

Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Mary M. Cheh introduced the following bill, which was referred to the Committee on _____.

To establish a District of Columbia Open Government Office; to amend the District of Columbia Administrative Procedure Act to create a presumption of disclosure, to streamline the process by which a Freedom of Information Act request may be made and responded to, to require posting of letters of denial on the agency's websites, to amend the statutory exemptions under the Freedom of Information Act, and to provide stronger enforcement mechanisms including penalties for violations of the law; to require agencies to develop biennial transparency plans; to amend the District of Columbia Administrative Procedure Act to improve the formal rulemaking process; to amend the District of Columbia Campaign Finance Reform and Conflict of Interest Act to require additional disclosures regarding financial interests and potential conflicts of interest, and to improve the internet accessibility of financial disclosure reports; to amend An Act to regulate certain political campaign finance practices in the District of Columbia, and for other purposes, to increase the frequency of lobbyist activity report filings from semiannual reporting to quarterly reporting, to require a searchable lobbyist activity database, and to require a lobbyist, upon request, to disclose his or her client; and to establish a spending transparency website.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Open Government Act of 2010".

TITLE I. OPEN GOVERNMENT OFFICE.

Sec. 101. Short title.

This title may be cited as the "Open Government Office Establishment Act of 2010".

1 Sec. 102. Definitions.

2 For the purposes of this title, the term:

3 (a) “Freedom of Information Act” means Title II of the District of
4 Columbia Administrative Procedure Act, effective Mar. 25, 1977 (D.C. Law 1-96; D.C.
5 Code § 2-531 *et seq.*).

6 (b) “Office” means “District of Columbia Open Government Office”.

7 Sec. 103. Establishment of the District of Columbia Open Government Office.

8 Pursuant to section 404(b) of the District of Columbia Home Rule Act, approved
9 December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04(b)), the Council
10 establishes the District of Columbia Open Government Office, an independent agency to
11 monitor the District’s compliance with the Freedom of Information Act, to assist the
12 public and promote effective use of the District of Columbia Freedom of Information
13 Act, and to resolve disputes between agencies and requesters regarding access to
14 government records.

15 Sec. 104. Duties of the District of Columbia Open Government Office.

16 The Office shall:

17 (a) Establish uniform procedures for public bodies’ handling of Freedom
18 of Information Act requests; *provided*, that the procedures include:

19 (1) An intake procedure by which each request a public body
20 receives is:

21 (A) Assigned an individualized tracking number;

22 (B) Assigned to a designated Freedom of Information

23 Officer within the public body.

1 (2) A screening procedure by which the public body evaluates
2 whether the requested records are already publicly available.

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3 (3) A review procedure under which the designated Freedom of
4 Information Officer within the agency is to review records that has not previously been
5 made public, and evaluation criteria determining whether, in whole or in part,

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6 (A) The record falls within one of the specific exemptions
7 enumerated in Section 104 of the Freedom of Information Act (D.C. Official Code § 2-
8 534);

9 (B) Despite the fact that the record may fall within one of
10 the enumerated exemptions, it should be disclosed; and

11 (C) Whether the record contains segregable, non-exempt
12 information which must be disclosed.

13 (b) Issue advisory opinions to agencies and requesters.

14 (c) In coordination with the District of Columbia Auditor, conduct an
15 annual audit of public bodies on the implementation of the Freedom of Information Act
16 and issue a report detailing the audit's results,

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17 (d) Provide training to public bodies, officials, and employees related to
18 the Freedom of Information Act.

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19 (e)(1) Provide education and outreach to public requesters;

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20 (2) To provide informal dispute-resolution as a non-exclusive

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21 alternative to litigation; provided, that the Office shall refrain from providing formal

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22 dispute resolution during the pendency of the administrative process.

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1 (f) Report, before the 1st of February, on its activities, including
2 recommendations for changes in the law and a review of the fees charged by agencies for
3 searching and copying costs, to the Mayor and the Council.

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4 (g) Promulgate regulations detailing a schedule of penalties consistent
5 with section 207(e) of the Freedom of Information Act.”

6 Sec. 105. Powers of the District of Columbia Open Government Office.

7 (a)(1) The Office shall, pursuant to its rules, have the power to:

8 (A) Issue such orders as necessary for the execution of its duties
9 set forth in section 104 of this Act;

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10 (B) Require by subpoena the attendance and testimony of
11 witnesses and the production of documents relating to the execution of the Office’s
12 duties; and

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13 (2) The Office may petition the Superior Court of the District of Columbia
14 to enforce the subpoena or order, in the case of a refusal to obey a subpoena or order of
15 the Office issued pursuant to this subsection. Any person failing to obey the Court’s order
16 may be held in contempt of court.

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17 (b) The Office shall have a right of access to all records, including original
18 electronic records and server copies, back-up tapes, and other records, which are not
19 otherwise prohibited from disclosure between agencies by law, subject to rules and
20 procedures promulgated by the Office.

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Deleted: in consultation with the Mayor, the Attorney General, and the Chief Technology Officer.¶
 . . . (c) The Office shall issue rules to implement the Freedom of Information Act.¶
 . . . (d) The Office may, pursuant to its rules, investigate any alleged violation of the Freedom of Information Act and refer any violation to any of the following entities for enforcement: (1) the Mayor; (2) the Attorney General; (3) the Inspector General; (4) the District of Columbia Auditor; (5) the United States Attorney for the District of Columbia; or (6) any other law-enforcement agency.¶

21 (c) The Office shall work with the Office of Chief Technology Officer to procure
22 or build a tracking system that will store all requests, allow for searches of requests,
23 allow for assignment of requests, and allow for tracking of requests as they move through

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 . . . (2) To bring a civil action in the Superior Court of the District of Columbia for declaratory or injunctive relief with respect to the failure of any agency to comply with the requirements of the Freedom of Information Act.

1 the review process. The Office shall send all or a subset of the production data to the data
2 warehouse to be used in reporting environments and business intelligence applications.

3
4 (d) The Office shall, pursuant to its rules, have the power to bring a civil action in
5 the Superior Court of the District of Columbia for declaratory or injunctive relief with
6 respect to any violation of the Freedom of Information Act.

7 Sec. 106. Director.

8 (a) The Office shall be headed by a Director appointed by the Mayor with the
9 advice and consent of the Council to serve a 5-year term. The Director shall employ staff
10 as needed, in accordance with annual appropriations.

11 (b) The Director may be reappointed, and, if not reappointed, the Director shall
12 serve until his successor has been confirmed.

13 (c) The Director shall not be removed before expiration of the 5-year term except
14 for cause.

15 (d) Qualifications

16 Sec. 107. Appropriations.

17 (a) There are authorized to be appropriated from the general revenues of the
18 District funds necessary to carry out the purposes of this act.

19 (b) The annual budget for the Office shall be adopted as follows:

20 (A) The Director shall prepare and submit to the Mayor, for inclusion in
21 the annual budget of the District of Columbia under part D of title IV [§ 1-204.41 et seq.]
22 of the District of Columbia Home Rule Act for the year, annual estimates of the
23 expenditures and appropriations necessary for the operation of the Office for the year. All

Comment [v1]: What should these qualifications be?

1 such estimates shall be forwarded by the Mayor to the Council of the District of
2 Columbia for its action pursuant to §§ 1-204.46 and 1-206.03(c), without revision but
3 subject to recommendations. Notwithstanding any other provision of such Act, the
4 Council may comment or make recommendations concerning such estimates, but shall
5 have no authority to revise such estimates.

6 (B) Amounts appropriated for the Office shall be available solely for the
7 operation of the Office, and shall be paid to the Office by the Mayor (acting through the
8 Chief Financial Officer of the District of Columbia) in such installments and at such
9 times as the Office requires.

10 **TITLE II. FREEDOM OF INFORMATION ACT AMENDMENTS.**

11 Sec. 201. Short title.

12 This title may be cited as the “District of Columbia Freedom of Information
13 Amendment Act of 2010”.

14 Sec. 202. Title II of the District of Columbia Administrative Procedure Act,
15 effective Mar. 25, 1977 (D.C. Law 1-96; D.C. Code § 2-531 *et seq.*) is amended as
16 follows:

17 (a) Section 202 (D.C. Code § 2-532) is amended to read as follows:

18 “Sec. 2. Right to inspect public records.

19 “(a)(1) Any person has a right to inspect, and at his or her discretion, to copy any
20 public record of a public body, in accordance with reasonable rules concerning the time
21 and place of access, except as expressly provided by Section 204 of this Act,

22 “(2) A public body shall make available for inspection and copying any
23 record produced or collected pursuant by any party acting on behalf of, utilized by, or

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... “(A) The public body reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions; or ¶

... “(B) If disclosure is prohibited by law.

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1 acting under the direct supervision of a public body to perform a public service or
2 function, and the public body with programmatic responsibility for the party shall be
3 responsible for making such records available to the same extent as if the record were
4 maintained by the public body.

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5 “(b)(1) A person may request records from any public body or seek access to a
6 public body’s records by written request whether made in person, by mail, by e-mail, by
7 facsimile, or any other electronic means that the public body is capable of receiving. The
8 public body shall endeavor to utilize social media and web portals to the greatest extent
9 possible. A request should identify or describe the records sought with sufficient
10 specificity to enable the public body to ascertain which records are being requested.

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11 “(2) A person may request records from any public body or seek access to
12 a public body’s records by oral request if the records are readily available or if the
13 records must be disclosed under section 206 of this Act. A public body may require that a
14 request for records be reduced in writing. A public body shall maintain a record of any
15 oral requests made under this paragraph.

16 “(c)(1) A public body shall respond to any request within 10 days (except
17 Saturdays, Sundays, and legal public holidays) of the receipt of the request.

18 “(2)(A) In unusual circumstances, the time limit prescribed in subsection
19 (c)(1) of this section may be extended one-time after written notice to the requester
20 setting forth the reasons for extension, the activities already taken by the public body, and
21 expected date for determination. Such extension shall not exceed 10 days (except
22 Saturdays, Sundays, and legal public holidays). The public body shall provide the Office

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1 with notice of each extension. For purposes of this subsection, and only to the extent
2 necessary for processing of the particular request, “unusual circumstances” are limited to:

3 | _____ “(i) The need to search for, collect, and appropriately
4 examine a voluminous amount of separate and distinct records sought in a single request;
5 or

6 | _____ “(ii) The need for consultation, which shall be conducted
7 with all practicable speed, with another public body having a substantial interest in the
8 determination of the request or among 2 or more components of a public body having
9 substantial subject-matter interest therein.

10 | _____ “(B) Partial production.”

11 | _____ “(d) When possible, the public body shall make requested documents available in
12 electronic format unless the requester specifically requests another format. If the
13 requested format is a form not normally used by the public body, it may at its discretion
14 charge the actual cost of reproduction.

15 | _____ “(e) Any failure on the part of a public body to comply with a request under
16 subsection (a) of this section within the time provisions of subsections (c) and (d) of this
17 section shall be deemed a denial of the request, and the person making such request shall
18 be deemed to have exhausted his administrative remedies with respect to such request,

19 | such person may at their option choose to seek all available remedies under section 207
20 of this Act to review the deemed denial of the request.

21 | _____ “(f)(1)(A) The public body may, by rule, establish and collect fees not to exceed
22 the actual cost of searching for, reviewing, and making copies of records.

23 | _____ “(B) Records shall be furnished without charge or at a reduced charge where the

Comment [v2]: One comment that was made during the working group sessions is that there should be a threshold upon which the public body notifies the Open Government Office that it is routinely extending the deadline. This provision, already included in the proposed bill, probably takes care of that problem. Any comments?

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1 public body determines that waiver or reduction of the fee is in the public interest

2 because it is likely to contribute significantly to the public's understanding of matters of
3 public concern and is not primarily in the commercial interest of the requester.

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4 “(C) A denial of fee waiver or reduction may be reviewed under
5 section 207 of this Act in the same manner as a denial of records.

6 “(2) The fee schedules adopted by the public body shall provide that:

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

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

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

17 “(D) Only the direct costs of search, duplication, or review may be
18 recovered.

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

1 “(4) The public body may not require advance payment of any fee unless
2 the requester has previously failed to pay fees in a timely fashion, or the public body has
3 determined that the fee will exceed \$ 250.

4 “(5) Any direct costs incurred by a public body in conducting a search
5 shall be reimbursed; *provided*, that no fee may be collected by the public body if it fails
6 to timely respond to a request.

7 (h) For purposes of this section, the term:

8 “(1) “Office” means the Open Government Office.

9 “(2) “Reasonable efforts” means that a public body shall not be required to
10 expend more than 8 hours of personnel time to reprogram or reformat records.

11 “(3) “Request” means a single demand for any number of documents
12 made at one time to an individual public body.

13 “(4) “Search” means to review manually or by automated means, public
14 records for the purpose of locating those records which are responsive to a request.

15 Sec. 203. Section 203 (D.C. Code § 2-533) is amended as follows:

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

17 (1) By striking the phrase “Denial by” and inserting the phrase “Denial,
18 whether in whole or in part, by” in its place.

19 (2) By inserting a new paragraph (4) to read as follows:

20 “(4) A listing of each record, including the number of pages in that record,
21 which is denied in whole.”.

22 (b) Subsection (b) is amended to read as follows:

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1 “(b) A public body shall maintain a file of all letters of denial of requests for
2 public records. This file shall be made available to any person on request for purposes of
3 inspection or copying. The public body shall also post the file, including all records
4 required by subsection (a) of this section, on its website.” Sec. 204. Section 204(a)
5 (D.C. Official Code § 2-534(a) is amended as follows:

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6 (a) By striking the phrase “exempt from disclosure under the provisions of this
7 subchapter” and inserting the phrase “exempt from disclosure under the provisions of this
8 subchapter; provided that the public body reasonably foresees that disclosure would harm
9 an interest protected by the exemption” in its place.

10 (b) By amending subparagraph (3)(B) to read as follows:

11 “(B) Deprive a person of a right to a fair trial or an impartial adjudication in a
12 criminal proceeding.”

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- Deleted: ; provided that this subsection shall not apply to civil litigation involving the District of Columbia

13 Sec. 205. Section 207 (D.C. Code § 2-537) is amended as follows:

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

Comment [v3]: Make clear the three methods for review.

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

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16 “(a-2)(1) Any person denied the right to inspect a public record may request that
17 the Office review the public body’s response for compliance with this Act. In its
18 discretion, if the Office finds that the public body’s response does not comply with the
19 Act, the Office may issue an order enjoining the public body from withholding the record
20 and to compel the production of the requested record.

Comment [v4]: Waiting for comments from Bob Becker to make consistent with Title I of the Act.

21 “(2) If the public body refuses to comply with the Office’s order, the
22 Office may petition the Superior Court for the District of Columbia for a contempt order,
23 or for injunctive or declaratory relief.

1 “(3) This subsection shall not be construed to limit in any way the ability
2 of a person to seek relief in the Superior Court pursuant to subsections (a) or (a-1) of this
3 section.”.

4 (b) Subsection (b) is amended to read as follows:

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

12 “(2) Within 30 days after service of a complaint under this subsection, and
13 notwithstanding the government’s responsibility to provide any other litigation
14 documents or pleadings, if the plaintiff is alleging that the government conducted an
15 inadequate search, the government shall file with the Court and serve on the plaintiff:

16 “(A) An affidavit describing in detail what records were searched,
17 by whom, and through what process. The affidavit must set forth the search terms and the
18 type of search performed and shall identify the actual records searched. The public body
19 cannot limit its search to only one or more places if there are additional sources that are
20 likely to reveal the records requested. Moreover, a public body must follow through on
21 obvious leads to discover requested records.

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1 “(B) An affidavit identifying each record withheld, the exemption
2 claimed, and a reason why disclosure would damage the interests protected by the
3 claimed exemption.

4 “(3) Except for good cause shown, if the public body fails timely to submit
5 the affidavits described in paragraph (2) of this subsection, the Court shall order the
6 public body to conduct a new search for the records sought or to produce such an
7 affidavit within 15 days, and plaintiff shall be considered to have substantially prevailed
8 under subsection (c) of this section.

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9 “(4) Notwithstanding anything else in this Act, a reviewing court may not
10 find a public body’s search for records adequate unless the public body clearly
11 demonstrates to the court that its search was reasonably calculated to uncover all relevant
12 records.”

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13 (c) Subsection (c) is amended to read as follows:

14 “(c) If a person seeking the right to inspect or to receive a copy of a public record
15 substantially prevails in such suit, he or she shall be awarded reasonable attorney fees and
16 other costs of litigation. For purposes of this section, a person has substantially prevailed
17 if the person has obtained relief through either—

18 “(1) A judicial order, or an enforceable written agreement or consent
19 decree; or

20 “(2) A voluntary or unilateral change in position by the agency, if the
21 complainant’s claim is not insubstantial, including the disclosure of previously withheld
22 records or the grant of a fee waiver.”

23 (d) Subsection (d) is added to read as follows:

1 “(d) Any person who willfully violates this Act shall be guilty of a misdemeanor
2 and upon conviction shall be punished by a maximum of 6 months in jail and a fine not to
3 exceed \$10,000. A prosecution under this section may only be commenced by the
4 issuance of a citation, which shall be personally served upon the defendant. The
5 defendant shall not be arrested prior to the time of trial, except that a defendant who fails
6 to appear for arraignment or trial may be arrested pursuant to a bench warrant and
7 required to post a bond to secure his or her future appearance.”

Comment [v5]: Waiting for proposed changes.

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

9 “(e) If a person is found to have recklessly violated any provisions of this
10 subchapter, that person may be subject to appropriate personnel action or a fine of up to
11 \$1,000. The Office shall promulgate regulations detailing a schedule of penalties
12 consistent with this subsection for such violations.”

13 (f) A new subsection (f) is added to read as follows:

14 “(f) No District funds may be used to pay the salary of any individual found to
15 have intentionally violated any provision of this subchapter.”

16 Sec. 206. Section 208 (D.C. Code § 2-538) is amended by striking the phrase “to
17 the Council” and inserting the phrase “to the Council and to the Office” in its place.

18 **TITLE III. AGENCY TRANSPARENCY ACT.**

19 Sec. 301. Short title.

20 This title may be cited as the “Agency Transparency Act of 2010”.

21 Sec. 302. Biennial transparency plans.

1 (a) Within 180 days of the enactment of this Act, each agency shall submit a
2 transparency plan as described in subsection (c) of this section to the City Administrator,
3 the Open Government Office, and the Council.

4 (b) Beginning on February 1, 2012, an agency shall submit an updated
5 transparency plan as described in subsection (c) of this section to the City Administrator,
6 the Open Government Office, and the Council, on a biennial basis. Each agency shall
7 solicit comments from the public in the development of its transparency plan.

8 (c) A transparency plan shall include the following:

9 (1) A narrative description of efforts to improve public access to the public
10 body's decisionmaking and actions;

11 (2) A statement of its compliance with public records maintenance and
12 disclosure obligations under District and federal law; and

13 (3) A strategic plan to inventory the agency's high-value information, to
14 improve the use of this information to increase public knowledge and promote public
15 scrutiny of the agency's services; to identify high-value information not yet available; to
16 identify unused and unneeded information currently being collected; and which
17 establishes a reasonable timeline for publication online in open data formats."

18 (d) The Office of the City Administrator shall procure or build a database to track
19 the inventory of high-value information that meets the following requirements.

20 (e) For the purposes of this section, the term:

21 (1) "High value information" includes, but is not limited to, agency
22 outcome data, agency caseload data, data reported to the federal government by the
23 agency, agency data reported as part of the performance measurement process, and any

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1 data that is tracked by the agency that is not required to remain confidential under
2 existing law.

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3 (2) "Open data format" means a format that is platform-independent,
4 machine-readable, [does not require registration](#), and made available to the public without
5 restrictions that would impede the re-use of information. Any information made available
6 should be capable of being retrieved, downloaded, indexed, and searched by commonly
7 used web-search applications.

8 Sec. 303. Agency data disclosure.

9 (a) For all databases procured in an amount greater than [\\$50,000](#), the District shall
10 ensure the inclusion of a public-facing component or module that allows the public to
11 access public records contained within the database. This must be made available no later
12 than six months from the creation of the database.

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13 [\(b\) All information technology systems procured by the District shall include the](#)
14 [following minimum provisions in any request for proposal:](#)

15 [\(1\) The agency or vendor, if the data is to be stored at a vendor location,](#)
16 [shall work with the Office of the Chief Technology Officer \("OCTO"\) to send all or a](#)
17 [subset of the production data to the data warehouse to be used in reporting environments](#)
18 [and business intelligence applications. OCTO will use the data only for the purpose of](#)
19 [delivering data and services approved by the agency or vendor;](#)

20 [\(2\) The data fields sent to OCTO will be defined by the agency with input](#)
21 [from OCTO;](#)

22 [\(3\) The data connection shall provide updates in near real time;](#)

1 (4) The agency or vendor shall monitor the status of the near real time
2 connection to OCTO and work with OCTO to resolve issues as they occur;

3 (5) The connection from the source system to the Citywide Data
4 Warehouse shall be automated.

5 (6) Upon award the vendor shall supply the agency and OCTO with
6 appropriate documentation to include but not be limited to data dictionary, data base
7 schemes other upon request;

8 (7) Sample data shall be provided to OCTO and to the Open Government
9 Office upon request;

10 (8) The data connection shall be factored into the proposed cost and
11 schedule;

12 (9) Access to testing and development environments for OCTO shall be
13 provided.

14 Sec. 305. Race to the Top fund.

15 To encourage use of high value information, the Open Government Office, in
16 coordination with the Office of City Administrator and the Office of the Chief
17 Technology Officer shall make grants available, through a competitive and reviewed
18 process, to public bodies that propose the best business use for their high value
19 information.

20 **TITLE IV. ADMINISTRATIVE PROCEDURE ACT.**

21 Sec. 401. Short title.

22 This title may be cited as the "District of Columbia Administrative Procedure
23 Amendment Act of 2010".

1 Sec. 402. Section 6 of District of Columbia Administrative Procedure Act,
2 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-505) is amended to
3 read as follows:

4 (a) The Mayor and each independent agency shall, no later than 30 days before
5 the adoption, amendment, or repeal of any rule, except as otherwise provided by the
6 Mayor or the agency upon good cause found and published with the notice, publish in the
7 District of Columbia Register notice of the proposed action. The notice shall, at a
8 minimum, include the following:

- 9 (1) A short explanation of the purpose of the proposed action;
- 10 (2) A citation or reference to the specific legal authority authorizing the
11 proposed action;
- 12 (3) The text of any rule proposed to be adopted, amended, or repealed;
- 13 (4) How a copy of the full text of the regulatory analysis of any rule
14 proposed to be adopted, amended, or repealed may be obtained;
- 15 (5) Where, when, and how a person may comment on the proposed action
16 and request a hearing; and
- 17 (6) A citation to and summary of any scientific or statistical study, report,
18 or analysis that served as a basis for the proposed rulemaking, together with an indication
19 of how the full text may be obtained.

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20 (b)(1) The Mayor and each independent agency shall publish in the District of
21 Columbia Register and on the agency’s website any guidance document. A guidance
22 document does not require notice and comment as required in subsections (a), (d), (e), (f),
23 and (g).

1 (2) An agency that proposes to rely on a guidance document to the
2 detriment of a person in any administrative proceeding must afford the person a fair
3 opportunity to contest the legality or soundness of positions taken in the document. The
4 agency may not use a guidance document to foreclose consideration of issues raised in
5 the document.

6 (3) A guidance document may contain binding instructions to agency staff
7 members if at an appropriate stage in the administrative process, the agency's procedures
8 provide affected persons an adequate opportunity to contest positions taken in the
9 document.

10 (4) If an agency proposes to act in an adjudication at variance with a
11 position expressed in a guidance document, it shall provide a reasonable explanation for
12 the variance. If an affected person in an adjudication may have reasonably relied on the
13 agency's position, the explanation must include a reasonable justification for the agency's
14 conclusion that the need for the variance outweighs the affected person's reliance
15 interests.

16 (5) An agency shall maintain an index of all of its currently effective
17 guidance documents, publish the index on its website, make all guidance documents
18 available to the public and file the index with the District of Columbia Register annually.
19 The agency may not rely on a guidance document or cite it as precedent against any party
20 to a proceeding, unless the guidance document is published on the agency website.

21 (6) A guidance document may be considered by a presiding officer or final
22 decision maker in an agency adjudication but it does not bind the presiding officer and
23 the final decision maker in the exercise of discretion.

1 (7) A person may petition an agency under subsection (i) to adopt a rule in
2 place of a guidance document.

3 (8) A person may petition an agency to revise or repeal a guidance
4 document. Not later than 60 days after submission of the petition, the agency shall:

5 (A) revise or repeal the guidance document;

6 (B) initiate a proceeding for the purpose of considering a revision
7 or repeal; or

8 (C) deny the petition in a record and state its reasons for the
9 denial, meeting fairly each point raised by the petitioner.

