

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

January 24, 2022

Commissioner Chuck Elkins
ANC 3D
4505 Lowell Street, N.W.
Washington, D.C. 20016

Re: ANC Authority to Use Electronic Records

Dear Commissioner Elkins:

A court recently observed that, “[c]onsistent with the realities of modern technology,” “virtually all businesses maintain their books and records in electronic format.” *C. R. Bard, Inc. v. Angiodynamics, Inc.*, 156 F. Supp. 3d 540, 546 (D. Del. 2016). Likewise, many Advisory Neighborhood Commissions (“ANCs”) keep electronic records, either as supplements to hard-copy records or as replacements to them, and have done so for some time.¹ You asked whether the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)² allows ANCs to maintain its records in electronic rather than physical form, a question we have never squarely confronted. We conclude that the ANC Act allows this, because it does not specify what form ANC records must take.

To answer your question, we apply the normal rules for interpreting statutes. We read the ANC Act “according to its terms,” *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020), giving “effect, if possible, to every clause and word.” *Roberts v. Sea-Land Servs.*, 566 U.S. 93, 111 (2012). “When a term goes undefined” in the ANC Act, “we give the term its ordinary meaning.” *Kouichi Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). We also consider the broader statutory context, since the “words of a statute must be read in their context and with a view to their place in the statutory scheme.” *Davis v. Mich. Dep’t of the Treasury*, 489 U.S. 803, 809 (1989); *In Re Edmonds*, 96 A.3d 683, 687 (D.C. 2014).

The provision that most directly addresses ANC record-keeping requirements is section 16(e) of the ANC Act (D.C. Official Code § 1-309.13(e)). Last amended in 2001,³ section 16(e) requires

¹ See, e.g., Letter to ANC 2F Comm’rs Reed and Biasillo, February 16, 2006, at 1 (describing a computer crash that “result[ed] in the loss of the ANC[’]s electronic files”) (on file).

² Effective Oct. 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

³ See Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, § 3(d), effective June 27, 2000 (D.C. Law 13-135; 47 DCR 2752).

each ANC to designate, by resolution, “the location at which the Commission’s books and records shall be maintained which shall, if the Commission has a regular office, be the Commission office.” Each part of this provision leaves room for electronic records. Both in 2001 and today, books and records may be either hard-copy or electronic. A record is “[i]nformation that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form.”⁴ An ANC’s “books” (here, likely a reference to the “books of accounts” an ANC treasurer must maintain⁵) can be electronic too, as the earlier-cited *Bard* decision notes.⁶ Likewise, the “location” of those books and records could be physical or virtual,⁷ which leaves room for ANC records to be stored in a virtual space (such as a shared drive) rather than a physical one.

The requirement that these books and records be maintained in the ANC office (if it has one) does not change this analysis. Nothing in the ANC Act requires that an ANC office be physical rather than virtual. Moreover, if the ANC maintains a physical office in which records must be maintained, nothing prevents the ANC from maintaining electronic records in that office. For example, those records could be stored on a computer in the office (with copies of the records available electronically elsewhere).

Although several other ANC Act provisions also reference ANC records, none of them suggests a different answer. For example, the Act requires each ANC treasurer to keep records of ANC transactions;⁸ gives each Commissioner in an ANC equal access “to the Commission office and its records”;⁹ and authorizes members of the public to inspect and copy “any public record of the Commission” (subject to ordinary FOIA exemptions).¹⁰ None of these provisions restricts an ANC to paper rather than electronic records, explicitly or implicitly.

In fact, some provisions in the ANC Act actually require an ANC to make use of electronic records. For example, before each meeting, an ANC must send its draft meeting agenda electronically to the Office of Advisory Neighborhood Commissions (“OANC”).¹¹ Similarly,

⁴ *Record*, Black’s Law Dictionary (11th ed. 2019).

⁵ See D.C. Official Code § 1-309.13(f)(1) (“Any expenditure of funds by a Commission shall be recorded by the treasurer in the Commission’s books of accounts”).

