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July 23, 2025

Members  
Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

**Re: *Bill 26-265 — the “Fiscal Year 2026 Budget Support Act of 2025”***

Dear Councilmembers:

The D.C. Open Government Coalition strongly urges you to remove the provision Chairman Phil Mendelson inserted into Bill 26-265<sup>1</sup> that makes “[i]nformation or data provided by any court or federal entity to the Criminal Justice Coordinating Council” (CJCC) exempt from disclosure under the D.C. Freedom of Information Act (FOIA), D.C. Code § 2-531, *et seq.* Because the “Criminal Justice Coordinating Council Freedom of Information Clarification Amendment Act of 2025” would exempt information from disclosure solely based on its source, the amendment:

- Is contrary to the policy that D.C. residents are entitled to full and complete information about the operations of the District government;<sup>2</sup>
- Is unnecessary to protect truly sensitive information that can be withheld under existing exemptions or other statutes; and
- Would deny access to court records that, for decades, have been public under the First Amendment, common law, court rules, statutes and public body practice.

You should enact public policy changes of this magnitude only after holding public hearings, committee markup, and readings in two legislative meetings, not by injecting a few lines of text into the 625-page Budget Support Act (BSA) just hours before the vote on first reading. In light of the long-standing, vehement criticism District residents and community leaders have voiced about the courts, law enforcement, and the criminal justice system as a whole, you should be especially reluctant to short-circuit the regular order to allow the CJCC to use secret data in formulating criminal justice policy.

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<sup>1</sup> [Fiscal Year 2026 Budget Support Act of 2025](#), Title I, Sub-title A, 6 – 7.

<sup>2</sup> D.C. Code § 2-531.

This amendment marks the chairman’s second effort in less than four months to surreptitiously shroud the CJCC in secrecy. His emergency and temporary amendments to the Open Meetings Act, D.C. Code § 2-571, *et seq.*, made public barely 72 hours before the Council’s April 1 vote, declared that the CJCC is not a public body subject to that statute.<sup>3</sup> Now, the committee report accompanying the BSA<sup>4</sup> provides no justification for the FOIA exemption, no description of the kinds of “information and data” the exemption would cover, and no assertion that disclosure of that unspecified information would cause harm of any kind.

#### **PROPONENTS HAVE PROVIDED NO VALID REASON FOR THIS EXEMPTION**

The origin of this amendment, it appears, is in the District’s courts, although they have issued no statement of need. Their concern, a CJCC staff member explained recently, is that

when the court provides the CJCC with data for research and analysis, consultations with BEGA indicated that the data would be considered a CJCC agency record and therefore subject to FOIA. This was a concern because it seemed to be a “back door” way to get court data that is otherwise not subject to FOIA.

The staffer said federal members of the CJCC do not want their data, which is subject to the federal FOI Act,<sup>5</sup> to be disclosed under D.C.’s law. She expressed concern that failure to enact this exemption would jeopardize CJCC analysis because members, including federal entities that work in the District, might refuse to share data unless they are assured of full secrecy.

The CJCC’s concern that it will lose access to federal entities’ data flies in the face of guidance urging CJCCs nationwide to comply with local transparency laws.<sup>6</sup> For example, in Maryland, CJCCs are subject to the Public Information Act (MPIA).<sup>7</sup> Md. Code Ann. § 4-101, *et seq.*

#### **COURT DATA SHARING IS NOT A FOIA “BACK DOOR”**

The court system’s rationale for this exemption fails on several levels. First, courts are excluded

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<sup>3</sup> Bills 26-199 and 26-200.

<sup>4</sup> Bill 26-265, Committee Report, 17.

<sup>5</sup> 5 U.S.C. § 552.

<sup>6</sup> [NATIONAL STANDARDS FOR CRIMINAL JUSTICE COORDINATING COUNCILS](#) (2023), 26 – 30 (“the CJCC shall abide by all open meeting laws.”). Standard 7 discusses CJCC meetings at length, including public availability of meeting records. The standards are not Department of Justice policy but, according to the text, are a product of a national network of CJCCs, aiming to reflect the ideal model for a CJCC based on years of refinement of best practices. The D.C. CJCC director took part in preparing the guidance. *Id.* vii. *See, also*, [CJCC ESSENTIAL ELEMENTS: A Companion to the National Standards for Criminal Justice Coordinating Councils](#), Elements 5, 6 & 9, 8 – 9, 12 (“Two-way information sharing is a critical piece of community engagement.”).

<sup>7</sup> The Baltimore CJCC and the Mayor’s Office of Neighborhood Safety and Engagement (MONSE) created a [Public Safety Accountability Dashboard](#) that publishes detailed crime and justice system data. The MPIA includes no provisions exempting CJCCs or their data partners from records requests. *See* [Maryland Public Information Act Manual](#), 19<sup>th</sup> Ed., Dec. 2024.

from the FOI Act because legislatures strive to avoid separation of powers challenges that surely would be raised if the Council attempted to compel judicial compliance with the statute.

Courts are not excluded because disclosure of their records and data would create unique concerns that existing FOIA exemptions cannot address. In fact, there is a strong presumption that court records are public. The U.S. Supreme Court and lower federal courts have repeatedly held that the public has a First Amendment right of access to criminal cases and records; and courts across the country have held that the First Amendment, common law and/or court rules ensure public access to civil cases. PACER, part of the federal courts' electronic case management system, provides ready access to nearly all federal cases — civil and criminal, trial and appellate — and pleadings filed in them. The Administrative Office of U.S. Courts, the U.S. Sentencing Commission, the Bureau of Justice Statistics and other government entities annually publish copious amounts of court and criminal justice data.

Nor are courts excluded from the FOI Act because their records and data are fundamentally different from executive and legislative branch records. Courts, like the other branches of government, create and maintain records and data at taxpayer expense. The public is entitled to access because those records are the public's property.

Second, the CJCC is not unique — public bodies across the city government hold court and federal entities' data in their files, and the District's FOI Act requires them to disclose that data in response to records requests. If you enact this exemption, a FOIA requester's success or failure in obtaining non-exempt criminal justice data will largely depend on whether the request went to any public body except the CJCC.

Third, the argument that allowing FOIA requests to the CJCC for data provided by courts is a "back door" way of imposing the FOI Act's provisions on the judiciary is ludicrous. So is the argument that, because federal entities' data may be obtained under the federal FOI Act, D.C. residents should be prevented from obtaining it from a District government body that uses and relies upon that data.

Potential FOIA requests to the CJCC for records and data supplied by the D.C. courts or federal entities would not impinge upon the courts' constitutional autonomy, nor burden federal sources. Only the CJCC, a District public body, must process those requests in compliance with the statute, and it may invoke any applicable FOIA exemptions to protect sensitive information.

#### **COURTS CANNOT SHARE SENSITIVE DATA WITH THE CJCC**

In the absence of an explanation from the court system of what it is trying to keep secret, the Council should conclude that none of the data it shares with the CJCC could be withheld from a FOIA requester because it is exempt. This is so because, as noted above, adult criminal cases are presumptively public, and D.C. Code § 16-2333.03 prohibits the Family Court from sharing raw data with the CJCC. The court may share or publicly disclose only aggregated, anonymized data regarding juvenile cases. In light of the voluminous disclosures by federal judicial and executive entities, the same is true for data they share with the CJCC.

That said, of these arguments reflect concerns about improper disclosure of sensitive

information, they carry a very unfortunate, disparaging implication. They demonstrate a belief that CJCC staff, in the first instance, and Superior Court judges on appeal, are incompetent to properly apply FOIA exemptions to protect portions of their data that legitimately fall under exemptions.

Government transparency laws and regulations, such as the District and federal FOI acts, address public access to records and data created or maintained at taxpayer expense. Boiled down to its essentials, the rationale given for this exemption reflects a belief on the part of its proponents that records and data they share with the CJCC belong to them, not to the D.C. residents who paid to create them.

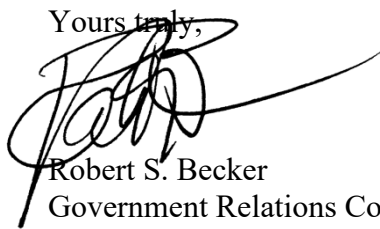
#### **THE FOI ACT EXEMPTS DATA BASED ON CONTENT, NOT SOURCE**

Public records laws exempt records based on their content, not on their source. Such laws do not exempt all records of an entire public body such as the Central Intelligence Agency or National Security Agency, even though substantially all of its records might fall under an exemption.

In support of this amendment, there has been no claim that records and data D.C. courts and federal entities share with the CJCC contain any exempt information. The only claim is that neither source is required to disclose records in response to requests submitted under the D.C. FOI Act. Under these circumstances, broadly exempting responsive records and data merely because they came from a court or federal or source, would serve only one purpose. It would limit public access to a broad range of not-sensitive, non-exempt information that could help District residents better understand the workings and impact of D.C.'s criminal justice system.

Based on the record before it, the Council should not create an exemption allowing the CJCC to withhold all records and data the courts or federal entities provide. We ask that you remove the proposed FOIA exemption from the Budget Support Act before you vote on second reading.

Yours truly,



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