

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer



Office of Integrity and Oversight

TO: David Tseng, General Counsel
Office of the General Counsel

FROM: Timothy Barry, Executive Director *Timothy Barry*
Office of Integrity and Oversight

DATE: April 22, 2021

SUBJECT: Audit of the Office of the General Counsel's Compliance with the Freedom of Information Act (FOIA) (21-01-02 OGC)

This report summarizes the results of the Office of the Chief Financial Officer (OCFO)'s Office of Integrity and Oversight (OIO)'s Audit of the Office of the General Counsel's (OGC) Compliance with the Freedom of Information Act (FOIA). The objective of the audit was to determine whether the Office of General Counsel complies with the FOIA regulations.

Our audit identified one (1) deficiency related to internal controls over the FOIA process and maintenance of documents. To address the deficiency, we provided two (2) recommendations. Your agency provided a written response to the draft report on April 21, 2021 and concurred with the recommendations. The planned corrective actions are responsive and meet the intent of the recommendations. A copy of your response, in its entirety, is included as an Appendix to this report.

We appreciate the assistance and cooperation that you and your staff provided to OIO during this audit. Should you have any questions related to the report, please contact me at (202) 442-6433; or Tisha Edwards, Director of Internal Audit, at (202) 442-6446.

cc: Fitzroy Lee, Interim Chief Financial Officer, Government of the District of Columbia
Angell Jacobs, Deputy Chief Financial Officer and Chief of Staff, OCFO
Marshelle Richardson, Chief Risk Officer, OCFO
Tracy Ferguson, Assistant General Counsel, OGC



Office of Integrity & Oversight

**Government of the District
of Columbia, Office of the
Chief Financial Officer**

April 22, 2021

**AUDIT OF THE OFFICE
OF GENERAL
COUNSEL'S
COMPLIANCE WITH
THE FREEDOM OF
INFORMATION ACT
(FOIA)**



Highlights

Highlights of Report 21-01-02 OGC, a report to the General Counsel, Office of the General Counsel.

Why OIO Did This Audit

The Office of Integrity and Oversight (OIO) performed this audit of the Office of General Counsel's (OGC) Compliance with the Freedom of Information Act (FOIA) as part of OIO's oversight responsibilities. This audit was also included in the OIO FY 2021 Audit Plan.

What OIO Recommends

We provided the General Counsel with two (2) recommendations that center on:

1. Updating the OGC's FOIA standard operating procedures to provide FOIA Information Officers with detailed, comprehensive procedures, and
2. Implementing a quality review process to ensure records are accurate and complete.

April 22, 2021

AUDIT OF THE OFFICE OF GENERAL COUNSEL'S COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT (FOIA)

What Did OIO Find

The District of Columbia Freedom of Information Act, or FOIA, DC Code §§ 2-531-539, provides that any person has the right to request access to records. All public bodies of the District Government are required to disclose public records, except for those records, or portions of records, that are protected from disclosure by the exemptions found at DC Code § 2-534. The Office of the Chief Financial Officer (OCFO) follows FOIA guidance and internal procedures provided by the OGC. Based on the guidance and our review of the FOIA process we determined the following:

Internal Controls over the FOIA Process Requires Improvement

Our review of the FOIA process revealed internal control deficiencies in the processing and maintenance of FOIA requests. This was due to the OGC's internal policies and procedures not providing detailed and comprehensive guidance over the FOIA process. Specifically, the policies and procedures do not include documentation standards for OGC's FOIA system of record (ArkCase), a quality review of FOIA records for completeness.

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Abbreviations and Acronyms

ACL	Audit Command Language
DC	District of Columbia
DCMR	DC Municipal Regulations & Register
FOIA	Freedom of Information Act
GAO	Government Accountability Office
OCFO	Office of the Chief Financial Officer
OFT	Office of Finance and Treasury
OGC	Office of General Counsel
OIO	Office of Integrity and Oversight
SOAR	System of Accounting and Reporting

Background

The District of Columbia (DC) Freedom of Information Act, or FOIA, DC Code §§ 2-531-539, provides that any person has the right to request access to records. All public bodies of the District Government are required to disclose public records, except for those records, or portions of records, that are protected from disclosure by the exemptions found at DC Code § 2-534.

A FOIA request may be made for any public record. This does not mean, however, that the public body will disclose every record sought. Statutory exemptions authorize the withholding of certain public records. When the public body does withhold records or portions of records, it must specify which exemption of the FOIA permits the withholding. FOIA does not require agencies to do research, analyze data, answer written questions, or create records in order to respond to a request. FOIA only requires the agency to make a reasonable effort to locate an already existing record.

The Office of the Chief Financial Officer (OCFO), Office of the General Counsel (OGC) is responsible for managing OCFO related FOIA requests.

Submission of FOIA Requests

A FOIA request may be submitted online via the DC Government Public FOIA Portal. Requests may also be submitted by mail, fax or email. FOIA requests must describe the record(s) the requestor is seeking as clearly and precisely as possible. Descriptions must be specific regarding names, dates, places, events, subjects and other pertinent details that will help the public body to identify the records. If the request is vague or too broad, there may be a need for more specific information which may delay the processing of the FOIA request.

FOIA requests are submitted through the FOIA portal within the OCFO website. The OGC uses ArkCase software to manage the FOIA process. ArkCase, the official system of record, has been customized to suit the OGC's needs and is a repository for all FOIA documents utilized by FOIA Information Officers.

ArkCase requires authentication prior to accessing the submission form from the District FOIA portal. ArkCase sends an Acknowledgement Letter to the requestor upon receipt of the FOIA request which is maintained in ArkCase. ArkCase automatically

populates the date the FOIA request was received and the due date (fifteen (15) business-days from date of receipt).

Response Time

All public bodies are required to respond to a FOIA request within fifteen (15) business-days following the receipt of a request by the FOIA Information Officer. Public bodies may extend the time for a response by an additional ten (10) business-days via an extension request for unusual circumstances as defined by DC Code § 2-532 (d). A copy of the extension request must be maintained within the FOIA records.

The OCFO has modified its operations to accommodate the COVID-19 public emergency. This includes the tolling (or putting on hold) the OCFO's response time for FOIA requests received on or after March 11, 2020 until the COVID-19 closure has ended. This date is subject to change at the discretion of the Mayor. As a result, the automatically generated due date of fifteen (15) business-days from the date of receipt indicated in the Acknowledgement Letter received by requestors upon submission is no longer enforced.

Exemptions from FOIA Disclosure

The FOIA statute provides that certain categories of documents may be withheld from disclosure. Included among these are documents that relate to law-enforcement activities, documents subject to recognized legal privileges such as the attorney-client and work-product privileges, documents required to be withheld by other laws (federal or District), documents that reflect the internal deliberative processes of the government, and documents the disclosure of which would result in a clearly unwarranted intrusion on personal privacy. OGC FOIA Information Officers are responsible for identifying information exempt from disclosure for redaction. ArkCase has a redaction tool that will permanently redact exempt information once identified.

FOIA Fees

There is no initial fee for submitting a FOIA request. The fees are based on the direct costs the OCFO incurs to respond to a FOIA request. Review costs consist of the hourly rate based on the pay grade of the personnel who performs the review and fees for searching and reproducing records as provided in 1 DCMR § 408. The Notice of Estimated Fees shall include a breakdown of the fees incurred to provide a FOIA response. The requestor must provide a

response accepting the stated fee and provide payment prior to the release of the FOIA response.

Payments for FOIA fees are remitted in the form of check or money order made payable to the DC Treasurer. All check/money order payments received are scanned and retained by the OGC Executive Assistant and FOIA Information Officer. The checks/money orders are then transported by the OCFO Office of Management and Administration's Logistics Division to the Office of Finance & Treasury (OFT). Prior to the State of Emergency and remote operations commencing in March 2020, the Logistics Division provided the OGC Executive Assistant and FOIA Information Officer with a confirmation of delivery signed by the OFT.

FOIA payments are remitted to the OFT Revenue Operations Officer or the Revenue Collections Analyst who creates a journal voucher for the check/money order and processes it in the cashiering system which interfaces with the District's System of Accounting and Reporting (SOAR).

Waiver of FOIA Fees

In accordance with DCMR 1-408.9, an agency may waive all or part of any fee when it is deemed to be either in the agency's interest or the interest of the public. DCMR 1-408.10 states that a requestor seeking a waiver or reduction of fees shall provide a statement in his or her request letter explaining how the requested records will be used to benefit the general public. If the OCFO determines disclosure of the information is in the public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the District and is not primarily in the commercial interest of the requestor, it may reduce or eliminate the fees accordingly.

FOIA Appeals

An administrative appeal or judicial review may be filed by the requestor if there is dissatisfaction with a public body's response to the FOIA request. All administrative appeals involving the OCFO are submitted to the Mayor. An administrative appeal may be submitted online via the DC government Public FOIA Portal.

Objective, Scope, and Methodology

The objective of the audit was to determine whether the Office of General Counsel complied with the FOIA regulations. The audit covered fiscal years 2019 and 2020 (October 1, 2018 to September 30, 2020).

In order to achieve our objective, we requested and obtained the OGCs Standard Operating Procedures (SOPs) related to the FOIA process. We interviewed the relevant OGC officials and performed our walkthrough of the process for responding to FOIA requests and maintenance of FOIA records to understand whether OGC complies with the FOIA regulations and its own SOPs. We noted the OGC's compliance with FOIA has not been audited prior to this audit and therefore has no open recommendations.

We requested and obtained the listing of FY 2019 and FY 2020 FOIA requests submitted via the ArkCase software. Utilizing the Random Number Generator by the Audit Command Language (ACL) data analysis software, we selected a random sample of 60 transactions. We also inquired with FOIA Information Officers regarding FOIA requests that included fees and selected three (3) transactions to increase the sample size to 63.

We requested and obtained the supporting documentation for sample FOIA requests to determine whether FOIA responses were in compliance with FOIA regulations regarding response time, fee policy, appeals process and information exempt from disclosure.

This performance audit was conducted in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Finding **Internal Controls over the OGC FOIA Process
Requires Improvement**

Our review of the FOIA process revealed internal control deficiencies in the processing and maintenance of FOIA requests. This was due the OGC's internal policies and procedures not providing detailed and comprehensive guidance over the FOIA process. Specifically, the policies and procedures do not include documentation standards for OGC's FOIA system of record (ArkCase), a quality review of FOIA records for completeness, and proper disposition of FOIA payments. As a result, the audit revealed deficiencies in the:

- Management of FOIA Records,
- FOIA Response Times,
- Release of Information Exempted from Disclosure, and
- FOIA Fees Collection Process.

FOIA objectives cannot be achieved without internal controls in place. The Government Accountability Office (GAO) Standards for Internal Controls in the Federal Government (Greenbook 2014 Version) Overview Section 1.03 states, "Internal control comprises the plans, methods, policies and procedures used to fulfill the mission, plans, goals and objectives of the entity." The OGC can benefit from having proper policies and procedures by providing guidelines to FOIA Information Officers for daily operations, ensuring compliance with FOIA laws and regulations and providing guidance for decision-making and streamlined internal processes.

Management of FOIA Records

The OGC Office Order 2008-06 requires a timestamped documented chronological record of each FOIA request to be maintained as applicable including a copy of the request with the due date, extension request detailing approval or denial, name of the attorney assigned to the request and the FOIA response. For appeals of FOIA responses, a timestamped documented copy of the appeal, due date, extension request detailing approval or denial and appeal response with any follow-up communication must be included.

FOIA records were not properly maintained in five (5) of the 63 requests reviewed. We specifically noted the following:

Table 1: ArkCase File Exceptions

Exception	Number of Exceptions
No redacted file in ArkCase	2
File not in ArkCase	3
Total	5

Source: OIO

The three (3) responses not in ArkCase were assigned to FOIA Information Officers who are no longer employed by the OCFO. As a result of the missing files, OIO was unable to perform a review of the complete FOIA records.

The OGC policies and procedures do not provide FOIA Information Officers with documents that must be maintained in ArkCase and there is no quality review process in place, therefore, the incomplete and missing records were not identified. If FOIA records are not properly maintained, relevant documents to aid in appeal decisions or further judicial review would not be available.

Non-Compliance with FOIA Response Times

Under D.C. Official Code § 2-532, the District of Columbia has fifteen (15) business-days, subject to the possibility of a ten (10) business-day extension, to respond to the public record request as of the date of receipt.

Our review of FOIA responses revealed fourteen (14) of 63 FOIA responses sampled were not provided to the requestor within fifteen (15) business-days or by the FOIA request due date. The ArkCase records for these FOIA requests did not include evidence that a Request Extension Letter or other supporting documentation notifying the requestor of the extension request and new FOIA response due date.

During the State of Emergency commencing in March 2020, the extension response policy was put on hold; however, these instances occurred in FY2019; therefore, they were not exempt from the fifteen (15) business-day response requirement.

In the current process, FOIA Information Officers are alerted via a notification generated by ArkCase five (5) days before the FOIA response due date; however, we observed that responses were not issued by the due date or FOIA Information Officers were unable to produce evidence that an extension request was sent to the requestor. To demonstrate compliance with the regulation, these responses should be maintained in the file; therefore, it is incumbent on each FOIA Information Officer to monitor the due dates and ensure extension requests are communicated and maintained within ArkCase.

