

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

**MEETING MINUTES
JANUARY 7, 2021**

The District of Columbia Board of Ethics and Government Accountability held a meeting on January 7, 2021 at 12:00 p.m. The meeting was held remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Melissa Tucker, and Darrin Sobin. Questions about the meeting may be directed to bega@dc.gov. Members of the public were welcome to attend, and a recording of the meeting is available at: <https://youtu.be/LNBsmH6VoV4>

I. Call to Order

II. Ascertainment of Quorum

Quorum established.

III. Adoption of the Agenda/Approval of Minutes

Board Members unanimously approved the Agenda and December 3, 2020 minutes.

IV. Report by the Director of Open Government

Good afternoon Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, the Director of Open Government. Before I begin my report on the activities of the Office of Open Government (“OOG”), I must mention the disturbing events that occurred at the U.S. Capitol yesterday. The perpetrators of the insurrection and those who supported them made a mockery of our Democracy by their lawless, dangerous actions. America is a country and an idea. We, as government officials and attorneys, have a responsibility to uphold the U.S. Constitution and respect the rule of law. The chaos of yesterday emphasized the importance of our work here to ensure that this government is open, transparent, ethical, and an example of good, just governance. Our commitment to ensuing our charter is carried out cannot and will not be deterred. I would like to commend my staff for continuing to serve the residents of the District of Columbia yesterday despite the chaos we all witnessed. The Office of Open Government resolves and continues 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

OOG has not issued any advisory opinions since the Board’s last meeting. OOG continues to provide formal and informal advice regarding the operation of the Open Meetings Act and FOIA during the public health emergency in writing via e-mail and orally.

1. Formal FOIA Advice:

OOG's Chief Counsel and FOIA Officer, Johnnie Barton, and OGE's General Counsel, Rashee Raj, continue to provide BEGA's pending FOIA requesters with a letter detailing the changes to FOIA requirements and the impact of those changes on FOIA requirements.

2. Dorothy Brizill complaint: As requested by the Board, on December 9, 2020, I along with Attorney Barton held a telephone conference with Dorothy Brizill. We discussed her concerns about the Board of Elections' post-election audit that she expressed during BEGA's December 3, 2020, meeting. We reiterated the OOG's strong commitment to government transparency and our statutory authority and limited jurisdiction. As you recall, the OOG informed Mrs. Brizill that it did not have jurisdiction to pursue her complaint, an effective dismissal. To substantiate this, we provided her with copies of several OOG advisory opinions that were dismissed because of lack of jurisdiction. During our discussion, Mrs. Brizill stated that she knew her best option was to seek injunctive relief through the courts. However, she did not take legal action on the mistaken belief that the courts were closed due to the pandemic. Mrs. Brizill requested and was provided with a copy of the OMA's the legislative history. She later informed us that she would provide the OOG and OGE with additional material to consider. I encouraged her to contact either office in the interim with additional questions or concerns.

3. Informal OMA/FOIA Advice:

OOG continues to experience a high volume of requests for advice and assistance on open government matters since the commencement of the public health emergency on March 16, 2020.

- The Office responded to 12 requests for OMA advice;
- The Office responded to 21 requests for FOIA advice; and
- The Office responded to 6 requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. 42nd Annual COGEL Conference: On December 1, 2020, I, Chief Counsel Barton, and Attorney DeBerry, attended the 42nd Annual COGEL Conference Plenary Session. The webinar session topic – Voting in Times of Crisis._
2. DC Bar FOIA Webinar: On December 3, 2020, I and OOG legal staff attend the D.C. Bar webinar “Training Basics of Filing and Litigating Freedom of Information Act Requests 2020.” The webinar discussed: (1) the proper submission of FOIA requests; (2) the issues that arise in FOIA litigation; and (3) federal Privacy Act requests and litigation.
3. Public Records Webinar: On December 8, 2020, Attorney Barton attended the “Slay the Public Records Request Dragon: Real Stories of Conquest” webinar. The webinar was sponsored by GovQA a provider of public records management systems. Topics discussed included managing public record requests considering the pandemic, civil unrest, and future uncertainty.
4. OMA Basics Training #3: On December 9, 2020, I facilitated an OMA Q & A webinar for the D.C. Public Charter School Boards of Trustees and their points of

contacts. This session was the last of three trainings provided by the OOG to get the Trustees up to speed with the OMA.

5. LSAT Compliance with OMA: On December 16, 2020, I, Chief Counsel Barton, and Attorney DeBerry, held a virtual meeting with Eboni Govan, Attorney-Advisor from DCPS. The purpose of the meeting was to provide guidance to ensure that all LSATs fully comply with the OMA. We are working with DCPS to schedule additional training sessions to lessen future OMA complaints about LSATs.
6. Yearly FOIA Report: Annually, District of Columbia agencies are required to submit a report to the Mayor on their FOIA activities of the previous calendar year. The Mayor transmits that report to the D.C. Council. The OOG assisted several agencies with completing their reports and Chief Counsel Barton, Attorney Advisor DeBerry and General Counsel Raj complied and timely submitted BEGA's FOIA report. On December 16, 2020, Attorney DeBerry met with the Alcoholic Beverage Regulations Administration's FOIA Officer and assisted with completing the agency's annual FOIA Report. Chief Counsel Barton and I also assisted the Office of Cable Television, Film, Music, and Entertainment with their FOIA Report.
7. 42 Annual COGEL Conference FOIA Update: On December 11, 2020, I, Chief Counsel Barton, and Attorney DeBerry, attend the COGEL FOIA Update session. Topics discussed included: (1) how to balance existing laws pertaining to law enforcement agency records and the growing demand for more access to those very records; (2) what to do when statutes, policies, or rules require specific time responses to public records requests in the middle of a pandemic; (3) how to respond to records requests when so many public employees have been working from home, and issues related to FOIA requests for body-worn camera footage.
8. ANC FOIA and Ethics Training: As the Board is aware, D.C. Official Code §1-309.12(d)(6) requires the OOG to provide a training session at least twice per calendar year on ANC Commission obligations under FOIA, to which all Commissioners shall be invited. On December 22, 2020, Attorney Barton, Director Ford, and Attorney Cooks met with Gottlieb Simon, Executive Director of the Office of Advisory Neighborhood Commissions. They discussed the dates and contents of the trainings. The training dates are January 19, 2021 and January 26, 2021. The ANCs will receive FOIA and ethics trainings on these dates.
9. Mandatory Cybersecurity Training: On December 29, 2020, and December 31, 2020, Attorney Barton completed Cybersecurity training for employees of the District of Columbia Government. The course is mandatory for all DC Government employees and contractors and includes information about identifying common cyberattacks; cyber-safety best practices; and a "Working Remotely" Training Module.
10. Monitoring Public body meetings: OOG continues to play an important role in ensuring that Boards, Commissions, and other public bodies successfully conduct government business remotely. OOG is currently responsible for remotely overseeing that approximately 292 public bodies comply with the OMA. This figure includes approximately 105 Local School Advisory Teams. OOG continues

to ensure the public's right of access to public meetings by monitoring public body compliance with the OMA as amended by the "Coronavirus Support Temporary Amendment of 2020." We are monitoring public meeting notices to ensure they provide remote meeting access information for the public to observe these meetings. We are also attending meetings remotely to observe meetings as participants.

C. Litigation and Legislative Update:

1. Mayor's Order extending public health emergency: On December 18, 2020, Mayor Bowser issued Mayor's Order 2020-127. The order extends the public health emergency through March 31, 2021.
2. D.C. FOIA Tolling Legislation: The FOIA Tolling Emergency Amendment Act of 2020 (A23-0555), was signed by the Mayor on December 22, 2020. It expires May 21, 2021. During the Legislative Session held on December 15, 2020, the Council of the District of Columbia approved on second reading the FOIA Temporary Amendment Act of 2020 (Bill 23-1108). These measures adjust the time that agencies must respond to FOIA requests during the public health emergency. They restart the FOIA response clock as of January 15, 2021, but allow for an extension of FOIA deadlines when the need to conduct an on-site review of records could present a significant risk to health or safety during the COVID-19 pandemic. The January 15, 2021 start date will also ensure that any requests received since March 11, 2020 (the first day of the declared Public Health Emergency) do not immediately come due. OOG will make sure D.C. FOIA Officers are informed of these new deadlines by sending out a notice.

D. Administrative Matters:

1. During its January 4, 2021, Organizational meeting the Council voted to remove BEGA and the subject matters of government transparency and ethics from the Committee on Judiciary & Public Safety, chaired by Charles Allen. The Committee on Human Services, Chaired by Councilmember Brianne Nadeau now has oversight responsibilities for BEGA. We appreciate the support and oversight of the OOG under the Committee on the Judiciary and Public Safety under Chairman Allen's leadership, the Committee members and Committee staff. We look forward to continuing our statutory functions under the oversight of Committee on Human Services.
2. Attorney-Advisor and Trial Attorney Vacancies: During the week of December 9, 2020, the OOG interviewed candidates to fill the Attorney-Advisor vacancy. The OOG intends to extend an offer to a candidate within the next few days. The Trial Attorney position vacancy was listed on December 18, 2020 and will close February 2, 2021. We anticipate commencing the process of hiring the OMA Trial Attorney in February.

This concludes the Office of Open Government's January 7, 2021 report.

V. Report by the Director of Government Ethics

Good afternoon Chairperson Hutcheson and Members of the Board. Happy New Year. My name is Rochelle Ford, I am the Director of Government Ethics. I am pleased to present this report on the activities of the Office of Government Ethics (OGE).

A. Update on Status of OGE Operations:

The information reported today regarding OGE’s cases will not reflect any status changes that may will occur as a result of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	49
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	49

OPEN "UNDOCKETED MATTERS"	
Grand Total	2

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	32
Closed - Pending DC Superior Court Case	0
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	9
Stayed - US District Court Case	0
Grand Total	43

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	0
Grand Total	24

	Current	Last month	October
Investigations Currently Open:	49	56	50
Investigations Stayed:	12	12	11

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

During the month of December, nearly all OGE employees completed mandatory training from the D.C. Office of the Chief Technology Officer on Cybersecurity and Working Remotely. The only exceptions were due to technological issues with logins. All OGE employees are now in compliance.

