

**BOARD OF TRUSTEES**  
**UNIVERSITY OF THE DISTRICT OF COLUMBIA**  
**UDC Resolution No. 2014-11**

**Subject:** Updating Freedom of Information Act (FOIA) Regulations - Notice of Final Rulemaking

**WHEREAS**, the District of Columbia Freedom of Information Act, or FOIA, DC Official Code §§ 2-531 et seq., provides that any person has the right to request access to public records and further provides that all public bodies of the District government are required to disclose public records, except for those records, or portions of records, that are protected from disclosure by the exemptions found at DC Official Code § 2-534; and

**WHEREAS**, the University seeks to update the relevant section of 8B DCMR Chapter 8 to accurately reflect the University's process and obligations pursuant to the Freedom of Information Act; and

**WHEREAS**, the substance of the proposed rules enacted herein was published on September 27, 2013 in Volume 60 Issue 41 for a thirty day public comment period in accordance with the DC Official Code § 2-505(a); and no public comment was received during the public comment period; and

**WHEREAS**, pursuant to 8 DCMR § 128.4, where no comments are received, the Chairperson of the Board Committee may forward the rules for final adoption without committee action;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Trustees hereby adopts the Notice of Final Rulemaking attached and incorporated hereto; and

**BE IT FURTHER RESOLVED** that the General Counsel is hereby directed to publish this Notice of Final Rulemaking in the D.C. Register as soon as is practicable.

Approved by the Board of Trustees:

March 27, 2014

  
Elaine A. Crider  
Chairperson, Board of Trustees



**Office of the General Counsel**

**TO:** Jerome Shelton  
Chairperson- Audit, Administration and Governance Committee

**FROM:** Stacie Mills *SM*  
Legislative Policy Coordinator

**SUBJECT:** Notice of Final Rulemaking

**DATE:** March 20, 2014

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On September 10, 2013, the Board of Trustees approved a Notice of Proposed Rulemaking (NPRM) for a revision of the District of Columbia Municipal Regulations to update the section on the Freedom of Information Act. The NPRM was published in the D.C. Register on September 27, 2013 for a thirty (30) day comment period. The public comment period has lapsed, and no comments have been submitted during the period pursuant to the instructions printed in the Notice.

The NPRM was initially adopted and forwarded for consideration by the Audit, Administration, and Governance (AAG) Committee. Pursuant to 8 D.C.M.R. §128.4, if no public comments are received on a Notice of Proposed Rulemaking, “the chairperson of the Board committee may forward the rules to the Board for final adoption without a meeting of or action by the committee.” Accordingly, I am requesting that you, as chairperson of the AAG Committee, forward the referenced rulemaking action to the full Board of Trustees for its further consideration and final rulemaking action at the Board Meeting on March 27, 2014. Please contact me if I can be of further assistance.

## **UNIVERSITY OF THE DISTRICT OF COLUMBIA**

### **NOTICE OF PROPOSED RULEMAKING**

The Board of Trustees of the University of the District of Columbia pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act), effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a) and 38-1202.06)(3),(13) (2001 & 2011 Supp.) hereby gives notice of its intent to amend Chapter 8 (Information, Records, and Publications) of Subtitle B (University of the District of Columbia), Title 8 (Higher Education), of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rule is to update University Freedom of Information Act regulations to be consistent with current law. The substance of the rules adopted herein was published in the *D.C. Register* on September 27, 2013 for a period of public comment of not less than thirty (30) days, in accordance with D.C. Official Code § 2-505(a) (2011 Supp.). No public comment was received by the Board within the public comment period.

**Chapter 8, INFORMATION, RECORDS, and PUBLICATIONS, of Subtitle B, UNIVERSITY OF THE DISTRICT OF COLUMBIA, of Title 8, HIGHER EDUCATION, is amended as follows:**

**Section 804, FREEDOM OF INFORMATION ACT PROCEDURES, is amended as follows:**

#### **804 FREEDOM OF INFORMATION ACT**

- 804.1 This chapter contains the rules and procedures to be followed by the University in implementing the Freedom of Information Act, D.C. Code 2-531-539 (hereinafter "the Act") and all persons (hereinafter "requesters") requesting records pursuant to the Act.
- 804.2 Employees may continue to furnish to the public, informally and without compliance with these procedures, information and records, which they customarily furnish in the regular performance of their duties.
- 804.3 The public policy of the District of Columbia Government is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees consistent with the provisions of the D.C. FOIA Act. All records not exempt from disclosure shall be made available. Moreover, records exempt from mandatory disclosure shall be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest.

**Section 805, UNIVERSITY RESPONSIBILITIES, is amended as follows:**

#### **805 UNIVERSITY RESPONSIBILITY**

- 805.1 The ultimate responsibility for responding to requests for records is vested in the Board of Trustees.
- 805.2 The Board of Trustees shall designate an individual as the Freedom of Information Officer and may delegate to that individual the authority to grant and deny requests and to respond to appeals pursuant to FOIA law.
- 805.3 The University shall post the name, title, address, telephone number, fax number, and e-mail address of its designated Freedom of Information Officer on its web page.
- 805.4 The Freedom of Information Officer shall attend meetings and training sessions, as required by law.
- 805.5 All agency employees who maintain records shall assist the designated Freedom of Information Officer, as appropriate, with the identification and search of responsive records.

**Sections 806-811 are added as follows:**

**806 REQUESTS FOR RECORDS**

- 806.1 A FOIA request may be submitted orally or in writing.
- 806.2 Although oral requests may be honored, a requester may be asked to submit in writing a request for records.
- 806.3 A written request may be mailed, faxed or e-mailed to the University Freedom of Information Officer or Board of Trustees in the absence of a designated Freedom of Information Officer. The outside of the envelope or the subject line of the fax or e-mail shall state: "Freedom of Information Act Request" or "FOIA Request". In addition, a request shall include a daytime telephone number, e-mail address or mailing address for the requester.
- 806.4 A request shall reasonably describe the desired record(s). Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied.
- 806.5 Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.

**807 TIME LIMITATIONS**

- 807.1 Within the time prescribed by applicable law following the receipt of a request, the University shall determine whether to grant or to deny the request and shall dispatch its determination to the requester, unless an extension is made.
- 807.2 In unusual circumstances, the University may extend the time for initial determination on a request up to the time prescribed by applicable law.
- 807.3 An extension shall be made by written notice to the requester, which shall set forth the reason or reasons for the extension. As used in this section "unusual circumstances" means, but only to the extent necessary to the proper processing of the request, either of the following:
- (a) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
  - (b) The need for consultation with another agency having a substantial interest in the determination of the request or among two (2) or more components of the agency having substantial subject matter interest therein.
- 807.4 If no determination has been dispatched at the end of the period prescribed by law or the extension thereof, the requester may deem his or her request denied, and exercise a right of appeal in accordance with § 811.
- 807.5 When no determination can be dispatched within the applicable time limit, the University shall nevertheless continue to process the request. On expiration of the time limit, the University shall inform the requester of the following:
- (a) The reason for the delay;
  - (b) The date on which a determination may be expected; and
  - (c) The right to treat the delay as a denial and of the appeal rights provided by the Act and this chapter.

The University may ask the requester to forego appeal until a determination is made.

- 807.6 For purposes of this chapter, a request is deemed received when the designated Freedom of Information Officer, or the Board of Trustees in the absence of a designated Freedom of Information Officer, receives the request submitted in compliance with the Act and this chapter. When the Freedom of Information Officer, pursuant to § 806.5, contacts the requester for additional information, then the request is deemed received when the Freedom of Information Officer receives the additional information.