Release of Information Exempt from Disclosure

Under D.C. Official Code § 2-534 Exemptions from disclosure, item (2) states, “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

Our review of FOIA responses revealed one (1) of 63 sampled FOIA responses was released to the requestor containing the first and last names of individuals.

Per the FOIA Information Officer, the exempt information was included due to human error. While ArkCase has a redaction tool, it relies on the FOIA Information Officer to manually identify the

exempt information. With large amounts of data, it is possible that exempt information is inadvertently released.

FOIA Fees Collection Process

The GAO Standards for Internal Controls in the Federal Government (Greenbook 2014 Version), states a key control activity includes the accurate and timely recording of transactions. However, the OGC FOIA Fee Policy does not include a procedure to ensure the proper disposition of FOIA payments from receipt to deposit and posting to SOAR.

In 60 of the 63 cases reviewed, the OCFO waived the fee to the FOIA requester or there was a no charge referral since the OCFO resolved the FOIA request by directing the requestor to publicly accessible information, such as a website or to another District agency. To ensure FOIA payments were processed correctly, we reviewed three (3) requests with a fee attached and found one (1) of the three (3) FOIA payments could not be traced to SOAR.

When we brought this matter to OGC's attention, it was determined that the check was received during the District's COVID-19 Public Emergency, scanned by administrative staff within the OCFO's Executive Office and delivered to OFT by the Logistics Division. However, OFT officials were unable to confirm the check was received. OGC advised they contacted the requestor and learned that the check was never cashed. The requestor provided a replacement check.

Prior to commencing remote operations in March 2020, the Logistics Division would provide the OGC Executive Assistant and FOIA Information Officer with a confirmation of payment delivery signed by OFT. However, we were told that the Logistics Division has discontinued providing delivery confirmations during the period of remote operations.

Although it is the responsibility of OFT to deposit and post payments to SOAR; OGC should ensure a confirmation of receipt is received from OFT for inclusion in the FOIA records.

Overall, the deficiencies identified may have been prevented with the inclusion of a peer/quality control review to ensure FOIA request files are complete. Without detailed policies and procedures and guidelines for FOIA Information Officers there is a risk of non-compliance.

Recommendations: We recommend the OCFO/OGC General Counsel:

1. Update the internal policies and procedures to provide comprehensive guidance for the management of FOIA requests from initiation to closeout.
2. Implement a uniform quality control review process of FOIA responses such as a completion checklist in ArkCase.

MANAGEMENT RESPONSE AND OIO COMMENT

Management Response (Recommendations 1 & 2)

OGC agreed with the recommendations and noted in their response that the General Counsel will appoint a task force which will be chaired by the Assistant General Counsel and consist of OGC staff who are experienced in FOIA matters.

OIO Comment:

The planned corrective actions are responsive and meet the intent of the recommendations.

APPENDIX 1:

AGENCY RESPONSE

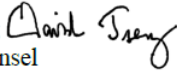
GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER



Office of the General Counsel

MEMORANDUM

TO: Timothy Barry
Executive Director, OIO

FROM: David Tseng 
General Counsel

DATE: April 21, 2021

SUBJECT: OGC's Response to the Audit of the Office of the General Counsel's Compliance with the Freedom of Information Act (FOIA) (OIO No. 21-01-02 OGC)

The Office of the General Counsel (OGC) appreciates the time and dedication the Office of Integrity and Oversight (OIO) provided to assess OGC's compliance with the Freedom of Information Act (FOIA) and related internal OGC policies and procedures. As requested, I am providing you with OGC's response to OIO's draft Audit of the Office of the General Counsel's Compliance with the Freedom of Information Act (FOIA), dated April 6, 2021 (Draft Audit Report).

The Draft Audit Report sets forth two recommendations for OGC: (1) to update its FOIA standard operating procedures to provide guidance on the management of FOIA requests from initiation to closeout, and (2) to implement a quality review process to ensure records are accurate and complete. (See Draft Audit Report, p. 7). OGC concurs with OIO's two recommendations and will take specific actions to address them. Upon receipt of the final audit report concerning OGC's FOIA compliance, I will appoint a task force, which will be chaired by Assistant General Counsel Tracy Ferguson and consist of OGC staff who are experienced in FOIA matters. The task force will be asked to develop an action plan, to be submitted to me no later than June 30, 2021, to implement the two OIO recommendations.