

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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District of
Columbia
Official Code

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To amend the District of Columbia Administrative Procedure Act to extend the initial period of time within which an agency must respond to a request for information from 10 to 15 days, to clarify that the Freedom of Information Act law enforcement and investigatory records exemptions apply equally to the Council’s investigatory proceedings, that the inter-agency memorandum exemption applies to Council records, that the Council may assert exemptions on behalf of public bodies from which it receives information, to exempt from disclosure records that would reveal the identity of the whistleblower and that final decisions of the Council may not be appealed to the Mayor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Freedom of Information Legislative Records Clarification Amendment Act of 2004".

Sec. 2. Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), is amended as follows:

(a) Section 202(c) (D.C. Official Code § 2-532(c)) is amended by striking the number "10" and inserting the number "15" in its place.

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(b) Section 204 (D.C. Official Code § 2-534) is amended as follows:

Amend
§2-534

(1) Subsection (a) is amended as follows:

(A) Paragraph (3) is amended as follows:

(i) The lead-in language is amended to read as follows:

"(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:".

(ii) Subparagraph (A) is amended to read as follows:

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

(B) Paragraph (4) is amended to read as follows:

"(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.".

(C) A new paragraph (12) is added to read as follows:

"(12) Information, the disclosure of which would reveal the name of an employee providing information under the provisions of the Whistleblower Reinforcement Act of 1998, effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code §§ 1-615.51 *et seq.*, and 2-233.01 *et seq.*), unless the name of the employee is already known to the public.".

(2) A new subsection (a-1) is added to read as follows:

"(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."

(3) A new subsection (e) is added to read as follows:

"(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 act."

(c) Section 207 (D.C. Official Code § 2-537) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "Any person" and inserting the phrase "Except as provided in subsection (a-1), any person" in its place.

(2) A new subsection (a-1) is added to read as follows:

"(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."

(3) Subsection (b) is amended by striking the phrase "subsection (a)" and inserting the phrase "subsection (a) or (a-1)" in its place.

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Sec. 3. Applicability.

This act shall apply with respect to any requests for records pending on the effective date of this act, whether or not the request was made prior to that date, and shall apply to any civil action pending on that date.

Sec. 4. 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. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

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), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-602.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia