

COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
FISCAL YEAR 2020 COMMITTEE BUDGET REPORT



DRAFT 5/1

**TO:** Members of the Council of the District of Columbia

**FROM:** Chairman Phil Mendelson  
Committee of the Whole

**DATE:** May 2, 2019

**SUBJECT:** Report and Recommendations of the Committee of the Whole on the  
Fiscal Year 2020 Budget and Corresponding Budget Support Act

The Committee of the Whole, having conducted hearings and received testimony on the Mayor’s proposed fiscal year 2020 operating and capital budgets for the agencies under its purview, reports its recommendations for consideration by members for inclusion in the final Fiscal Year 2020 Budget. The Committee also comments on several subsections of the Fiscal Year 2020 Budget Support Act of 2019, and makes its own additional proposals.

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## TITLE COW-D FREEDOM OF INFORMATION CLARIFICATION AMENDMENT

### I. PURPOSE, EFFECT, AND IMPACT ON EXISTING LAW

The purpose of this subtitle is to make technical and clarifying amendments to the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*) (FOIA Act). The subtitle proposes to clarify that FOIA requests pertain only to information regarding the affairs of government and the official acts of public officials and employees. Further, it clarifies that electronic records and information on personal devices are subject to FOIA requests. Finally, the subtitle clarifies that FOIA requests must reasonably describe the type of public records requested which reflects federal case law.

### II. COMMITTEE REASONING

Since enactment of the FOIA Act in 1976, government and government employees have become more reliant on technology for communication. Thus, clarification is needed to emphasize electronic records are subject to this Act. Additionally, the Court of Appeals' holding in *FOP v. District of Columbia*, 139 A.3d 853 (D.C. 2016), has rendered District agencies powerless to negotiate narrowing the scope of requests or to require specificity in describing requested documents, thereby resulting in the inefficient use of resources. Finally, while the Council is a strong proponent of government transparency (including voting to subject itself to the act in 2001), clarification is needed to underscore that only records related to the conduct of public business by public bodies are subject to the act.

### III. SECTION BY SECTION ANALYSIS

Sec. XX01. Short title.

Sec. XX02. *subsection (a)* Provides that responsive records pertain to information regarding the affairs of government and the official acts of public officials and employees.

*subsection (b)* Clarifies that electronic records and personal devices are subject to FOIA requests.

*subsection (c)* Clarifies that FOIA requests must reasonable describe the type of public records requested.

Sec. XX03. Provides that this act shall apply with respect to any requests for records pending on the effective date of this subtitle.

#### IV. LEGISLATIVE RECOMMENDATION

1 TITLE XX, SUBTITLE X. Freedom of Information Clarification Amendment

2 Sec. XX01. Short title.

3 This subtitle may be cited as the “Freedom of Information Clarification  
4 Amendment Act of 2019”.

5 Sec. XX02. The Freedom of Information Act of 1976, effective March 29, 1977  
6 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), is amended as follows:

7 (a) Section 201 (D.C. Official Code § 2-531) is amended by striking the  
8 phrase “information.” and inserting the phrase “information regarding the affairs of  
9 government and the official acts of public officials and employees.” in its place.

10 (b) Section 209 (D.C. Official Code § 2-539) is amended as follows:

11 (1) Subsection (a)(10) is repealed.

12 (2) Subsection (b) is amended by adding new paragraphs (3), (4), and  
13 (5) to read as follows:

14 “(3) “Personal device” includes computers, tablets, cellular phones,  
15 personal email addresses, and similar devices owned by an employee of a public body when  
16 those devices are used to store records created pursuant to an employee’s government  
17 employment.

18 “(4) “Public record” includes all books, documents, papers, maps,  
19 photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw  
20 data, and ballot images), or other documentary materials, regardless of physical form or  
21 characteristics prepared, owned, used, in the possession of, or retained by a public body and  
22 related to the conduct of public business. Public records include information stored in an  
23 electronic format and on a personal device.

24 “(5) “Reasonably describing” means describing with particularity the  
25 public records requested by including the names of the sender and recipient, a timeframe for  
26 the search, and a description of the subject matter of the public record or search terms to  
272 allow a public body to conduct a search and review within the time prescribed pursuant to  
8 section 202(c).”.

29 Sec. XX03. Applicability.

30            This subtitle shall apply with respect to any requests for records pending on the  
31   effective date of this subtitle, whether or not the request was made prior to that date, and shall  
32   apply to any civil action pending on that date.  
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**V. FISCAL IMPACT**

N/A

## COMMITTEE ACTION

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