

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2004 Winter  
Supp.

West Group  
Publisher

To amend, on a temporary basis, the District of Columbia Administrative Procedure Act to bring the District's Freedom of Information Act into greater conformity with the federal Freedom of Information Act, to clarify that the Freedom of Information Act law enforcement or investigatory records exemption applies equally to the Council of the District of Columbia's investigatory proceedings, that the inter-agency memorandum exemption applies to Council records, to provide that records containing the identity of whistleblowers are exempt from disclosure, that the Council may assert exemptions on behalf of public bodies from which it receives information, and that final decisions of the Council may not be appealed to the Mayor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Freedom of Information Legislative Records Clarification Temporary Amendment Act of 2003".

Sec. 2. Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), is amended as follows:

(a) Section 204 (D.C. Official Code § 2-534) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase "outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained" and inserting the phrase "a person and privileged or confidential" in its place.

(B) Paragraph (2) is amended by striking the phrase "Information of a personal nature where the public disclosure thereof" and inserting the phrase "Personnel and medical files and similar files the disclosure of which" in its place.

(C) Paragraph (3) is amended as follows:

(i) The lead-in language is amended by striking the phrase "Investigatory records" and inserting the phrase "Records or information" in its place.

Note,  
§ 2-534

(ii) Strike the word "would".

(iii) Subparagraph (A) is amended by striking the phrase "Interfere with enforcement" and inserting the phrase "Could reasonably be expected to interfere with enforcement, or Council investigatory" in its place.

(iv) Subparagraph (B) is amended by striking the word "Deprive" and inserting the phrase "Would deprive" in its place.

(v) Subparagraph (C) is amended by striking the word "Constitute" and inserting the phrase "Could reasonably be expected to constitute" in its place.

(vi) Subparagraph (D) is amended by striking the word "Disclose" and inserting the phrase "Could reasonably be expected to disclose" in its place.

(vii) Subparagraph (E) is amended by striking the word "Disclose" and inserting the phrase "would disclose" in its place.

(viii) Subparagraph (F) is amended as follows:

(I) Strike the word "Endanger" and insert the phrase "Could reasonably be expected to endanger" in its place.

(II) Strike the phrase "law-enforcement personnel" and insert the phrase "any individual" in its place.

(D) A new paragraph (3A) is added to read as follows:

"(3A) Records or information in the possession of the Council that are compiled for purposes of a Council investigation, including records or information compiled prior to the initiation of the investigation. The Council may assert an exemption on behalf of any public body from which the records or information were obtained."

(E) Paragraph (4) is amended to read as follows:

"(4) Inter-agency or intra-agency memorandums or letters, including memorandums or letters generated or received by the staff or members of the Council that would not be available by law to a party other than a public body in litigation with the public body."

(F) A new paragraph (11) is added to read as follows:

"(11) Records or information, the disclosure of which could reasonably be expected to reveal the name of a person providing information under the provisions of the Whistleblower Reinforcement Act of 1998, effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code §§ 1-615.51 *et seq.*, and 2-223.01 *et seq.*)".

(2) A new subsection (a-1) is added to read as follows:

"(a-1) The Council may assert, on behalf of any public body from which it obtains records or information, any exemption listed in subsection (a) of this section that could be asserted by the public body pertaining to the records or information."

(3) A new subsection (e) is added to read as follows:

"(e) All exemptions available under this section shall apply to the Council of the District of Columbia as well as executive branch agencies of the District of Columbia government. The deliberative process privilege, the attorney work-product privilege, and the

attorney-client privilege are incorporated under the inter-agency memoranda exemption listed in subsection (a)(4) of this section, and these privileges, among other privileges that may be found by the court, shall extend to any public body that is subject to this act. Memoranda created by or exchanged between staff and members of the Council of the District of Columbia shall be exempt from disclosure to the extent that such memoranda represent predecisional documents that were written in the process of developing legislation, drafting budget reports, or conducting oversight hearings."

(b) Section 207 (D.C. Official Code § 2-537) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "Any person" and inserting the phrase "Except as provided in subsection (a-1), any person" in its place.

Note,  
§ 2-537

(2) A new subsection (a-1) is added to read as follows:

"(a-1) Any person denied the right to inspect a public record in the possession of the Council may institute proceedings in the Superior Court for the District of Columbia for injunctive or declaratory relief, or for an order to enjoin the public body from withholding the record and to compel the production of the requested record as set forth in subsection (a)(1) or (2) of this section."

(3) Subsection (b) is amended by striking the phrase "subsection (a)" and inserting the phrase "subsection (a) or (a-1)" in its place.

### Sec. 3. Applicability.

This act shall apply with respect to any requests for records pending on the effective date of this act, whether or not the request was made prior to that date, and shall apply to any civil action pending on that date.

### Sec. 4. Fiscal impact statement.

This legislation does not affect the District of Columbia budget or financial plan and, therefore, has no fiscal impact.

### Sec. 5. Effective date.

(a) 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

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia