

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Council of the District of Columbia Independence Act of 1982, and the Freedom of Information Act of 1976 to clarify that notwithstanding any statutory or regulatory confidentiality or privacy provision, an agency is required to provide information to the Council, its committees, and Councilmembers acting in an official capacity, and the District of Columbia Auditor or an employee of the Office of the District of Columbia Auditor upon request to ensure that they are able to fulfill their oversight responsibilities, that the disclosure of information to these persons or entities is not to be treated as disclosure to a third party, and that such communications remain subject to the statutory restrictions that would otherwise apply.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Disclosure of Information to the Council Amendment Act of 2009”.

Sec. 2. The Council of the District of Columbia Independence Act of 1982, effective July 24, 1982 (D.C. Law 4-127; D.C. Official Code § 1-301.44 *et seq.*), is amended by adding a new section 2a to read as follows:

“Sec. 2a. Disclosure of information to the Council; District of Columbia Auditor; conditions on disclosure.

"(a) Notwithstanding any other provision of law, no document or information that the following persons or entities have requested for the purpose of performing their official duties shall be withheld by a subordinate or independent agency, instrumentality, board, or commission, or by an official or employee thereof, based upon a statutory or regulatory provision restricting or prohibiting disclosure to the general public:

- “(1) The Council;
- “(2) A Council committee;
- “(3) A member of the Council acting in an official capacity;
- “(4) The District of Columbia Auditor; or
- “(5) An employee of the Office of the District of Columbia Auditor.

"(b) Documents or information obtained under subsection (a) of this section shall

remain subject to the underlying statutory restrictions and shall not be disclosed to the public or any third party unless permitted by that statute.

"(c) Documents or information shall not be disclosed to the Council under subsection (a) of this section if:

"(1) A District statute expressly prohibits disclosure of the information to the Council; or

"(2) A federal law or regulation requires that the information be withheld from disclosure to the Council in such a manner that it leaves no discretion on the issue.

"(d) Disclosure of documents or information under subsection (a) of this section shall not constitute a waiver of any privilege or exemption that otherwise could lawfully be asserted by the District of Columbia to prevent disclosure to the general public or in a judicial or administrative proceeding."

Sec. 3. Section 204(a-1)(2) of the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a-1)(2)), is amended to read as follows:

Amend § 2-534

"(2) Disclosure of any public record, document, or information from a District of Columbia government agency, official, or employee to the following persons or entities shall not constitute a waiver of any privilege or exemption that otherwise could be asserted by the District of Columbia to prevent disclosure to the general public or in a judicial or administrative proceeding:

- “(A) The Council;
- “(B) A Council committee;
- “(C) A member of the Council acting in an official capacity;
- “(D) The District of Columbia Auditor; or
- “(E) An employee of the Office of the District of Columbia Auditor."

Sec. 4. The District of Columbia Auditor Subpoena and Oath Authority Act of 2004, effective April 22, 2004 (D.C. Law 15-146; D.C. Official Code § 1-301.171 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code § 1-301.172) is amended as follows:

Amend § 1-301.172

- (1) Designate the existing text as subsection (a).
- (2) New subsections (b) and (c) are added to read as follows:

“(b) If the District of Columbia Auditor prevails, in whole or in part, in an application to the Superior Court of the District of Columbia in a suit to enforce a subpoena issued pursuant to section 2, the District of Columbia Auditor may be awarded reasonable attorney fees and other costs of litigation.

“(c) If the District of Columbia Auditor prevails, in whole or in part, in an application to the Superior Court of the District of Columbia in a suit to enforce a subpoena issued pursuant to section 2 and is not awarded reasonable attorney’s fees, the District government agency or instrumentality challenging the enforcement order shall reimburse the District of

Columbia Auditor for any litigation-related expenses or costs incurred.”.

(b) A new section 4a is added to read as follows:

“Sec. 4a. District of Columbia Auditor Legal Fund.

“(a) There is established as a nonlapsing fund the District of Columbia Auditor Legal Fund (“Fund”), which shall be administered by the District of Columbia Auditor for the purpose of enforcing the District of Columbia Auditor’s subpoena power.

“(b) There shall be deposited into the Fund all fees awarded and expenses or costs reimbursed pursuant to section 3(b) or (c), and any other funds required by law to be deposited into the Fund.

“(c) Funds deposited to the Fund shall be used for the purpose of subpoena enforcement against a District government agency or instrumentality challenging the District of Columbia Auditor’s subpoena authority. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the purpose set forth in this section without regard to fiscal year limitation, subject to authorization by Congress.”.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia