



Executive and Governance Committee

Amendment of Freedom of Information Policy to Provide for an External Appeal Of Decisions to Withhold Requested Records

March 2013



BACKGROUND

The Airports Authority has adopted its own Freedom of Information (FOI) Policy. The Airports Authority is not subject to any federal or state FOI statutes.

The current FOI Policy provides persons dissatisfied with a decision by the Authority's FOI Officer to appeal the decision to the Chairman of the Legal Committee. No further appeal is provided by the Policy.

In its November 2012 Airports Authority report, the DOT Office of Inspector General recommended that, to “enhance [its] accountability and transparency,” the Board of Directors amend the Airports Authority FOI Policy to provide “a mechanism for external review . . . when a requester is denied information.”



DISCUSSION

To address this OIG recommendation, it is proposed that the FOI Policy be amended to establish a two-step appeal process.

Under this proposed process:

- Step 1 of the process would be the Policy's current appeal to the Chairman of the Legal Committee.
- A new Step 2 would allow a requester dissatisfied with a Step 1 decision to obtain a review of the decision by a person external to the Airports Authority.

This new step 2 would involve the following:

1. A FOI Review Panel consisting of three retired judges would be established – the panel members would be selected by the Chairman of the Legal Committee and the General Counsel.



2. A requester wishing to pursue a Step 2 appeal will file notice of appeal with the Board Secretary within 5 days of the Step 1 decision.
3. Following the filing of this notice, the requester and the General Counsel will jointly select a member of the FOI Review Panel to hear the Step 2 appeal.
4. Within 10 days of this selection, both the requester and General Counsel may present to the selected panel member their position on the merits of the appeal.
5. The panel member will then review the parties' submissions, if any, and prepare and issue a written Step 2 decision.
6. This Step 2 decision will be the final decision of the Airports Authority, and the requester will have no further right of appeal under the FOI Policy.



This proposed amendment to the FOI Policy has been reviewed and concurred in by the DOT Accountability Officer.

CONCLUSION

It is requested that the Committee recommend to the Board of Directors that it adopt this proposed amendment to the Airports Authority FOI Policy.

**RECOMMENDATION PAPER
TO THE EXECUTIVE AND GOVERNANCE COMMITTEE**

PROPOSED REVISION TO THE FREEDOM OF INFORMATION POLICY

MARCH 2013

RECOMMENDATION

That the Executive and Governance Committee review the attached revision to the Airports Authority's Freedom of Information Policy,¹ and recommend its adoption by the Board of Directors.

BACKGROUND

The Airports Authority has adopted its own Freedom of Information (FOI) Policy. The Airports Authority is not subject to the federal or any state FOI statute. The current FOI Policy provides a single-step appeals process for persons who are dissatisfied with a decision by the Airports Authority's FOI Officer on their request for records. This process allows an appeal of the FOI Officer's decision to the Chairman of the Legal Committee. The Policy does not provide any right of further appeal to a person who is dissatisfied with the Chairman's decision.

In its November 2012 MWAA report, the DOT Office of Inspector General (OIG) recommended that, to "enhance [its] accountability and transparency," the Board amend the FOI Policy to provide "a mechanism for external review . . . when a requester is denied information."

DISCUSSION

To address this OIG recommendation, it is proposed that the FOI Policy be amended to establish a two-step appeals process. The current appeals process would remain in place as the first step of an expanded process. Thus, a requester of records who is dissatisfied with a decision of the FOI Officer would still appeal that decision to the Chairman of the Legal Committee. The proposed new second step of the expanded process would allow a requester who is dissatisfied with a step one decision to appeal that decision by a person who is "external" to the Airports Authority.

The proposed second step of the appeals process would have the following characteristics:

1. A FOI Review Panel consisting of three retired judges would be established. Members of this panel would be selected by the Chairman of the Legal Committee and the general counsel, and would continue on the panel until replaced by a new member.
2. A FOI requester wishing to pursue a step two appeal will have five days following the step one decision in which to file a notice of appeal with the Board Secretary.

¹ The attachment contains Part 3 of the FOI Policy which addresses the procedures for FOI requests. The proposed amendment revises paragraph VI of that Part 3, and is shown by redlining and strikeouts.

3. After the filing of this notice, the requester and the general counsel will jointly select a member of the FOI Review Panel to hear and decide the requester's appeal.

4. Within 10 days of this selection, the requester and the General Counsel may submit to the selected panel member a paper setting forth their position on the requester's appeal.

5. The panel member will then review the parties' submissions, if any, and issue a written decision. This step two decision will constitute the final decision of the Airports Authority, and the requester will have no further right of appeal under the FOI Policy.

This proposed amendment to the FOI Policy has been reviewed and concurred in by the DOT Accountability Officer.

CONCLUSION

It is recommended that the Executive and Governance Committee forward the attached proposed amendment to the FOI Policy to the Board of Directors with a recommendation that it be approved by the Board.

Prepared by

Office of General Counsel

March 2013

Attachment

Freedom of Information Policy

The Metropolitan Washington Airports Authority is committed to transparency in all its operations. From the beginning, it has maintained its own Freedom of Information Policy that continued the disclosure rules in force at the two Airports from the enactment of the federal Freedom of Information Act in 1966. All its records are available to the public, except those that are not required to be disclosed pursuant to the exemptions set out in Part 3 below.

Given its commitment to transparency, the Airports Authority encourages anyone interested in its activities to seek information informally. This document is designed to assist in that process, and is divided into three parts.

Part 1 identifies records easy to get from the Authority's website; Part 2 provides contacts for answering questions and help in obtaining other records; Part 3 provides a formal Freedom of Information procedure for obtaining Authority records that are not readily available, and includes standards for the withholding of certain types of records.

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Part 3 – Formal Freedom of Information Procedures

I. Where to file a request – Formal Freedom of Information requests for records located anywhere within the Authority should be addressed to the Freedom of Information Officer, Office of the Secretary, MA-BD, Metropolitan Washington Airports Authority, 1 Aviation Circle, Suite 210, Washington, D.C. 20001-6000. They can also be submitted to [FOI@mwaa.com]. Questions may be directed to the e-mail address or to 703-417-8740.

II. Content of a request – Such requests should identify the records requested or set out as clearly as possible their nature, state the format requested (paper or electronic) and provide a telephone number and/or an e-mail address for clarifying communications.

III. Internal processing – The Freedom of Information Officer will assure a copy of the request is directed to the office holding the requested records, and will respond to a request as soon as possible, but not later than within two weeks of the receipt of the request. The Freedom of Information Officer will keep a docket of all Freedom of Information requests.

IV. Requests sent elsewhere – Copies of written FOI requests submitted to offices other than the Office of the Secretary will be promptly provided to the Freedom of Information Officer.

V. Response – The Authority’s written response shall (a) provide the records requested, (b) explain why more time is required to respond, or (c) deny the release of records, in whole or in part, based on the exemptions in paragraph VII below. If denied, the withheld records shall be identified, and reasons shall be provided for their withholding. Responses may not be sent without the concurrence of the Secretary and appropriate consultation with the General Counsel’s Office.

VI. Appeal – ~~If a request is denied in whole or in part, or not responded to within two weeks, the requester may appeal to the Chairman of the Legal Committee of the Board of Directors. Such an appeal should be clearly identified as a Freedom of Information appeal, and addressed to the Secretary of the Authority at the address in paragraph I, above. The Committee Chairman’s decision will be final.~~

A. Step 1. If a request is denied, in whole or in part, or is not responded to within the two week period referenced in paragraph III of this part, the requester may appeal to the Chairman of the Legal Committee of the Board of Directors. Such an appeal must be addressed to the Secretary of the Authority at the address in paragraph I, clearly identified as an appeal under the Freedom of Information Policy, and filed with the Secretary within five business days of the date of the denial. The decision of the Committee Chairman shall be final unless Step 2 of the appeal process is pursued.

B. Step 2. A requester dissatisfied with a Step 1 decision may file a notice of an appeal of that decision to the FOI Review Panel. The FOI Review Panel will consist of not more than three retired judges who shall be selected for the panel by the Chairman of the Legal Committee and the Authority’s General Counsel. The requester’s notice of appeal must be filed with the Secretary of the Authority within five business days of the Step 1 decision. The requester and the General Counsel shall then jointly select a member of the FOI Review Panel to consider and decide the Step 2 appeal. Within 10 business days of the selection, the requester and the General Counsel each may make a written submission to the selected panel member setting out their position on the Step 1 decision. Thereafter, the panel member shall issue a written decision on the appeal. That decision shall be final, and the requester shall have no further right of appeal under this Policy.

VII. Reasons for withholding – Records or portions of records in the following categories of exemptions may be, but are not required to be, withheld from disclosure. Records are rarely withheld in their entirety; when an exemption applies to only a portion of a requested record, the rest of the record will be released. Any decision to withhold must set out the reasons for doing so, based on the exemptions stated below:

A. Personal Privacy. Personnel, payroll and financial records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. The name, position and salary of Authority employees, however, are public information.

B. Confidential Business Information.

(1) Confidential business information of the Authority: records containing commercial, financial, or proprietary information which, if disclosed, could harm the competitive or negotiating position of the Authority; and

(2) Confidential business information provided by others and held by the Authority: records containing commercial, financial or proprietary information provided from outside the Authority, if the submitter claims a privilege for the information and gives adequate reasons why protection is necessary, or the information has been identified as exempt in the Authority Contracting Manual.

(3) Confidential procurement records, such as proposals, offers, bids and proposal scoring records, including competitive negotiation proposals, sealed bidding records, cost estimates, and business plans, the withholding of which is specifically addressed in the Authority Contracting Manual.

C. Law Enforcement and Security Records. Records compiled for law enforcement and security purposes, but only to the extent that and as long as the production of such records would (1) interfere with investigative or enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source and confidential information furnished only by the confidential source; (5) disclose law enforcement and security techniques and procedures not generally known outside the law enforcement community; (6) cause a suspect to flee or evade detection; (7) result in the destruction of evidence; or (8) endanger the life or physical safety of an individual.

D. Privileged Documents. Records subject to a generally recognized privilege, such as the attorney work product privilege and the attorney-client privilege; records that would not be available to a person in litigation with the Authority; and records with respect to matters addressed by the Board of Directors in Executive Session.

E. Pre-Decisional Documents. Records containing analyses and recommendations with respect to matters to be decided by the President and Chief Executive Officer or the Board of Directors, except to the extent the analyses and/or recommendations are disclosed or otherwise addressed in a final decision document. Documents prepared for the Board of Directors and its committees and not otherwise exempt from disclosure under paragraph VII are normally made available at www.mwaa.com before the meeting at which the matters addressed in the documents are to be discussed, but only after they have been provided to the Directors.

VIII. Other Considerations – Only existing records are subject to release. The Authority does not create new records in response to a Freedom of Information requests, including records summarizing data or other information. Only records held by the Authority can be released, paper records in its own files or electronic records on its own servers; this Policy does not reach records held by vendors, contractors, or other third parties. In addition, personal notes, papers and any other records created and maintained by the preparer solely as work papers for personal use are not treated as Authority records.

IX. Fees – Requests for a limited number of readily available records that do not require significant staff resources to locate and produce will normally be answered without charge. More substantial requests will be assessed fees to cover the costs of locating the requested records and in producing and delivering hard or electronic copies of the records. A schedule of such fees will be provided to the requester; if the projected fees exceed \$250, a 50 percent deposit may be required before Authority resources are committed to locating and producing the requested records.

July 18, 2012