



3901 Argyle Ter., N.W.
Washington, D.C. 20011
www.dco.gc.org -- 202-780-6020

**Testimony of the
D.C. Open Government Coalition**

by

Fritz Mulhauser
Co-Chair, Coalition Legal Committee

Before the
Council of the District of Columbia, Committee on Executive Administration & Labor

FY 22 Performance Oversight – Office of the Secretary

February 10, 2023

Thank you for the opportunity to provide views on the performance of the Office of the Secretary. We have suggestions related to the public records mission of the Office, and the exciting prospect of a new archives building at UDC.

Appointing Dr. Lopez Matthews as District Archivist last year was a significant step and re-starting architectural plans begun years ago is welcome as well. Our views are offered in the spirit of building on a good start and assuring continued good work in an effort that is not your garden variety elementary school renovation.

We communicate today on behalf of the public, the users, to urge you to keep them in mind as you review the Office stewardship of the archives and the new building, and the adequacy of staff and other resources for records management, the move, and the expanded public history mission it can house.

District citizens, elected officials, and government staff can learn from the public-facing mission statement of the U.S. National Archives.¹ It states a goal that D.C. archives can also embrace:

Our mission is to provide public access to Federal Government records in our custody and control. Public access to government records strengthens democracy by allowing Americans to claim their rights of citizenship, hold their government accountable, and understand their history so they can participate more effectively in their government.

In that spirit, public access to D.C. records for education, business, and every kind of study and inspiration, is a key part of open government, along with access to open data and open meetings. Access to records, in

turn, depends on sound policies, effective leadership and adequate resources—a joint responsibility shared between executive and Council. We have five concerns:

- **The budget for the new building** remains unsettled; it is again listed as \$75M in Senior Advisor Perry’s Pre-hearing Response.ⁱⁱ Ms. Perry spoke of a revised estimate of \$100M last year but it is not reflected in plans yet. The offices declined to answer Council Pre-Hearing Questions on any capital budget increase requests. Architectural work continues yet is obviously inefficient if done with an incorrect budget figure in mind. And a very outdated figure constrains cutting-edge imaginative planning.
- **The public records staff needs to be augmented.** The staff is five total, according to the staff chart.ⁱⁱⁱ That cannot possibly be enough to manage existing agency records, survey materials due to be archived, plan and execute a complex move, staff the new building (not to mention including for the first time other branches of D.C. government). The staff upgrade needs a multi-year plan.
- **Public input can help the new building take its best shape.** The committee recognized this in its budget report last year: “based on feedback to the Committee, there is room to improve the planning and development of a new DC Archives facility by including voices of the public.”^{iv} Unfortunately, despite the wealth of important community knowledge that could be tapped, opportunities have been limited. Agency officials and the architects have not engaged around submitted comments nor allowed give and take about critical choices being made behind closed doors.
- **Archivist role must be central.** As the lead professional in the District government responsible for records and archives, Dr. Lopez Matthews must be the central voice or “client” in discussions of the archive building design. We ask the Committee to satisfy itself with questions that this is the case.
- **Records management in the District needs a new legal framework.** D.C. records management rests on a 40-year-old statute.^v Its limits are beyond number. The Council needs to commit to a rewrite.

We look forward to working with others in the community on further archives planning and on other related initiatives such as the amazing goal of digitizing D.C. records.^{vi} Open government records access in the 21st Century will depend increasingly on efficient digital storage and retrieval, which in turn requires specialized planning, equipment, and assistance to dozens of agencies and thousands of employees.

For any questions, reach me at: fmulhauser@aol.com or 202-550-4131.

The Open Government Coalition is a citizens’ group established in 2009 to enhance public access to government information and ensure the transparency of D.C. government operations. Transparency promotes civic engagement and is critical to responsive and accountable government. We strive to improve the processes by which the public gains access to government records (including data) and proceedings and to educate the public and government officials about the principles and benefits of open government in a democratic society.

We work to maintain the legal foundation assuring open government — the Open Meetings Act, the Freedom of Information Act, and the mayor’s Open Data Policy — through public education, legislative advocacy, and litigation. For example, the Coalition has an extensive website with practical advice for finding information and a blog on D.C. open government news, holds public forums such as an annual Summit during Sunshine Week in March, testifies to the D.C. Council, and files complaints and court actions to correct agency problems. The Coalition has no staff but does its work through the volunteer efforts of 13 directors, who include reporters, community activists, experts with open government institutions overseas and at the federal level, and attorneys in media law, nonprofit legal services, and criminal defense. The Coalition participates in a National Freedom of Information Coalition where advocates from dozens of states work together on common issues all are facing.

ENDNOTES

ⁱ Available at: <https://www.archives.gov/about/plans-reports/strategic-plan/strategic-plan-2018-2022#toc-mission-statement->.

ⁱⁱ Pre-hearing Responses, Office of the Special Adviser, Q.12-14, p. 18. Available at: <https://dccouncil.gov/wp-content/uploads/2023/02/Office-of-the-Senior-Advisor-Performance-Oversight-Hearing-Questions.pdf>.

ⁱⁱⁱ Pre-Hearing Responses, Office of the Secretary, Q.1, p. 2. Available at: <https://dccouncil.gov/wp-content/uploads/2023/02/2023-OS-Performance-Oversight-Responses-Wiwiek-Rembrandt.pdf>.

^{iv} Committee FY23 Budget Report, p.93. Available at: <https://dccouncil.gov/wp-content/uploads/2022/04/MARK-UP-VERSION-FY23-COHEA-Budget-Report.pdf>.

^v See D.C. Code § 2-1702 note.

^{vi} See Committee on Human Resources, FY23 budget report at p. 93. That committee called on the Board of Ethics and Government Accountability to “develop a budget and process to determine how to digitize records and include community partners to help identify the next steps in achieving this goal...Because FOIA statutes have not been amended in 21 years, with the exception of the public health emergency, BEGA will need to work collaboratively with stakeholders to determine a clear plan to digitize decades worth of records.” Available at: <https://dccouncil.gov/wp-content/uploads/2022/04/DRAFT-FY23-Committee-on-Human-Services-Budget-Report-04.19.22-Circulation2.pdf>. On the analogous project in the federal government, see “Transition To Electronic Records” (OMB/NARA M-19-21). Available at <https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-21.pdf>. A date of December 2022 for the last paper records accepted at the National Archives proved impossible. New guidance requires “No later than June 30, 2024, all permanent records in Federal agencies must be managed electronically to the fullest extent possible for eventual transfer and accessioning by NARA.” See OMB/NARA memo, available at: https://www.whitehouse.gov/wp-content/uploads/2022/12/M_23_07-M-Memo-Electronic-Records_final.pdf.