

**DISTRICT OF COLUMBIA  
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

**MINUTES OF MEETING  
FEBRUARY 7, 2019**

The District of Columbia Board of Ethics and Government Accountability held a public meeting on Thursday, February 7, 2019, at 10:00 a.m. at One Judiciary Square, 441 Fourth Street, N.W., Room 540 South, Washington, D.C. 20001. The Board's Chairperson Tameka Collier was present, as well as Board Members Norma Hutcheson, Shomari Wade, and Darrin Sobin. Also present was Senior Attorney Advisor, Rochelle Ford.

Members of the public are welcome to attend. Questions about the meeting may be directed to [bega@dc.gov](mailto:bega@dc.gov).

**I. Call to Order**

Chairperson Collier called the meeting to order at 10:02 a.m.

**II. Ascertainment of Quorum**

Chairperson Collier established that a quorum was present.

**III. Adoption of the Agenda/Approval of Minutes**

The Board voted unanimously to adopt the amended agenda. The Board approved the following:

A. January 10, 2018 Meeting Minutes

**IV. Report by the Director of Open Government**

Good morning Chairperson Collier and Members of the Board. I am Niquelle Allen, Director of the Office of Open Government (OOG), and I am pleased to present this monthly report on the activities of the OOG. The OOG has continued to fulfill its mission of ensuring that all persons receive full and complete information regarding the affairs of the District government and the actions of those who represent them.

A. Open Meetings Act (OMA) and Freedom of Information Act (FOIA) Advice

1. Advisory Opinions: On February 6, 2019, OOG issued a FOIA Advisory Opinion to a FOIA Requester (OOG-0003\_10.31.18\_FOIA AO). The Advisory Opinion addressed what notifications, if any, does FOIA require an agency, specifically the MPD, to provide a requester when: (1) it invokes an extension to dispatch a determination to a FOIA request for body-worn camera recordings and (2) when no determination is dispatched by the agency to the requester within the applicable period. In this matter,

MPD failed to follow the FOIA law by failing to inform the Requester that the delay in responding could be construed as a denial and providing notice of appeal rights. OOG recommended that the MPD General Counsel create a form letter that comports with FOIA law that MPD should send to Requesters seeking body-worn camera footage. OOG also advised that MPD should provide the requester with a determination or provide a letter to the Requester that provides the proper notice and information required under the FOIA law and regulations.

2. Informal OMA/FOIA Advice: Since January's Board meeting, the OOG responses for informal and technical FOIA and Open Meetings Act (OMA) responses are as follows: (1) 8 FOIA and 4 OMA substantive responses; and 2 responses to OMA requests for technical assistance.

B. OMA/FOIA Audits:

The OOG provided notice of its planned comprehensive FOIA/OMA audit to the Mayor of the District of Columbia on January 31, 2019. The OOG will provide written notice to the Attorney General and independent agencies of its planned comprehensive FOIA/OMA audit on or before February 8, 2019. OOG plans to complete the comprehensive audit on or before August 1, 2019 and will report the results prior to September 30, 2019.

C. Training/ Outreach:

1. On January 10, 2019, the Director attended the Open Government Advisory Group meeting. The Chief Data Officer provided a review of the 2018 Open Data report and will present the 2019 Open Data Report at the next meeting. The Office of the Chief Technology Officer also provided an update on its efforts to define and protect Publically Identifiable Information (PII) in the District. The OOG Director plans to meet with OCTO in the near future to discuss this issue,
2. On January 17, 2019, the Director attended the Open Government Coalition Meeting. Prior to the meeting, the Director met with a small group to discuss body-worn cameras and concerns regarding MPD's processing of FOIA requests concerning body-worn cameras. As you may know, MPD utilizes a third-party vendor to process body-worn camera videos. This vendor makes the redactions to the videos. The discussion concerned the cost of processing the requests and the amount of redactions that occur prior to release of the videos. The group presented me with some of the videos they received where the faces, badge numbers, and license plate numbers were blurred out. The redactions diminished

the value of the videos and the cost of the video redaction was quite high. As a result of this meeting, OOG is considering hosting a roundtable or other forum regarding body-worn cameras in the future. OOG was also invited to participate in Sunshine Week as a speaker or panelist.

