

**Council of the District of Columbia:
Committee on Government Operations and the Environment**

June 7, 2010

Public Hearing on Bill 18-777: The Open Government Act of 2010

Testimony of James A. McLaughlin*

Good morning. My name is James McLaughlin. I'm a lawyer with The Washington Post, and I'm testifying today on behalf of The Post and the Maryland-Delaware-D.C. Press Association.

As a newsroom lawyer, I spend a lot of time on Freedom of Information Act matters. I represent requesters, of course, but I also work cooperatively whenever possible with the FOIA officers or agency lawyers who respond to our requests. I've become well acquainted with public-records law and practice in the District, Maryland and Virginia, as well as federal FOIA.

My experience with the District's Freedom of Information Act can be summed up as follows: on paper, the District has a very good FOIA statute – better, in some ways, than the federal model on which it's based. In the reality of implementation, however, there is enormous room for improvement.

Mr. Susman alluded in his testimony to the FOIA denial letters project that I oversaw as chairman of the legal committee of the D.C. Open Government Coalition. The project wasn't intended as an audit, but it yielded notable results. The Coalition asked 34 D.C. agencies for the FOIA denial letters that had issues in recent years. This should have been about the easiest request there is, because FOIA itself requires the agencies to maintain their FOIA denial letters in a file for public inspection upon request. Unfortunately, the results were wildly uneven. Though some agencies fared reasonably well, many nominally granted the request but failed to produce the records in a timely or complete fashion. It confirmed what I see on a regular basis in my work for the Post.

The Open Government Act is a sorely needed step toward addressing this problem. The centerpiece of the bill is its establishment of a new, independent FOIA ombudsman's office, the Open Government Office. Variants of this approach have proven successful in other states, including New York, Connecticut, and Virginia, and a FOIA ombudsman is now being tried at the federal level.

The D.C. Open Government Office would have real enforcement authority, including the all-important power to compel an agency to disclose records (Sec. 205). But its greatest impact could ultimately come from its less formal powers. Most FOIA or public information officers at D.C. agencies, I believe, are trying in good faith to do their jobs in accordance with the law. But they often have little training and minimal support,

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especially at the smaller agencies. The Open Government Office would have a statutory responsibility to provide such training. It would also offer public education and outreach, issue advisory opinions, and generally serve as a much-needed “honest broker” to resolve disputes between agencies and requesters without expensive litigation.

For these reasons, The Post and Press Association strongly support the Open Government Act. We are grateful to Councilmember Cheh and her staff for their hard work on such an important issue.

Finally, though I’ve focused my comments on Titles I and II, I’d like to note our support for the other open government provisions in the bill – particularly, improved transparency of administrative rulemaking, and enhanced disclosures for campaign and lobbying activities. Thank you.