**808 EXEMPTIONS**

808.1 No requested record shall be withheld from inspection or copying unless both of the following criteria apply:

- (a) It comes within one of the classes of records exempted by the D.C. Law 1-96; and
- (b) There is need in the public interest to withhold it.

**809 RESPONSES TO REQUESTS**

809.1 When a requested record has been identified and is available, the University shall notify the requester where and when the record will be made available for inspection or copies will be made available. The notification shall also advise the requester of any applicable fees.

809.2 A response denying a written request for a record shall be in writing and shall include the following information:

- (a) The identity of each person responsible for the denial, if different from that of the person signing the letter of denial;
- (b) A reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation how each exemption applies to the record withheld. Where more than one record has been requested and is being withheld, the foregoing information shall be provided for each record or portion of a record withheld; and
- (c) A statement of the appeal rights provided by the Act and this chapter.

809.3 If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

**810 FEES**

810.1 Charges for services rendered in response to information requests shall be as follows (not to exceed a maximum search fee per request as may be imposed by applicable law):

- (a) Searching for records, \$4.00 per quarter hour, after 1st hour, by clerical personnel as determined by UDC



- (b) Searching for records, \$7.00 per quarter hour after the 1<sup>st</sup> hour, by professional personnel as determined by UDC
- (c) Searching for records, \$10.00 per quarter hour after the 1<sup>st</sup> hour, by supervisory personnel as determined by UDC
- (d) Copies made by photocopy machines... \$ .25 per page;
- (e) Charges for the initial review of documents, as permitted by applicable law, shall be assessed at the rate provided in subsections (a), (b), and (c) above.

- 810.2 When a response to a request requires services or materials for which no fee has been established, the direct cost of the services or materials to the government may be charged, but only if the requester has been notified of the cost before it is incurred.
- 810.3 Where an extensive number of documents is identified and collected in response to a request and the requester has not indicated in advance his or her willingness to pay fees as high as are anticipated for copies of the documents, the University shall inform the requester that the documents are available for inspection and for subsequent copying at the established rate.
- 810.4 A charge of one dollar (\$ 1) shall be made for each certification of true copies of University records.
- 810.5 Search costs, not to exceed any dollar limitation prescribed by the Act for each request, may be imposed even if the requested record cannot be located. No fees shall be charged for examination and review by the University to determine whether a record is subject to disclosure.
- 810.6 To the extent permitted by applicable law, the University shall require that fees as prescribed by these rules shall be paid in full prior to issuance of requested copies.
- 810.7 Remittances shall be in the form either of a personal check or bank draft on a bank in the United States, or a postal money order. Remittance shall be made payable to the order of the University of the District of Columbia and mailed or otherwise delivered to the Freedom of Information Officer, or the Board of Trustees in the absence of a designated Freedom of Information Officer.
- 810.8 A receipt for fees paid shall be given only upon request. No refund shall be made for services rendered.
- 810.9 The University may waive all or part of any fee when it is deemed to be either in the Universities interest or in the interest of the public.
- 810.10 A requester seeking a waiver or reduction of fees shall provide a statement in his or her request letter explaining how the requested records will be used to benefit the general

public.

**811 APPEALS**

**811.1** A requestor may appeal a denial of a request to the Mayor. All appeals shall be in writing and shall include:

- (a) Statement of the circumstances, reasons or arguments advanced in support of disclosure;
- (b) Copy of the original request, if any;
- (c) Copy of any written denial issued under § 809.2; and
- (d) Daytime telephone number, email address or mailing address for the requester.

**811.2** The appeal letter shall include "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well as marked on the outside of the envelope. The appeal shall be mailed to:

Mayor's Correspondence Unit  
FOIA Appeal  
1350 Pennsylvania Ave, NW  
Suite 316  
Washington, D.C. 20004

**811.3** The requester shall forward a copy of the appeal to the Freedom of Information Officer, or the Board of Trustees in the absence of a designated Freedom of Information Officer