⁶ See *Shop books*, Black’s Law Dictionary (11th ed. 2019) (“shop books,” a synonym for “books of account,” refers to “[r]ecords of original entry maintained in the usual course of business by a shopkeeper, trader, or other businessperson”); *Broadfoot v. Diaz*, 245 B.R. 713, 725 (Bankr. N.D. Ga. 2000) (referencing a company’s “underlying books and records, including” its “electronic files”).

⁷ See, e.g., *Greater L.A. Agency on Deafness, Inc. v. CNN, Inc.*, 742 F.3d 414, 434 (9th Cir. 2014) (referring to CNN.com as a “virtual location on the Internet”); *State v. Mansor*, 421 P.3d 323, 342 (Or. 2018) (“information on a computer easily can be moved from one virtual location to another”); *Virtual Works, Inc. v. Volkswagen of Am., Inc.*, 238 F.3d 264, 268 (4th Cir. 2001) (quoting a statute that refers to a trademark owner’s “online location”); *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1342 (Fed. Cir. 1998) (referring to data “stored in a location in the [computer] memory system”).

⁸ See D.C. Official Code § 1-309.13(f)(1) and (h).

⁹ *Id.* § 1-309.13(p); Letter to Comm’r Hanlon, July 1, 2020, at 2, available at <https://oag.dc.gov/sites/default/files/2020-07/ANC-2B-Access-to-Private-Emails-Follow-Up.pdf> (discussing this provision) (all internet sites last visited January 21, 2022).

¹⁰ D.C. Official Code § 1-309.10(p).

¹¹ *Id.* § 1-309.11(c-1)(1)(B).

when an ANC seeks to reimburse a Commissioner for qualifying travel or childcare expenses, the ANC must electronically transmit the reimbursement application to OANC.¹² Also, unless an ANC specifies otherwise, advance notices from District agencies on matters affecting neighborhood planning and development in that ANC area may be sent by email.¹³ The meeting agenda, reimbursement application, and advance notices would all be electronic records.

Our reading also dovetails with other ANC Act provisions that let an ANC take advantage of modern technology. For example, we have previously advised that section 14(c) of the ANC Act (D.C. Official Code § 1-309.11(c)), which requires advance notice of public ANC meetings, allows the ANC to give notice electronically.¹⁴ Moreover, during the COVID-19 pandemic, ANCs have had the authority to conduct meetings virtually rather than in-person.¹⁵

To sum up, the ANC Act makes clear that an ANC may – and sometimes must – use electronic rather than hard-copy records, just as they are free to communicate by email. At the same time, we note one important limit: any use of electronic records must be consistent with an ANC’s bylaws. Under the ANC Act, those bylaws govern the ANC’s “operation and internal structure,”¹⁶ including the “use of the Commission office and supplies.”¹⁷ An ANC may, if it chooses, limit its own use of electronic records in any way that is otherwise consistent with the requirements of the ANC Act.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Brian K. Flowers, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

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(AL-21-746)

¹² *Id.* § 1-309.13(1-1)(2).

¹³ *Id.* § 1-309.10(c)(1A)-(4).

¹⁴ See Letter to Comm’r Henderson, June 6, 2017, at 1-2, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-5-D-June-19-2017-Supplementary-Question-Concerning-Meeting-Notice.pdf>; Letter to Comm’r Henderson, June 2, 2017, at 1, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-5-D-June-5-2017-Meeting-Notice-and-Enforcement-Authority.pdf>.

¹⁵ See Public Emergency Extension and Eviction and Utility Moratorium Phasing Temporary Amendment Act of 2021 (“Extension Act”), § 3(jj)(2)(B), effective October 27, 2021 (D.C. Law 24-39; 68 DCR 9487).

¹⁶ D.C. Official Code § 1-309.11(d).

¹⁷ *Id.* § 1-309.11(d)(1)(H).