3. On January 17, 2019, the Director met with counsel for the Committee of the Whole (COW) to discuss FOIA. As you know, the Judiciary Committee of the DC Council has jurisdiction over BEGA and now the COW has jurisdiction over FOIA. If there is any legislation concerning FOIA, it will go to the COW. The purpose of this meeting was to introduce myself and provide information concerning OOG's role in the FOIA process.
4. On January 29, 2019, I participated in a conference call facilitated by the Mayor's Office of Talent and Appointments to establish a training schedule for members of Boards and Commissions and Board Administrators to receive OMA training. The schedule has not yet been finalized, but training is anticipated to begin this month. OOG will provide an hour-long training for Board Administrators and a shorter training for Board members.
5. On February 1, 2019, OOG Attorney Johnnie Barton provided a FOIA and OMA presentation to the Academy of Public Administration of Kazakhstan.
6. On February 6, 2019, the Director attended the Open Government Advisory Group FOIA/OMA Subcommittee meeting. At the meeting we discussed the growing public concern regarding the records of individual charter schools being available to the public. I also informed the group that OOG's rulemaking would be published in the near future.

D. Rulemaking:

The Office of Open Government has submitted for consideration by the Board new and revised regulations to implement the recent changes in the law and which makes clarifying amendments to the OOG's regulations at 3 DCMR § 104000. We have provided a copy of the proposed regulations for your consideration. OOG has worked with the Board's Senior Attorney, Ms. Ford, on the rulemaking and she provided valuable insight and was very helpful during OOG's revision process. OOG estimates that it will submit the proposed rules for publication in the D.C. Register next week.

E. Staffing:

The announcement to fill the IT Specialist has closed. The OOG Director is currently reviewing the resumes submitted in response to the vacancy announcements and will schedule interviews for the position this month.

F. This concludes the OOG Director’s report for February 7, 2019.

**V. Report by the Director of Government Ethics**

A. Update on Status of Office of Government Ethics (OGE) Operations – Recap of previous month’s activities (statistics). These reported statistics do not reflect status changes that we anticipate will occur as a result of actions taken by the Board during today’s meeting.

<b>OPEN INVESTIGATIONS BY STATUS</b>	
Open	25
Open - Show Cause Hearing	3
Open - Negotiations	3
Grand Total	31

<b>PENDING/STAYED INVESTIGATIONS BY STATUS</b>	
Closed - Pending Collection	11
Closed Pending Appeal to DC Court of Appeals	1
Closed Pending DC Superior Court Appeal	2
Stayed - OAG False Claims Act Case	2
Stayed - OIG Investigation	5
Stayed - US District Court Case	3
Grand Total	24

<b>REGULATORY MATTERS BY STATUS</b>	
Closed - Pending Collection	27
Open	1
Open - Appeal to Director	2
Open - Board Appeal	1
Grand Total	31

	Current	Last month	Nov. 2018
Investigations Currently Open:	31	31	31
Investigations Stayed (Inactive):	10	10	10

B. Publication and Reporting Obligations

We are in the process of completing the Quarterly Complaint Report for the first quarter of FY 19. As mentioned last month, although we did not adopt any new performance measures for FY19, we have identified new statistics related to our regulatory enforcement matters and audits that we will report in FY20, and we have begun to keep track of those statistics during FY19 to use as a benchmark for comparison purposes next year.

C. Trainings/Outreach –

i. Attended by staff – None

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 4 trainings, two more than the 2 we conducted last month. The four trainings consisted of two new employee orientations, a monthly training session, and a training session at the Office of the Attorney General.

On Friday, February 1, we hosted a delegation from Kazakhstan. One of their questions pertained to whether unexplained displays of wealth on social media triggered an automatic investigation. Apparently, that is a significant problem there, in part because civil servants typically are not permitted to have outside employment. It was explained that here, employees could have outside employment – or wealth obtained legitimately from other sources, but that we did use social media in some of our investigations.

iii. Newsletter –

Due to other pressing deadlines, we postponed publication of our next newsletter until later in February.