10 (9) For the purposes of this subsection, the term “guidance document”
11 shall mean any “a document prepared or used by an agency that is not legally binding but
12 which states the agency’s current approach to or interpretation of law, or which describes
13 how and when the agency will exercise discretionary functions.”

14 (c)(1) The Mayor and each independent agency shall maintain an indexed
15 rulemaking docket that contains a list of all pending rulemaking proceedings. The Mayor
16 and each independent agency shall maintain a record for each proposed adoption,
17 amendment, or repeal of a rule that contains:

18 (A) A copy of all publications in the District of Columbia Register
19 relating to the rule or the proceeding upon which the rule is based;

20 (B) A copy or an index of written factual material, studies, and
21 reports relied on or consulted by agency personnel in formulating the proposed or final
22 rule;

1 (C) Any official transcript, audiovisual copy, or summary of oral
2 presentations made in the proceeding upon which the rule is based;

3 (D) A copy of the rule and notice described in paragraph (a); and

4 (E) All petitions for action on the rule.

5 (2) The Mayor and each independent agency shall publish the rulemaking
6 docket and the record for each rule on the internet and shall make them available for
7 public inspection, or, upon request, provide copies to individuals at a reasonable cost.

8 (d) To the greatest extent possible, the Mayor shall notify the public of the
9 proposed changes in the rules, and encourage participation in the rulemaking process. An
10 agency proposing the adoption, amendment, or repeal of a rule shall specify a public
11 comment period of at least 30 days after publication of the notice of proposed rulemaking
12 during which a person may submit information and comment on the rule proposed for
13 adoption, amendment, or repeal. Agencies shall publish comments received on their web
14 sites.

15 (e) Not later than one year after the notice of proposed rulemaking, the agency
16 shall adopt, amend, or repeal the rule pursuant to the rulemaking proceeding or terminate
17 the proceeding by publication of a notice of termination in the Register; provided, that the
18 agency may extend the period of time for adopting, amending or repealing the rule for an
19 additional period of 6 months by filing a statement of good cause for the extension in the
20 rulemaking record, but must provide for additional comment period of at least 30 days
21 before adopting, amending or repealing the rule.

22 (f) An agency may not take action on a rule proposed to be adopted, amended, or
23 repealed that differs from the action proposed in the notice of proposed rulemaking on

1 which the rule is based unless the action is the logical outgrowth of the action proposed in
2 the notice.

3 (g) At the time it adopts, amends, or repeals a rule, an agency shall issue a concise
4 explanatory statement containing:

5 (1) The agency's reasons for the action, including the agency's reasons for
6 not accepting substantial arguments made in testimony and comments; and

7 (2) Subject to subsection (f) of this section, the reasons for any change
8 between the text of the proposed adopted or amended rule contained in the published
9 notice of the proposed adoption or amendment of the rule and the text of the rule as
10 finally adopted.

11 (h)(1) An agency may gather information relevant to the subject matter of
12 rulemaking and may solicit comments and recommendations from the public by
13 publishing a notice of intent to propose rulemaking in the Register and indicating where,
14 when, and how persons may comment.

15 (2) An agency may engage in negotiated rulemaking by appointing a
16 committee to comment or make recommendations on the subject matter of a rulemaking
17 under active consideration within the agency. The committee, in consultation with one or
18 more agency representatives, may attempt to reach a consensus on the terms or substance
19 of a proposed rule. The agency shall publish a list of all committees with their
20 membership in the Register. Notice of a meeting of a committee appointed under this
21 subsection must be published in the Register at least 10 days before the meeting. A
22 meeting of a committee appointed under this section is open to the public.

1 (3) This subsection shall not be construed to prohibit an agency from
2 obtaining information and opinions from members of the public on the subject of the
3 rulemaking by any other method or procedure used in rulemaking.

4 (i) Any person may petition the Mayor or an independent agency to adopt, amend,
5 or repeal any rule. The Mayor and each independent agency shall prescribe by rule the
6 form for such petitions, and the procedure for their submission, consideration, and
7 disposition. Not later than 60 days after submission of a petition, the agency shall:

8 (1) Deny the petition in a record and state its reasons for the denial,
9 meeting fairly each point raised by the petitioner; or

10 (2) Initiate rulemaking proceedings in accordance with this Act.

11 Nothing in this subchapter shall make it mandatory that the Mayor or any agency to
12 promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in
13 accordance with this section.

14 (k) Notwithstanding any other provision of this section, the Mayor or an
15 independent agency may, without prior notice or hearing or upon any abbreviated notice
16 and hearing that it finds practicable, adopt, amend, or repeal any rule if, the adoption,
17 amendment, or repeal of a rule is necessary for the immediate preservation or promotion
18 of the public peace, health, safety, or welfare, including the imminent loss of federal
19 funding for a specific program, and if the Mayor or such independent agency states its
20 reasons for that finding. ~~No such adoption, amendment, or repeal of a rule made under~~

21 this subsection shall remain in effect longer than 120 days after the date of its adoption.

22 The adoption, amendment, or repeal under this subsection does not otherwise preclude
23 the adoption or amendment of an identical rule, or the repeal of the rule. The Mayor or

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1 independent agency shall publish in the District of Columbia Register the rule adopted,
2 amended, or repealed under this subsection as soon as practicable given the nature of the
3 emergency, shall publish the rule on its website, and shall notify persons who have
4 requested notice of rules related to that subject matter. Nothing in this section prohibits
5 the adoption of a new rule under this subsection if at the end of the effective period of the
6 original rule made under this subsection, the Mayor or independent agency finds that
7 need for the immediate preservation of the public peace, welfare, health, safety, or
8 welfare still exists; provided, however, that the Mayor or independent agency may not
9 adopt, amend, or repeal a rule under this subsection more than twice successively unless
10 the Mayor or independent agency provides 30 days' notice and an opportunity to
11 comment.

12 Sec. 403. Section 302(c) of District of Columbia Administrative Procedure Act,
13 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-552(c)) is amended by
14 adding a new paragraph (5) to read as follows:

15 “(5) The Mayor adopts a federal regulation as the District’s standard and
16 incorporates the federal regulation by reference in the rulemaking; provided, that the
17 Mayor shall specifically provide information about how and where a paper or electronic
18 copy of the federal regulation may be inspected or obtained. Any amendments to an
19 incorporated federal regulation shall be deemed to be included in the District’s rule;
20 provided, that after the adoption of a District rule incorporating a federal regulation, the
21 Mayor shall annually issue a Notice of Intent to re-adopt the federal regulations, in whole
22 or in part, or announce an intent to adopt a different standard. If the Mayor fails to issue a

1 [Notice of Intent, the District rule will not incorporate any further changes in the federal](#)
2 [regulation.”.](#)

3 **TITLE V. FINANCIAL DISCLOSURE AMENDMENT ACT.**

4 Sec. 501. Short title.

5 This title may be cited as the “Financial Disclosure Amendment Act of 2010”.

6 Sec. 502. Section 602(a) of the District of Columbia Campaign Finance Reform
7 and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 446; D.C. Official Code
8 § 1-1106.02(a)) is amended as follows:

9 (a) Paragraph (1) is amended as follows:

10 (1) By striking the phrase “the name of each business entity” and inserting
11 the phrase “name, address, and nature of each business entity” in its place.

12 (2) By striking the phrase “such person (or his or her spouse, if property is
13 jointly titled)” and inserting the phrase “such person (or his or her spouse, or domestic
14 partner)” in its place.

15 (b) Paragraph (5) is amended by striking the phrase “by such person” and
16 inserting the phrase “by such person, or by his or her spouse or domestic partner,” in its
17 place.

18 (c) By adding a new paragraph (5A) to read as follows:

19 “(5A) A certification that such individual has filed his federal and state income
20 tax returns, or has filed for an extension of time for filing such tax returns.”.

21 Sec. 503. Section 602(f) of the District of Columbia Campaign Finance Reform
22 and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 446; D.C. Official Code
23 § 1-1106.02(a)) is amended to read as follows:

1 “(f) All public reports filed under this section shall be maintained by the Board as
2 public records which, under such reasonable regulations as it shall prescribe, shall be
3 available for inspection by members of the public. The Board shall also post the reports
4 on its website and create a searchable database by which a user may programmatically
5 search and access all data in a serialized machine readable format (such as XML) via a
6 web-services application programming interface.”.

7 **TITLE VI. LOBBYIST DISCLOSURE AMENDMENT ACT.**

8 Sec. 601. Short title.

9 This title may be cited as the “Lobbyist Disclosure Amendment Act of 2010”.

10 Sec. 602. Increased lobbyist disclosure.

11 An Act to regulate certain political campaign finance practices in the District of
12 Columbia, and for other purposes, effective Aug. 14, 1974 (Pub. L. No. 93-376; D.C.
13 Official Code § 1-1105.01 *et seq.*) is amended as follows:

14 (a) Section 504 (D.C. Official Code § 1-1105.04) is amended by striking the
15 phrase “January 15th” and inserting the phrase “January 30th”.

16 (b) Section 505(a) (D.C. Official Code § 1-1105.05(a)) is amended to read as
17 follows:

18 “(a) Each registrant shall file with the Director on January 1, April 1, July 1, and
19 September 1, a report signed under oath concerning his or her lobbying activities during
20 the previous three-month period ending 20 days before the reporting date. If the registrant
21 is not an individual, an authorized officer or agent of the registrant shall sign the form. A
22 registrant must file a separate activity report for each person from whom he or she
23 receives compensation. Such reports shall be public documents, and shall be posted on

1 the Office’s website, and the Office shall create a searchable database by which a user
2 may programmatically search and access all data in a serialized machine readable format
3 (such as XML) via a web-services application programming interface. The report shall be
4 on a form prescribed by the Director and shall include the following:

5 “(1) A complete and current statement of the information required to be
6 supplied pursuant to § 1-1105.04;

7 “(2) Total expenditures on lobbying, listed by name of the recipient, and
8 accounting for the following categories:

9 “(A) Advertising and publications; and

10 “(B) Compensation to others.

