

**June 7, 2010 Testimony in Support of the Open Government Act and
To End to the Kafkaesque Era of FOIA Obstruction
- Roy Morris, Esq.-**

Committee Chairperson Cheh, and other members of the *Committee on Government Operations and the Environment*, I am privileged to address you on this historic occasion. Before you are critical amendments to the Washington DC Freedom of Information Act otherwise referred to as "DC-FOIA." The amendments promise to finally deliver what the current act only promises.

I need not tell you that the DC-FOIA is a critical tool for an informed citizenry to help assure the proper functioning of government.

The DC-FOIA is also critical for an effective City Council as it provides citizens information to better inform the Council on how the City is failing and how it is succeeding.

The DC-FOIA is also critical for an effective press for educating both the citizens and the Council. The DC-FOIA helps the press ask informed questions to city administrators, and aids in their investigations of dysfunction and corruption.

As examples, we have recently used the FOIA to uncover the conflict of interest that occurs within the DC Medical Board who are associated with Medstar and its affiliates. Armed with that information, we were able to advise Councilmember Catania's Committee on Health about this improper behavior. Unfortunately, further incomplete FOIA responses reveal that the practice has not fully stopped. We will continue to seek to have it corrected.

Another example...concerned that a grant of the DC-FOIA request might "end up...in the City Paper," the Attorney General has opposed the release of embarrassing CFSA documents that would show the root of some of the corruption and incompetence in the CFSA's leadership that is endangering our children, including the health and welfare of a chronically ill seven year old in Ward 3. A more effective DC-FOIA would help save lives.

The current DC-FOIA has loopholes that the Attorney General exploits and thus routinely undermines its purpose. Because the Attorney General's allegiance is to the Mayor and not the FOIA, litigation under today's FOIA is at best a Kafkaesque experience, where the Attorney General seeks to wear down the FOIA requester until they give up. I am not trying to pick on the Attorney General, but the reality is that no matter which agency one seeks information from, no matter how simple and straightforward the request, whenever a representative of the Attorney General's office is involved, the responses are typically overdue, incomplete, and unnecessarily obstructionist.

Let me explain how the proposed revisions of this act would have produced better outcomes.

1) Among its many important changes, the proposed amendments create a true advocate in the DC Government for the FOIA and openness in government. The proposed "District of

Columbia Open Government Office" is a welcome addition. In that CFSA case, records clearly existed which were not protected. Without clearly checking the documents, the Attorney General -- without support of any affidavit -- simply proffered that no documents existed -- even when there was clear evidence that they did. What did the Attorney General have to lose by obstructing -- even based on misleading facts? *They had no one to answer to! That the sad fact of today's FOIA.* Had there been an Open Government Office, they would have intervened and this straightforward issue would have been addressed and corrected, without unnecessary court litigation. In another case, involving the MPD, the Open Government Office would have forced not only the MPD, but also the Mayor's office, to respond to a request for information in a timely and thorough manner. Those reports would have helped get relief for that ill seven-year-old child in Ward 3.

2) The proposed requirement of a Vaughn Index early on in the process is another welcome amendment that will substantially reduce litigation. The agency will have to produce a Vaughn Index that lists each document and, if any information is withheld, why it was withheld. This time proven tool has been found by the Federal Courts to be critical for resolving FOIA disputes. Had a Vaughn index been required of CFSA, we would not be litigating that issue before the Superior Court now eight months after the original FOIA request was made. Timely relief for that sick child would have been available.

3) The proposed rolling requirement for production of documents is also a welcome amendment. It will save time, and even human life where it is at stake, and make all the difference when journalist's deadlines are involved.

Let me conclude by mentioning that going to court under DC-FOIA can be a frustrating experience. The proposed amendments will promote uniformity by clearly spelling out the required process. This will give the judiciary the guidance and tools they need to effectively and efficiently resolve these cases when they end up in court.

Special thanks and recognition goes to David Zvenyach whose leadership and drive has led to this excellent set of proposed modifications. Thanks to other members of the DC government who worked with him, as well. We all share the same goals, namely that the government be responsive to the people of the District of Columbia and operate under the highest ethical standards. These FOIA amendments further those goals and will make a positive impact on life in the District of Columbia.