D. Advisory Opinions/Advice –

**Informal Advice:** approximately 67, which is higher than the 39 reported at the last meeting. It should be noted that a number of these advice inquiries were related to the new lobbyist filing platform, and do not include the inquiries handled by staff, other than the attorneys, addressing those questions.

**Formal Advice requests:** We have one pending formal request for post-employment advice.

E. Ethics Legislation/Comprehensive Code of Conduct

We are anticipating that Councilmember Charles Allen will introduce the Comprehensive Code of Conduct this Council Period.

F. Rulemaking

We have prepared a proposed Rulemaking for your consideration that modifies existing procedures and establishes new procedures to govern the processing of some of the regulatory appeals we handle, including FDS filing waiver requests, FDS fine waiver requests, and Lobbyist penalty waiver requests. The rulemaking includes conforming and technical amendments that were identified when we last reviewed our rules in 2016. Our intention is to publish the entire body of our rules to ensure that they are in one location and easier for the public and interested persons to find. We ask that the Board approve this proposed Rulemaking, subject to modification by the General Counsel if needed to comply with the technical and compliance requirements applicable to the Rulemaking process.

G. Budget:

The data and document migration process for our new case management system has been completed, and all historical case data and documents from ProLaw have been imported into CMTS, except for 213 so-called “events” that were created within ProLaw to note certain case developments or milestones (e.g. the issuance of an Order by the Board) that in most instances were also memorialized by digital files (e.g. PDF scans of the actual Order). We are still working to get the contents of those “events” extracted from ProLaw and imported into CMTS as files associated with their respective cases, but the overwhelming majority of those “events” are related to closed cases and have no bearing on OGE’s open investigations. However, the new case management is fully operational.

I also wanted to update the Board on our efforts to secure additional space for the agency that would allow both Offices to be housed together. I have exchanged emails with the Chief Operating Officer for DGS (Yohance Fuller) regarding our interest in moving to a discrete space on the 7th floor where OCP’s IT department historically has been housed that may be large enough to accommodate both OGE and OOG. Mr. Fuller has tasked the Associate Director for the Portfolio team at DGS (IK Imo) with following up on our request. But unless DGS can locate additional space for BEGA at One Judiciary Square, it is our understanding – based on prior conversations with Mr. Fuller and others at DGS – that DGS generally does not act upon an agency’s request for additional office space unless and until the interested agency can identify funding that is available to pay its rent expenses for such space.

H. Staffing –

I would like to introduce you to our new Compliance Specialist, Andria Blaine. Ms. Blaine comes to us from the Department of Behavioral Health where she served in a Program Specialist position as the Executive Assistant to the agency's Chief Operating Officer. Prior to her service at DBH, she was at FINRA where she gained experience working with their case management system, arranged logistics for hearings and pre-hearing conferences, and prepared documents related to FINRA's disciplinary proceedings. Prior to moving to Washington, DC in 2015, Ms. Blaine spent 10 years working at a hedge fund called Titan Advisors, LLC in Stamford, CT where worked her way up to serving as the Executive Assistant to the firm's President, and gained experience providing high quality customer service to the company's investors --- a highly exacting customer base, to say the least. She earned her bachelor's degree from the State University of New York Purchase, and she is currently pursuing her master's degree in Human Resources Management from The Catholic University of America.

On a down note, I am sad to report that our Auditor, Ishmael Okai resigned his position a few weeks ago and his last day with us was Friday, February 1, 2019 to accept a job closer to his home in Virginia. We have already secured DCHR's approval of a new position description for a Grade 13 Auditor position that is more agency-specific than the one that was previously in effect, and DCHR should be posting that position for applications within a few days, if it hasn't already been posted.

I. Litigation

Status of pending cases.

Gerren Price – (CA No. 16-AA-1230), This case was submitted on October 24, 2018, and we are awaiting the Court's decision.

