows:

"(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."

(e) Section 206 is amended to read as follows:

**"INFORMATION WHICH MUST BE MADE PUBLIC**

"Sec. 206. (a) Without limiting the meaning of other sections of this title, 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;

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

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

"(9) Copies of all records, regardless of form or format, which have been released to any person under this 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; 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."

(f) Section 207 is amended as follows:

(1) The second sentence of subsection (b) is amended by striking the phrase "Mayor or the agency" and inserting the phrase "public body" in its place.

(2) New subsections (d) and (e) are added to read as follows:

"(d) Any person who commits an arbitrary or capricious violation of the provisions of this title 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 title, and this requirement shall be incorporated in section 1803 of the District of Columbia Personnel Regulations."

(g) Section 208 is amended to read as follows:

"(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 proceeding 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 title 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 section 207(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 section 207(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 title.

"(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 section 207(c).

"(d) Each public body subject to the provisions of this title 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 title."

Sec. 4. Section 602 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act is amended as follows:

(a) Subsection (c) is amended by striking the last two sentences and inserting a new sentence in its place to read as follows:

"The Director shall dispose of papers filed pursuant to this section in accordance with the District of Columbia Public Records Management Act of 1985."

(b) Subsection (d) is amended by striking the last two sentences and inserting a new sentence in its place to read as follows:

"The Director shall dispose of papers filed pursuant to this section in accordance with the District of Columbia Public Records Management Act of 1985."

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 6. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

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December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia