

## Hughes, Traci (BEGA)

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**From:** Fritz Mulhauser <fmulhauser@aol.com>  
**Sent:** Tuesday, July 08, 2014 4:44 PM  
**To:** Hughes, Traci (BEGA)  
**Subject:** Expeience of FOIA prioblems - letter from the ACLU  
**Attachments:** Letter\_to\_Traci\_Hughes\_7-8-14.pdf

Dear Traci--

I have experienced a concentrated set of delays and problems with agencies' handling of ACLU FOIA requests in recent weeks. I summarize them in the enclosed letter and request you look into the situation. (I didn't include some that are from months ago and also unfulfilled.)

I thought there might be some unusual or unique problems just now.

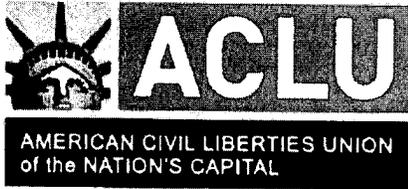
For example one agency head told the ACLU she declined to have staff drop all present FOIA work to go back and enter into the new FOIAXpress system all the requests from the first 10 months of the year. But if such work is being done in many agencies, that could explain a system slowdown.

Implementation of FOIAXpress is not an open book. I sent a FOIA request to the Contracts and Procurement Office for the contract, and they first denied there was one. But we ironed that out. They eventually sent me very barebones paperwork. Nothing described work done or plans for DC implementation..

I have now asked the EOM for FOIAXpress materials including instructions to agencies but the clock is still running.

I plan to comment at the upcoming BEGA meeting this week. Is it necessary to give notice to someone?

Fritz Mulhauser  
Sr Staff Attorney  
American Civil Liberties Union of the Nation's Capital  
4301 Connecticut Ave, N.W. Suite 434  
Washington, DC 20008  
T: 202-457-0800  
F: 202-457-0805  
[www.aclu-nca.org](http://www.aclu-nca.org)



4301 Connecticut Avenue, N.W., Suite 434  
Washington, DC 20008-2368  
T: 202-457-0800; Direct 202-601-4267  
E: fmulhauser@aol.com

Fritz Mulhauser  
Senior Staff Attorney

July 8, 2014

Traci Hughes, Esq.  
Director, D.C. Open Government Office  
441 4<sup>th</sup> St., N.W., Suite 830 South  
Washington, DC 20001

**Re: Problems with D.C. government agencies' responses to FOIA requests**

Dear Ms. Hughes:

We have encountered in recent weeks more than the usual extent of delays by D.C. government agencies in responding to requests under the D.C. Freedom of Information Act; even decisions of appeals are delayed for the first time in our experience. The Act is a key tool in the work of the ACLU gathering information for our legal, legislative and public education work on behalf of fundamental rights. We provide the details below, and request the following actions by the Office:

- investigate and make findings if agencies are not doing FOIA work properly and why;
- issue an advisory opinion, as authorized by D.C. Code § 2-593(c), to the Mayor requesting the urgent attention of his office and all agencies to restoring FOIA functionality.

The Mayor's Office bought the "FOIAXpress" software last September for all agencies to use and announced the project October 24 as a way the government would "more quickly and more efficiently" handle public requests for records. You were quoted in the same release offering the same hopes. The developer has provided staff training and instruction manuals. It would be ironic if this effort for improved transparency has made things worse in the short-run as staff take time get used to new systems. And some of the plans may be unreasonable. At least one agency head told the ACLU that she has countermanded orders that staff spent countless hours re-entering into FOIAXpress the requests earlier this year—an obvious source of delay for current requests. We asked the Mayor's Office for records on the project including the instructions to the agencies, with no answer as yet

Details are in Attachment A but the recent ACLU experience with FOIA requests may be summarized as follows: of eight recent requests where deadlines have passed, only two were acknowledged and two were done in full, on time (another after delay). To two requests, an agency responded pleading backlog but gave no date for an expected response; another said our request was voluminous but even an extended deadline has now passed; and two sent incomplete records. We have five pending appeals but even that process is working less well. In one case where we appealed incomplete release, we got no acknowledgement or any sign of the usual action by the Mayor's General Counsel despite two queries. The deadline for decision on our appeal has passed but as this letter was in draft the Mayor's office began action.

We look forward to your help improving the system.

Sincerely,

Fritz Mulhauser  
Senior Staff Attorney

Attachment (chart of ACLU requests)

ATTACHMENT A

**RECENT FOIA REQUESTS BY ACLU TO D.C. AGENCIES**

Sent	Agency	Subject	Status
3-21-14	DHS	Annual report of Adult Protective Services	Not acknowledged. Agency wrote on 4-3-14, assigned #18544, sent 2012 report (not most recent). After correspondence, sent 2013 report April 17. <b>OK.</b>
4-15-15	DOC	Records on sexual assaults in DC Jail for last five years	Not acknowledged. Agency wrote 5-6-14, assigned #2014-04-15-0268F, sent one record for 2012 only. <b>INCOMPLETE; APPEAL PENDING.</b>
4-16-14	MPD	Databases on gang members	Not acknowledged. We queried 5-9-14. Agency responded 5-15-14 that they are backlogged. <b>NO ACTION; APPEAL PENDING.</b>
4-16-14	MPD	Supervisory Support Program	Not acknowledged. We queried 5-9-14. Agency responded 5-15-14 that they are backlogged. <b>NO ACTION; APPEAL PENDING.</b>
4-16-14	MPD	MOU with DCPS on police/schools	Not acknowledged. We queried 5-9-14. Agency replied 5-15-14; assigned #140424-001, records received. <b>OK.</b>
4-28-14	OSSE	Report for Council due in March on school suspensions (or e-mails showing why not issued on time)	Acknowledged same day, #042014-8. After deadline expired, agency on 5-19-14 invoked 10-day extension to June 3 without providing justification. We objected. Agency said "voluminous e-mails" needed to be searched. No further response. Agency counsel sent URL for published report on date of release, June 5. We withdrew FOIA, also inquiring why agency couldn't just have contacted us, explaining "report due soon." <b>OK.</b>
5-18-14	DCPS	Parent waivers of student discipline appeal	Acknowledged 5-21-14, assigned #0514-79. DCPS 6-6-14 invoked "voluminous records" statutory basis for additional 10 days. <b>NO ACTION; APPEAL PENDING.</b>
5-30-14	Office of Contracting and Procurement	FOIAXpress	Not acknowledged until we queried 6-7-14. They attempted to say only just received, and thus deadline far off; but retreated. Assigned #1743. Rejected 6-12: "found no records." Referred ACLU to DC Council as FOIAXpress user. ACLU replied explaining incomplete search. "Revised response" 6-20-14 with partial release and no explanation of items not found or withheld. <b>INCOMPLETE; APPEAL PENDING.</b>
6-12-14	Mayor	Appeal OCP search	Not acknowledged. Queried 6-20 and 6-27-14; no reply. <b>DEADLINE FOR DECISION PASSED. ACTION FINALLY INITIATED 7-7-14.</b>
6-22-14	DC Auditor	Report by Nat'l Academy on DC education reform	Not acknowledged. <b>DUE JULY 14.</b>
6-25-14	OCTO	Public comments submitted to EOM on open government	Not acknowledged. Mayor's General Counsel (copied on the request) responded with reference to hidden web site with some not all the requested records. We explained missing items and he later said site had been supplemented so all were available. ACLU told OCTO to consider request met, though they had never responded. <b>OK.</b>
6-26-14	EOM	FOIAXpress	Not acknowledged. <b>DUE JULY 18.</b>