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OGC lawsuit prompts change in D.C. Council email policies

Council changes rules, issues new interpretation to settle FOIA case

D.C. Councilmembers and staff cannot avoid the Freedom of Information Act (FOIA) by doing business on personal, rather than government, email accounts, the Council of the District of Columbia agreed today in [settling a lawsuit](#) brought by the D.C. Open Government Coalition.

The Council had previously denied the D.C. OGC's request for government-related emails sent or received by Councilmembers from their personal email accounts. The OGC filed the suit in October challenging the Council's position that such emails are off-limits to requesters, even if their subject matter concerns official business.

"We commend the Council for taking action to address the problem highlighted by our lawsuit," said James A. McLaughlin, Co-chair of the OGC's Legal Committee. "This settlement closes a potential loophole in the District's public-records law, and it makes Council more transparent and accountable."

The D.C. FOIA provides the public a right to access records about government activity. In response to D.C. OGC's request, the Council initially stated that it would provide emails originating from government accounts only, but would not search Councilmembers' private accounts. The Council has reversed that position in response to the OGC lawsuit.

The settlement states that, in response to a request, the FOIA Officer must take steps to identify and collect emails from a Council employee's non-governmental accounts "if there is a reasonable basis to believe that some or all of the reasonably described records ... are to be found" there.

Going forward, the Council adopted new rules requiring Councilmembers and their staffs to [use government email accounts for government business](#), and if business should occur on personal email, to ensure those messages become government records. This policy mirrors Mayor Vincent Gray's July policy directing all D.C. employees to [use their government email accounts](#) for government business.

The Council's new policy brings it into line with other jurisdictions as well. States that have addressed the issue — including New York, Illinois, Pennsylvania and Florida — have overwhelmingly agreed that it is the purpose and content of a message, not the mechanics of its creation, that determine whether it must be disclosed.

The Coalition was represented by Chad Bowman of Levine Sullivan Koch & Schulz. Fritz Mulhauser is also Co-chair of the OGC Legal Committee.

The agreement is awaiting approval by D.C. Superior Court Judge Laura Cordero. The case is *D.C. Open Government Coalition v. Council of the District of Columbia*, No. 2012 CA 008118.

The [D.C. Open Government Coalition](#) is a nonprofit, nonpartisan organization that seeks to enhance the public's access to government information and ensure the transparency of government operations of the District of Columbia. The OGC was formed in 2009 in alliance with the [National Freedom of Information Coalition](#).