Auditor Tujuba completed the following trainings offered by DCHR:

- Business Analysis Analytical Techniques
- Keeping Business Calls Professional
- Personal Skills for Effective Business Analysis
- Business Analysis Documentation and Criteria

On December 1, 2020, the Council of Government Ethics Lawyers (COGEL) kicked off its annual conference remotely. Director Ford and OGE attorneys attended virtual sessions throughout the month on-demand as well as two live plenary sessions.

General Counsel Raj completed annual update training for agency Sexual Harassment Officers. Supervisory Attorney Cooks attended the Office of Human Rights “Discrimination in the Workplace” and “Understanding ADA and DCFMLA” trainings.

As part of OGE’s continued efforts to provide enhanced and specialized training to District officials, Senior Attorney Advisor Ashley Cooks and I met with attorneys from the Office of the Attorney General and with Johnnie Barton and Simon Gottlieb from the ANC office regarding providing training to ANC Commissioners in January. OOG, OGE and the ANC office will partner to provide ethics, FOIA, and ANC related matters later this month.

2. Conducted by staff

Since the last Board meeting, OGE conducted online Ethics Training on December attended by 122 employees. OGE attorneys conducted 3 ethics trainings to include the Monthly Ethics Training and two New Employee Orientations. OGE attorneys will restart the Ethics Counselor Brown Bag Discussions this month.

C. Advisory Opinions/Advice

Informal Advice: approximately 39 which is the same as the 39 reported at the December meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

OGE has not issued any advisory opinions since the last meeting.

D. Legislation Updates

On January 6, 2021, the DC Council voted on committee assignments for Council Period 24. BEGA's oversight will now be handled by the Committee on Human Services. I would like to take this opportunity to thank CM Charles Allen and the staff of the Committee on the Judiciary and Public Safety for their insights and guidance and for their commitment to ensuring that BEGA is able to make its mission. It was a pleasure to work with the Committee. We are looking forward to working with Ward 1 CM Brianne Nadeau who chairs the Committee on Human Services in the future.

We will reach out to the CM's office this week.

E. OGE Administrative Matters

The Board's Senior Attorney Advisor position was posted on December 18, 2020 and will close on January 23, 2021. The position description has been uploaded to the Dropbox.

The posting for the new Attorney Advisor should be posted tomorrow and will remain open for 30 days.

F. Financial Disclosure and Lobbyist Registration Programs

Lobbying Registration and Reporting (LRR) System – A few outstanding activity reports came in via the e-file system in December even though the 3rd Quarter ended on September 30th and reports were due October 15th. OGE prepared Notices of Non-Compliance to the lobbyists who did not comply with reporting by the October deadline. Auditor Tujuba completed Lobbyist Activity Report for third quarter of calendar year 2020 and discussed the findings with the Lobbyist team.

On December 16, OGE held a meeting with Lobbyists Stakeholders to discuss Lobbyist Stakeholders to discuss the LRR e-file system's features and shortcomings. Along with myself, Attorney Advisor King, Program Specialist Kosick, and Program Assistant Dow. Overall, the system received positive feedback with respect to functionality and search capacity (included the ability to upload excel spreadsheet for activity, multiclient capability, and the public employee search. The main concerns related to a lack of flexibility to revise previous filings, unduly cumbersome design, and system errors.

On December 29, OGE opened the LRR for Quarter 4 2020 Activity Reporting and 2021 Lobbyist Registration.

Financial Disclosure – A few outstanding Financial Disclosure Statements were filed electronically in December, but the focus has shifted to enforcement and pursuit of penalties. Between the public and confidential filers, the auditor and program specialist found 330 total non-filers (ones who received all notices and reminders to file yet did not) across the District. OGE sent 330 Financial Disclosure non-filers for calendar year 2019 to OCFO-OFRM for collection. This totals

approximately \$99,000 in revenue. To date, we have received a check for \$900.

Upgraded e-filing system – After a meeting to discuss our financial disclosure e-filing system, OCTO agreed to enhance the e-file system to allow multiple filings per year as OGE requested when they developed the system. The enhancement went live on December 23, 2020 and outgoing Councilmember David Grosso filed his final financial disclosure statement using the e-file system on December 29th.

Lastly, Auditor Tujuba completed the Councilmembers Public Financial Disclosure Statement (PFDS) audit for the November 15th, 2020 filing and there were no major findings. He also completed the calendar year 2020 third quarter complaint intake and processing audit and had no major findings.

Thank you. This concludes the Office of Government Ethics' January 7, 2021 report.

VI. Acknowledge of Public Comment – none received

VII. Executive Session (non-public)

VIII. Resumption of Public Meeting

IX. Adjournment

The Board will meet again on February 4, 2021.