



COUNCIL OF THE DISTRICT OF COLUMBIA

THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
SUITE 102
WASHINGTON, D.C. 20004

ZACHARY PARKER
COUNCILMEMBER, WARD 5

COMMITTEE MEMBER
Facilities and Family Services
Health
Hospital and Health Equity
Housing
Transportation and the Environment

April 24, 2024

Nyasha Smith, Secretary
Council of the District of Columbia
1350 Pennsylvania Avenue NW
Washington, DC 20004

Dear Secretary Smith,

Today, I am introducing the Transparency Is Accountability Amendment Act of 2024. Please find enclosed a signed copy of the legislation, which is co-introduced by Councilmember Brianne K. Nadeau.

One of the most important forms of accountability for government operations is transparency, and one of the principal mechanisms for delivering that transparency is the District of Columbia Freedom of Information Act, or FOIA, D.C. Official Code § 2-531 *et seq.* While this law in theory provides members of the public—including the press—access to public records, the reality of FOIA practice is somewhat different. Far too often, government records pertaining to basic government functions or that shed light on government misconduct are withheld—depriving the public of critical information and frustrating the transparency and accountability objectives of FOIA. At a time when local news outlets are struggling and council offices face routine difficulties securing information from the Office of Unified Communications and other agencies with significant performance issues, public access to records is more important than ever.

The Transparency Is Accountability Amendment Act of 2024 makes targeted changes to D.C.'s FOIA to enhance the ability of the public to obtain critical information about agency operations and to incentivize efficient and responsible government conduct through greater transparency. This legislation will:

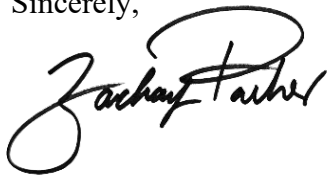
- (1) Clarify that 911 call records cannot be withheld under the personal privacy exemption where the name and number of the caller is redacted (while also allowing a caller to provide written consent for this information to be disclosed);

- (2) Ensure that often used exemption for inter-agency and intra-agency memoranda cannot be used to withhold information regarding government misconduct, including discrimination, violations of criminal law, and sexual harassment;
- (3) Require agencies to identify a specific, foreseeable harm when asserting an exemption to disclosure and to consider discretionary releases of information when the likelihood of significant harm occurring is low and the public interest in the information is high;¹ and
- (4) Require the disclosure of information withheld under the deliberative process if the public's interest in disclosure outweighs the District's interest in secrecy.

Enacting these changes will help bolster efforts to weed out unethical and unlawful conduct in the District's executive and legislative branches and ensure that District residents are better equipped to hold their elected and appointed representatives accountable.

Please contact my Deputy Chief of Staff, Conor Shaw, at cshaw@dccouncil.gov if you have any questions about this legislation.

Sincerely,

A handwritten signature in black ink that reads "Zachary Parker". The signature is written in a cursive style with a large, looping initial "Z".

Zachary Parker
Ward 5 Councilmember

¹ These changes reflect current federal FOIA law and practice prompted by the FOIA Improvement Act of 2016 (P.L. 114-185) as well as [guidelines](#) issued by United States Attorney General Merrick Garland on March 15, 2022.

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Brianne K. Nadeau
Councilmember Brianne K. Nadeau

Zachary Parker
Councilmember Zachary Parker

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Freedom of Information Act of 1976 to improve public access to critical records, including 911 transcripts and recordings, documents regarding government misconduct, and deliberative materials when the public interest in disclosure outweighs the District’s interest in secrecy.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Transparency Is Accountability Amendment Act of 2024”.

Sec. 2. The Freedom of Information Act of 1976 (D.C. Law 1-96; D.C. Official Code § 2-534(a)), is amended as follows:

(a) Paragraph (a)(2) is amended to read as follows:

“(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy, excluding audio or transcripts of calls to 911 and other 911 radio, including dispatches and agency to agency communications, where the 911 caller’s name and contact information has been redacted; provided, that the agency shall not redact the personal information of the person requesting the record or a person who has expressly consented to disclosure of the information in writing.”

(b) Paragraph (a)(4) is amended to read as follows

“(4) Inter-agency or intra-agency memorandums or letters, including memorandums or

33 letters generated or received by the staff or members of the Council, which would not be
34 available by law to a party other than a public body in litigation with the public body. This
35 exemption shall not apply to information regarding government misconduct, including actions,
36 policies, or decisions that violate the District’s Code of Conduct as defined by Section 101 of the
37 Board of Ethics and Government Accountability Establishment and Comprehensive Ethics
38 Reform Amendment Act of 2011 (D.C. Law 19-318; D.C. Official Code § 1–1161.01(7); the
39 District of Columbia Theft and White Collar Crimes Act of 1982 (D.C. Official Code Title 22,
40 Chapters 7, 24, 32); the Human Rights Act of 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-
41 1401.01 et seq.); and Mayor’s Order 2023-131 (October 31, 2023) and any superseding order.”

42 (c) Subsection (b) is amended by:

43 (1) inserting the sentence “An agency shall withhold information under this
44 section only if the agency reasonably foresees that disclosure would harm an interest protected
45 by subsection (a).” before the word “Any”; and

46 (2) inserting the sentence “An agency shall apply a presumption of openness
47 when applying this section and shall consider discretionary releases of information when the
48 reasonable likelihood of significant harm occurring is low and the public interest in the
49 information is high.” after the phrase “where the deletion was made.”

50 (d) A new subsection (f) is inserted to read as follows:

51 “(f) Information withheld under the deliberative process privilege shall be disclosed if the
52 public’s interest in disclosure outweighs the District’s interest in secrecy.”

53 Sec. 3. Fiscal impact statement.

54 The Council adopts the fiscal impact statement in the committee report as the fiscal
55 impact statement required by section 4a of the General Legislative Procedures Act of 1975,

56 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

57 Sec. 4. Effective date.

58 This act shall take effect after approval by the Mayor (or in the event of veto by the
59 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
60 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
61 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
62 Columbia Register.