

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
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May 18, 2021

Jeremiah Montague, Jr.
Commissioner, ANC 5C07
2914 25th Street, N.E.
Washington, D.C. 20018

Re: FOIA and Investigations

Commissioner Montague:

This letter responds to two questions you asked us to resolve, one about the Freedom of Information Act of 1976 (“FOIA”)¹ and one about investigations.

I. FOIA

You first asked whether an Advisory Neighborhood Commission (“ANC”) interested in obtaining a public document (or even a non-public document) must seek that document under FOIA. It must.

As we noted in a 2019 letter,² section 13(i)(1) of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)³ guarantees ANCs access to “all District government official documents and public data pursuant to [FOIA] that are material to the exercise of its development of recommendations to the District government.” The “pursuant to FOIA” part means that an ANC seeking District government documents should follow FOIA.⁴ Its request must be limited to documents that are “public records,” *i.e.*, documents that currently exist and are “owned, used, in the possession of, or retained by a public body.”⁵ This also means that, if a document is “non-

¹ Effective Mar. 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*).

² See Letter to Comm’r Krepp, Apr. 10, 2019, available at <https://oag.dc.gov/sites/default/files/2019-05/ANC-6B-April-10-19-Requests-for-Documents-from-District-Agencies.pdf> (all websites last visited May 17, 2021).

³ Effective Mar. 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.10(i)(1)).

⁴ See Letter to Comm’r Krepp at 1. This does not prevent an ANC or other Commissioner from simply asking for documents outside the ordinary FOIA process, but it does mean that when that happens, “an agency is not required to provide them.” *Id.*

⁵ D.C. Official Code § 2-502(18) (incorporated into FOIA by *id.* § 2-539(a)(10)).


public” because it is deliberative,⁶ contains sensitive personal information,⁷ or is covered by another FOIA exemption, the document may be withheld from an ANC to the same extent that it may be withheld from another requester.⁸ Moreover, the “material to the exercise of its development of recommendations” part means that an ANC is only entitled to documents that are material to its process of developing recommendations.⁹

II. Investigations

Your second question was whether an ANC or single-member district may request an investigation of an agency action that may appear contrary to the public interest or the interest of the District government. Although a single-member district is not an entity that can request an investigation,¹⁰ an ANC or Commissioner may request such an investigation to determine whether an agency’s action rises to the level of unlawful conduct. As a general rule, the right agency to contact (at least at the start) is the Office of the Inspector General, which has broad authority to “[c]onduct and supervise audits, inspections, and investigations relating to the programs and operations of District government departments and agencies, including independent agencies.”¹¹ Depending on the nature of the matter, it may also be appropriate to contact other entities, such as the Board of Ethics and Government Accountability (for a matter that may implicate government ethics)¹² or the Office of the District of Columbia Auditor (for a matter involving finances.)¹³

Sincerely,

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(AL-21-231)

⁶ See *id.* § 2-534(a)(4) and (e).

⁷ See *id.* § 2-534(a)(2) and (a)(3)(C).

⁸ See, e.g., *id.* § 2-534(b) (describing the scope of withholding).

⁹ See Letter to Comm’r Jordan, Aug. 16, 2004, at 5-6, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-8-D-August-16-2004-Notice-Requirements-Interpretation-of-Statutory-Definitions.pdf>. We note, as we noted in our 2019 letter, that “individual Commissioners are free to file their own FOIA requests.” Letter to Comm’r Krepp at 1.

¹⁰ Although a single-member district is a community from which a Commissioner is elected, it is not a governmental entity of its own, just as an individual district electing a member of Congress is not a separate entity.

¹¹ D.C. Official Code § 1-301.115a(a-1)(1).

¹² See *id.* § 1-1162.02.

¹³ See *id.* § 1-204.55.