J. Lobbyist/Financial Disclosure Matters

On Tuesday, February 5, 2019 we distributed the Annual Agency Head Memo to approximately 90 Ethics Counselors. As you know, the Agency Head Memo kicks off the financial disclosure season. We included with the memo several relevant documents and templates, including the Ethics Counselor FDS Manual written by Attorney Stewart-Mitchell. We scheduled three Ethics Counselor FDS Trainings for next week. Ethics Counselors can sign up for the training via Eventbrite, so far, 15 Ethics Counselors have signed up. At our FDS meeting last week, we discussed a general strategy for the FDS season which includes returning to paper notifications and increased communication with OCTO.

We still have approximately 200 PFDS non-filers from last season. We will begin formulating a strategy for conducting enforcement and bring that strategy back for discussion with the Board in the coming months. Along that same vein, we'd like the Board's input on non-employee enforcement. We need to adopt a uniform process for collecting fines from those who have left District employment. We'd also like to put definitive deadlines in place for the end of each FDS season (this includes all waiver requests and fine enforcement).

1. Financial Disclosure Waiver Requests:

Pursuant to D.C. Official Code § 1-1162.21(a)(3) anyone adversely affected by a civil penalty imposed under Section 221 of the Ethics Act may appeal said penalty to the Ethics Board.

None received.

2. Lobbyist Program:

We have a meeting with OCTO next week, where we will discuss early prep of the FDS e-filing system and work on a game plan to implement several system enhancements to the Lobbyist system that our customers have recommended. I am also planning to schedule a meeting with the new Chief Technology Officer to discuss the concerns our customers have expressed regarding the functionality and general "user experience" of the new Lobbyist system. I also plan to discuss my proposal to utilize the services of a contract Application Architect or Application Developer to help implement those system enhancements, and to help create detailed user manuals related to both the Lobbyist system and the FDS system after those development efforts are completed. We also anticipate this IT resource will focus on improving the FDS system's interaction with the District's Lightweight Directory Access Protocol (LDAP), as the new FDS E-Filing system experienced significant problems synching with the LDAP during the May 2018 FDS filing season, which unfortunately interfered with the ability of current District government employees to use their dc.gov usernames and passwords to access the new FDS system. This is a problem we simply must resolve if the 2019 FDS filing season is going to be successful.

Lastly, to improve the responsiveness and effectiveness of our technical support and customer service efforts, we plan to augment OCTO's staff during FDS and LRR filing seasons by retaining additional experienced IT Customer Service personnel who will be available to troubleshoot and resolve issues as they arise. In addition to OCTO's staffing efforts – which unfortunately were inadequate to



address the volume of technical support requests we have received for the new systems – we plan to retain three Customer Service Specialists through the Pipeline contract to assist BEGA’s customers during the next quarterly LRR filing season in April and the FDS filing season in May. Depending on the level of success achieved by those additional resources in April and May, we would continue utilizing those services during the July LRR filing season in FY19 and the October and January LRR filing season in FY20, while adjusting the staffing level as needed.

It should be noted that although constructive criticism regarding the logistics of our rollout is well-warranted and taken to heart, many users have complimented both BEGA and OCTO staff for providing high quality customer service for their questions and concerns since January 1st. We have also received favorable feedback from some users who felt that the new system constitutes a marked improvement over our old Lobbyist e-filing system, and we plan to build upon those successes to provide a more expansive favorable experience for the rest of our Lobbying customers in the days and weeks ahead.

After repeatedly asking OCTO in vain to prepare a visual training guide for the new Lobbyist system, they apparently did not have the bandwidth available to do so without negatively impacting their ability to process technical support requests from our users. My frustration with the rollout probably peaked last week when I tried to walk a Lobbying Client through the system and help her create an Activity Report but was unable to figure out how to do so myself. Thus, I bit the bullet, re-watched OCTO’s training webinar and took detailed notes before spending a good bit of time navigating around the system. While taking notes, I realized that I would probably absorb the concepts better if I took some screenshots during the webinar to provide greater context to my notes, and I took even more screenshots from the time I spent navigating through the system. Eventually, I realized that my notes could probably serve as a basic foundation for a visual User Manual for the new system, and I have shared that resulting document with the Board for your review..

Here is a statistical breakdown of the Registration Reports and quarterly Activity Reports that have been submitted or are in the process of being created as of Wednesday February 6 at approximately 1:30 pm:

Here is an updated chart of the report filings to date split between Registrant Type:

Report Type	Report Period	Registrant Type	Submit	Started
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Activity Report	2019 April Activity Report	Client		1
Activity Report	2019 April Activity Report	Individual Lobbyist	1	
Activity Report	2019 Jan Activity Report	Client	176	3
Activity Report	2019 Jan Activity Report	Individual Lobbyist	15	1
Activity Report	2019 Jan Activity Report	Lobbying Entity	239	7
<b>Activity Report</b>		<b>Subtotal</b>	<b>431</b>	<b>12</b>
Registration Report	2018 Registration Report	Client	15	3
Registration Report	2018 Registration Report	Individual Lobbyist	2	
Registration Report	2018 Registration Report	Lobbying Entity	24	3
Registration Report	2019 Registration Report	Client	122	3
Registration Report	2019 Registration Report	Individual Lobbyist	18	
Registration Report	2019 Registration Report	Lobbying Entity	189	6
<b>Registration Report</b>		<b>Subtotal</b>	<b>370</b>	<b>15</b>
<b>All Reports</b>		<b>Total</b>	<b>801</b>	<b>27</b>

To provide additional context, it should be noted that we received 447 registrations during calendar year 2018 vs. only 329 registrations to date for calendar year 2019. We also received 379 Activity Reports during the most recent filing season in July 2018 vs. 431 Activity Reports to date for the 1<sup>st</sup> quarter of FY19. We are working with OCTO to gain insight into possible causes for the reduced number of registrations that have been accompanied for some reason by an increase in the number of Activity Reports being filed. It is possible that customer frustration coupled with public awareness of the lenient enforcement position we have articulated may have played a role in reducing the number of 2019 registrations filed thus far. However, we need to keep a close eye on the situation due to the potential impact on our budget that would result from a reduced volume of Lobbyist Registration Fee payments

K. Non-Confidential Investigations

1. 18-0002-F, *In re* Antwan Wilson -- Pursuant to D.C. Official Code § 1-1162.12 (a), we conducted formal investigations into whether the actions of former-Chancellor Antwan Wilson and former-

Deputy Mayor Jenifer Niles in connection with the Chancellor's daughter's mid-year transfer to an out-of-boundary school during the 2017-2018 school year violated the Code of Conduct.

2. 18-0002-F, *In re* Jenifer Niles. We are proposing a negotiated disposition with Ms. Niles that will be presented to the Board in closed session.
3. 18-0006-P, *In re*: Jack Evans – This formal investigation into allegations that Councilmember Evans violated the Council Code of Conduct is currently stayed.

**L. Opportunity for Public Comment.**

Valerie Jablow provided public comment. Ms. Jablow, a District resident and DCPS parent, raised concerns about a complaint she made on June 15, 2018 about a possible unregistered lobbying entity in the District. She initially brought her complaint to the Board on June 15, 2018, and while she thanks staff for their assistance, she wanted to raise the matter again before the Board and provided additional materials to the office. Ms. Jablow was advised to provide her materials to OGE staff and she was advised that this matter may be discussed further in executive session.

- M. The Board voted unanimously to deliberate in Executive Session** (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b), to consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body pursuant to D.C. Official Code § 2-575(b)(4)(A), to discuss personnel matters including the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials pursuant to D.C. Official Code § 2-575(b)(10), and to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13).

**N. Resumption of Public Meeting**

The Board approved the following negotiated dispositions:

1. 1031-017 *In re* Jenifer Niles.
2. 18-0025-P *In re* Danielle Meadors

**O. Adjournment**

BEGA's next meeting is March 14, 2019 at noon.