11 “(3) Each political expenditure, loan, gift, honorarium, or contribution of \$
12 50 or more made by the registrant or anyone acting on behalf of the registrant to benefit
13 an official in the legislative or executive branch, a member of his or her staff or
14 household or a campaign or testimonial committee established for the benefit of the
15 official, and shall be itemized by date, beneficiary, amount, and circumstances of the
16 transaction; including the aggregate of all such expenditures that are less than \$ 50;

17 “(4) All contributions made by any third person directly or indirectly to or
18 for the benefit of an official in the legislative or executive branch, a member of his or her
19 staff or household or a campaign or testimonial committee established for the benefit of
20 the official, and shall be itemized by date, beneficiary, amount, and circumstances of the
21 transaction; including the aggregate of all such expenditures that are less than \$ 50, which
22 are in any way earmarked, encumbered, or otherwise directed through or by the
23 registrant;

1 “(5) Each official in the executive or legislative branch and any member of
2 such official’s staff who receives compensation in any manner by the registrant shall be
3 identified by name and nature of his or her employment with the registrant;

4 “(6) Each official in the executive or legislative branch with whom the
5 registrant has had written or oral communications (during the reporting period) related to
6 lobbying activities conducted by the registrant shall also be included in such report,
7 identifying the official with whom the communication was made, the date of such
8 communication, and the nature of such communication, including, to the maximum
9 extent practicable, a list of bill numbers and references to specific executive branch
10 actions; and

11 “(7) Each person whom the registrant has given compensation to lobby on
12 his or her behalf shall also be listed in such report.”.

13 (c) A new section 506a is added to read as follows:

14 “Sec. 506a. Disclosure of client.

15 “Any lobbyist who has made written or oral communications with a public
16 official shall, on the request of the official at the time of the communication, state
17 whether the lobbyist is registered under this Act and identify the client on whose behalf
18 the communication is made.”.

19 **TITLE VII. SPENDING TRANSPARENCY.**

20 Sec. 701. Short title.

21 This title may be cited as the “Spending Transparency Reform Act of 2010”.

22 Sec. 702. Spending transparency website.

1 (a) For the purposes of this section, the term “searchable budget database
2 website” means a website that allows the public at no cost to:

3 (1) Search and aggregate information for the following:

4 (A) The name and principal location or residence of the
5 entity or recipient of funds;

6 (B) The amount of funds expended;

7 (C) The funding and expending agency;

8 (D) The funding source of the revenue expended;

9 (E) The budget program/activity of the expenditure;

10 ~~(F) The descriptive purpose for the funding action or expenditure;~~
11 (F) The names, salaries, title, and dates of employment of
12 all employees and officers of the public body;

Deleted: (F) A descriptive purpose for the funding action or expenditure;
..... (G) The expected performance outcome for the funding action or expenditure;
..... (H) The past performance outcomes achieved for the funding action or expenditure;

13 (G) Any District audit or report relating to the entity or
14 recipient of funds or the budget program/activity or agency;

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15 (H) Any reports provided to the District by recipients of
16 funds;

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17 (I) A spending detail broken down by agency, division, and
18 activity for the current fiscal year, and the three previous fiscal years. For each agency,
19 division, and activity, funding detail should be broken down into object class and into the
20 type of funding source, for the current fiscal year and the three previous fiscal years;

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21 (J) District grant funds spending by agency, division and
22 activity and special purpose funds by agency, division, and activity;

1 | (K) Federal grants funds spending by agency, division and
2 | activity and special purpose funds spending by agency, division and activity; and

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3 | (L) Any other relevant information specified by the Chief
4 | Financial Officer.

5 | (2) Programmatically search and access all data in a serialized machine
6 | readable format (such as XML) through an online automated interface, such as a web-
7 | services application programming interface.”

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8 | (b) By October 1, 2011, the Chief Financial Officer shall develop and make
9 | publicly available a single, searchable budget database website including the required
10 | data for the 2012 Fiscal Year. Each District agency shall include a link on the front page
11 | of its website to the budget database website. The Chief Financial Officer shall work with
12 | the Office of the Chief Technology Officer to send all or a subset of the production data
13 | to the data warehouse to be used in reporting environments and business intelligence
14 | applications for the purpose of delivering data and services approved by the Chief
15 | Financial Officer.

16 | (c) The Chief Financial Officer shall update the budget database website as new
17 | data becomes available, but no later than 30 days upon receipt of data from the agency.

Deleted: An updated version of this database shall be made available quarterly.

18 | (d) The Chief Financial Officer shall ensure that all data added to the searchable
19 | budget database website remains accessible to the public for a minimum of 10 years.

20 | (e) The Council and the Chief Financial Officer shall have unrestricted access to
21 | any information identified in subsection (a) of this section that is an agency's possession.

22 | **TITLE VIII. CONFORMING LANGUAGE.**

23 | Sec. 801. Fiscal impact statement.

1 The Council adopts the fiscal impact statement in the committee report as the
2 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
3 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
4 206.02(c)(3)).

5 Sec. 802. Effective date.

6 This act shall take effect following approval by the Mayor (or in the event of veto
7 by the Mayor, action by the Council to override the veto), a 30-day period of
8 Congressional review as provided in section 602(c)(1) of the District of Columbia Home
9 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
10 206.02(c)(1)), and publication in the District of Columbia Register.