

May 9, 2019

Hon. Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Ave NW
Washington, DC 2004

Re: FOIA Amendments in the Budget Support Act

Dear Chairman Mendelson,

We are writing to urge you to remove the “Freedom of Information Clarification Amendment Act of 2019” from the Budget Support Act. You have been a long supporter of open and transparent government. Access to information by advocates, journalists and voters strengthens the District’s democratic institutions, improves policy and practice and helps expose misconduct, waste, inefficiency, and bad policy. The proposed amendments will weaken the District’s laws and make the District government less transparent and less accountable to voters and residents.

We are particularly concerned that these amendments will overly narrow the scope of information that the public can access, will chill the public’s use of the DC FOIA law, and that these amendments are being passed without the full legislative process and public input. DC FOIA and open government laws are critical components of protecting civil rights; these proposed changes will limit crucial information about how our government operates.

The FOIA Clarification Amendment Act will narrow the scope of information that the public can access in three significant ways. First, the new definition of public records removes the word “all” and implies that some types of records held by government bodies are not in fact public records. Second, the definition of public records changes to require records to be “related to the conduct of public business.” This added requirement could exclude records that, for example, demonstrate misuse of government funds or property or contain information about public official’s motivations and intent. Third, the amendment contemplates only providing records when the public can describe identifying features, which members of the public are not likely to know.

These changes will also chill the use and effectiveness of DC’s FOIA law. The lack of clarity in the new definitions will allow agencies to use these ambiguities to fight valid FOIA requests. Members of the public will have additional burdens placed upon them in both drafting FOIA requests and in getting the information that they have a right to access.

Lastly, it is problematic, if not highly ironic, to pass changes to the DC FOIA law, meant to ensure an open government and public participation, with no official notice to the public and no opportunity for a hearing or written testimony. These provisions have no particular relation to the FY 2020 Budget Support Act and so should not be included in the BSA.

We value DC's strong commitment to open government and would be happy to work with you and your staff to address any concerns with the current DC FOIA law while preserving public access to records that are of critical importance and allowing any amendments to go through the full legislative process.

Sincerely,

A handwritten signature in black ink that reads "Kaitlin Banner". The signature is written in a cursive, flowing style.

Kaitlin Banner, Deputy Legal Director

Cc: Councilmember Kenyan McDuffie
Councilmember Anita Bonds
Councilmember David Grosso
Councilmember Elissa Silverman
Councilmember Robert White
Councilmember Brianne Nadeau
Councilmember Jack Evans
Councilmember Mary Cheh
Councilmember Brandon Todd
Councilmember Charles Allen
Councilmember Vincent Gray
Councilmember Trayon White