



2019 NOV -7 PM 2:55  
OFFICE OF THE  
SECRETARY

**MURIEL BOWSER**  
MAYOR

NOV - 7 2019

The Honorable Phil Mendelson, Chairman  
Council of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Ave. NW., Suite 504  
Washington, D.C. 20004

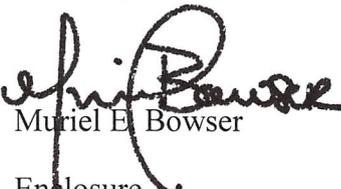
Dear Chairman Mendelson:

Pursuant to section 2918 of the Establishment of the Office of the Chief Medical Examiner Act of 2000 (D.C. Law 13-172; D.C. Official Code § 5-1417) and Mayor's Order 2015-200, please find the "Office of the Chief Medical Examiner Access to Documents and Records Retention Rulemaking Approval Resolution of 2019" attached.

This approval resolution seeks to approve a proposed rulemaking to amend Chapter 50 of Title 28 of the D.C. Official Code and prescribes the conditions for access to Office of the Chief Medical Examiner (OCME) decedent case files, amends the definition of legitimate interest to describe the individuals and entities that have access to OCME examination reports, and adds new definitions for examination reports and consultation reports.

I urge the Council to take prompt and favorable action on this measure.

Sincerely,

  
Muriel E. Bowser  
Enclosure

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Chairman Phil Mendelson  
at the request of the Mayor

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A PROPOSED RESOLUTION

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following resolution,  
which was referred to the Committee on \_\_\_\_\_

To approve the proposed rules to amend Title 28 (Corrections, Courts, and Criminal Justice) and  
Chapter 50 (Medical Examiner) of the District of Columbia Municipal Regulations.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
resolution may be cited as the “Office of the Chief Medical Examiner Access to Documents and  
Records Retention Rulemaking Approval Resolution of 2019”.

Sec. 2. Pursuant to section 2918 of the Establishment of the Office of the Chief Medical  
Examiner Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-  
1417), the Council approves the proposed rules, published May 17, 2019, at 66 DCR at 006198,  
to amend Title 28 and Chapter 50 of the District of Columbia Municipal Regulations.

Sec. 3. The Council adopts the fiscal impact statement contained in the committee report  
as the fiscal impact statement required by section 4a of the General Legislative Procedures Act  
of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. The Secretary to the Council of the District of Columbia shall transmit a copy of  
this resolution, upon its adoption, to both the City Administrator and the Chief Medical  
Examiner of the Office of the Chief Medical Examiner.

Sec. 5. This resolution shall take effect immediately.

## **OFFICE OF THE CHIEF MEDICAL EXAMINER**

### **NOTICE OF PROPOSED RULEMAKING**

The Chief Medical Examiner of the Office of the Chief Medical Examiner (OCME), pursuant to the authority set forth in Section 2918 of the Establishment of the Office of the Chief Medical Examiner Act of 2000 (Act), effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1417 (2012 Repl.)) and Mayor's Order 2015-200, dated August 17, 2015, hereby gives notice of the intent to adopt—in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, or at the completion of Council review pursuant to Section 2918 of the Act, whichever is later—amendments to Chapter 50 (Medical Examiner) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking action is necessary to preserve the privacy of thousands of decedents, and their families, whose deaths are subject to investigation by OCME. The rulemaking: (1) prescribes the conditions for access to OCME decedent case files; (2) amends the definition of legitimate interest to describe the individuals and entities that have access to OCME examination reports; and (3) adds new definitions for examination reports and consultation reports.

**Chapter 50, MEDICAL EXAMINER, of Title 28 DCMR, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, is amended as follows:**

**Section 5005, ACCESS TO DOCUMENTS AND RECORD RETENTION, is amended as follows:**

**Subsections 5005.2 through 5005.4 are amended to read as follows:**

5005.2 The CME shall promptly deliver copies of records relating to deaths as to which further investigation may be advisable to, and the records and files maintained under the provisions of § 5005.1 shall be open to inspection by, the following, upon receipt of a signed request letter:

- (a) The Mayor;
- (b) The Mayor's authorized representative;
- (c) The United States Attorney;
- (d) The Metropolitan Police Department;
- (e) Any other law enforcement agency or official; and
- (f) The Child Fatality Review Committee when necessary for the discharge of its official duties.

5005.3 Any other person with a legitimate interest in the files and records maintained under the provisions of § 5005.1 may obtain copies of those files and records upon such conditions and payment of such fees as may be prescribed by these rules and applicable privacy laws. If such person fails to meet the prescribed conditions, such persons may obtain copies of those files and records pursuant to a court order if the court is satisfied that such person has a legitimate interest. Nothing in this section shall be construed to limit or repeal any conditions imposed by other District law.

5005.4 The conditions for a person with a legitimate interest obtaining examination reports and consultation reports under § 5005.3 are:

- (a) A valid subpoena;
- (b) A valid court order;
- (c) A notarized request or designation letter from the next-of-kin;
- (d) A signed records request form with proof of identification from the next-of-kin; or
- (e) Documentation that demonstrates a legitimate interest in the specified records that the entity or individual seeks.

**A new Subsection 5005.5 is added to read as follows:**

5005.5 The conditions for obtaining all other records and files maintained under § 5005.1 pursuant to § 5005.3 are:

- (a) Valid Subpoena; or
- (b) Valid court order.

**Section 5007, DEFINITIONS, is amended as follows:**

**Subsection 5007.1(e) is amended to read as follows:**

- (e) “Legitimate interest” – an individual or entity has a legitimate interest if:
  - (1) They are the next-of-kin, or the next-of-kin’s designee;
  - (2) Access to the records would facilitate their governmental oversight functions;
  - (3) They participate in forensic research approved by an institution review board, pursuant to an agreement with the OCME;

- (4) They pay decedent survivor benefits;
- (5) They are a medical service provider that treated the decedent;
- (6) They provide education, training, or mutual aid support to the OCME pursuant to an agreement with the OCME; or
- (7) They are listed in § 5005.2(a)-(f).

**Subsection 5007.1 is amended by adding the following definitions.**

- (n) **“Examination report”** - means the autopsy and external examination records completed by the CME, or designee, to record the findings and determination of the cause and manner of death.
- (o) **“Consultation report”** – is a record, incorporated into the examination report, of specified tests and results performed at the direction of the CME, or designee, for the purposes of the determination of the cause and manner of death.

Comments on these rules should be submitted in writing to Mikelle DeVillier, General Counsel, Office of the Chief Medical Examiner, 401 E Street, S.W., 6<sup>th</sup> Floor, Washington D.C. 20024, via telephone at (202) 698-9005, via email at [mikelle.devillier@dc.gov](mailto:mikelle.devillier@dc.gov) or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov). Additional copies of these rules are available from the above address.

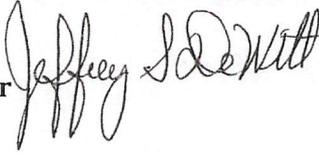
Government of the District of Columbia  
Office of the Chief Financial Officer



Jeffrey S. DeWitt  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeffrey S. DeWitt  
Chief Financial Officer 

**DATE:** June 17, 2019

**SUBJECT:** Fiscal Impact Statement – Office of the Chief Medical Examiner Access to Documents and Records Retention Rulemaking Approval Resolution of 2019

**REFERENCE:** Draft Proposed Resolution as shared with the Office of Revenue Analysis on June 12, 2019

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**Conclusion**

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution.

**Background**

The Office of the Chief Medical Examiner (OCME) investigates all deaths that occur in the District resulting from violence, occur unexpectedly, or pose a public health threat. OCME must keep records of every death it investigates and deliver those documents – in cases where further investigation is advised – or make available to the Mayor, the United States Attorney, the Metropolitan Police Department, and any other law enforcement agency or official. OCME also allows persons with a legitimate interest in death records to obtain copies of the records. If a person does not have a legitimate interest, she or he can get authorization from the next-of-kin, serve a subpoena, or obtain a court order to access the records.

The Honorable Phil Mendelson

FIS: "Office of the Chief Medical Examiner Access to Documents and Records Retention Rulemaking Approval Resolution of 2019," Draft Proposed Resolution as shared with the Office of Revenue Analysis on June 12, 2019

The proposed resolution approves rules that expand who is automatically authorized to receive or inspect records to include the Child Fatality Review Committee.<sup>1</sup> The rules also clarify the definition of legitimate interest,<sup>2</sup> expand how a person can claim legitimate interest, and require that a person without legitimate interest must obtain a court order to access records.

### **Financial Plan Impact**

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution. OCME can absorb any costs associated with clarifying or enhancing OCME's recordkeeping and document release practices within its existing budgeted resources.

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<sup>1</sup> Child Fatality Review Committee Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 4-1371.01 et seq.).

<sup>2</sup> A person with legitimate interest is the next-of-kin or her or his designee, one who needs records for government oversight, an entity in an agreement with OCME, a decedent survivor benefits payor, a medical service provider, or any of the automatic recipients of records pursuant to 28 DCMR § 5005.2.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**



**ATTORNEY GENERAL**  
**KARL A. RACINE**

Legal Counsel Division

**MEMORANDUM**

**TO: Alana Intrieri**  
**Executive Director**  
**Office of Policy and Legislative Affairs**

**FROM: Brian K. Flowers**  
**Deputy Attorney General**  
**Legal Counsel Division**

**DATE: June 12, 2019**

**SUBJECT: Legal Sufficiency Review – Draft “Office of the Chief Medical Examiner**  
**Access to Documents and Records Retention Rulemaking Approval**  
**Resolution of 2019”**  
**(AE-19-422)**

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**This is to Certify that** this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

A handwritten signature in black ink, appearing to read 'Brian K. Flowers'.

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**Brian K. Flowers**