

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

DRAFT MEETING MINUTES – FEBRUARY 4, 2021

The District of Columbia Board of Ethics and Government Accountability held a meeting on February 4, 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. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting. 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://www.youtube.com/watch?v=8dRcfMK4JX8&feature=youtu.be>

I. Call to Order

12:01

II. Ascertainment of Quorum

Quorum established.

III. Adoption of the Agenda/Approval of Minutes

Board Members unanimously approved the Agenda and January 7, 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. I am pleased to present this report on the activities of the Office of Open Government (“OOG”). Since the last Board meeting, the Office of Open Government 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 Opinion (OMA): On February 2, 2021, I issued “Resolution of Complaint #OOG-2020-0001-M” regarding the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (“COST”). This advisory opinion dismissed a complaint that COST held a meeting on September 18, 2020 that violated the OMA. The allegations in this complaint were identical to five previous OMA complaints that filed against COST and dismissed by this office. My findings were that: (1) COST did not violate the OMA on September 18, 2020, as alleged; (2) the alleged violations were for various dates in 2016, not September 18, 2021, as stated in the complaint; (3) the complaint resurrected allegations raised against the COST in five prior OMA complaints filed by the complainant; (4) the OOG dismissed those complaints as untimely or without merit; and (5) the request

that I remove the Chair of COST exceeds the scope of my authority under the OMA and should not be granted.

2. Formal and Informal FOIA and OMA Advice: As discussed below, OOG continues to provide formal and informal advice regarding the operation of the OMA and FOIA during the public health emergency in writing via e-mail and orally.
 - a. Formal FOIA Advice: OOG's legal staff and OGE's General Counsel, Rashee Raj, continue to provide BEGA's pending FOIA requesters with a letter detailing the changes to FOIA requirements resulting from the ongoing public health emergency and the impact of those changes on their FOIA requests to BEGA. FOIA requests received by the office prior to January 16, 2021, will be responded to on or before March 26, 2021, pursuant to the new FOIA rules. FOIA requests received by BEGA on or after January 16, 2021, will be processed according to the regular FOIA rules unless the request requires a BEGA staff person to retrieve records from the agency's physical office. Those requests are stayed until the termination of the public health emergency, which is March 31, 2021.
 - b. 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. We have also received numerous requests for FOIA assistance related to requests for D.C. government's records regarding the U.S. Capitol Insurrection that occurred on January 6, 2021.
 - The Office responded to 18 requests for OMA advice;
 - The Office responded to 35 requests for FOIA advice; and
 - The Office responded to 22 requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. Virtual Cabinet Meeting: On January 7, 2021, I attended Mayor Bowser's Virtual Cabinet Meeting. At the meeting, the new District of Columbia Metropolitan Police Department (MPD) Chief Robert J. Contee was introduced and he gave a briefing on the U.S. Capitol breach and the District of Columbia's response. He also provided a briefing on preparations for the Presidential Inauguration. As you know, BEGA's offices along with other District of Columbia government physical offices were closed to staff to ensure security during the Inauguration. We look forward to working with Chief Contee on issues related to open government and transparency in the near future.
2. D.C. Government Records Retention Webinar: On January 14, 2021, Attorney DeBerry attended the records training presented by the Office of the Secretary of the District of Columbia. The training discussed the importance of creating and updating agency Records Retention Schedules.
3. American Society of Access Professionals Training ("ASAP") on Introduction to FOIA: On January 21, 2020, I completed ASAP's refresher course on the active

federal FOIA requirements. The webinar included a discussion of the key procedural elements of the federal FOIA statute and a summary of its exemptions.

4. American Society of Access Professionals Training (“ASAP”): On January 26, 2021, I and Attorney DeBerry, attended the “ASAP Hot Topics” training. The presenters reviewed recent rulings in federal FOIA cases and discussed their impact on processing federal FOIA requests.
5. ANC FOIA and Ethics Training: D.C. Official Code § 1-309.12(d)(6) requires the Office of Open Government to provide a “FOIA training session at least twice per calendar year on Advisory Neighborhood Commissioners’ (ANC) obligations under FOIA, to which all Commissioners shall be invited.” As required by this law, on January 19, 2021 and January 26, 2021, I, along with the Executive Director of ANCs Gottlieb Simon, presented FOIA trainings for the ANCs. Attorney DeBerry attended the January 26th training. Director Ford and Attorney Cooks presented ethics training for ANCs on both dates.
6. Harvard University COVID-19 Wellness Seminar: On January 27, 2021, OOG Chief Counsel Barton attended the university’s “Mental Health in the Time of COVID-19” seminar. The seminar provided tips and resources for maintaining mental wellness during the pandemic.
7. HSEMA FOIA Coordination Meeting: On January 27, 2021, Chief Counsel Barton, Attorney DeBerry, and I attended a meeting with the staff of the D.C. Homeland Security and Emergency Management Agency (HSEMA) to discuss FOIA. The agency has received a marked increase in FOIA requests, and we discussed strategies and offered assistance.
8. Open Government and FOIA Update with Mayor’s General Counsel: On January 27, 2021, I met with the Mayor’s General Counsel and her staff to discuss open government issues. I also briefed her on the activities of the Office of Open Government, specifically the increase in requests for FOIA assistance in January. I plan to meet again with her in the near future and have an informal meeting to introduce the Mayor’s Office of General Counsel staff to OOG’s new staff members.
9. Monitoring Public body meetings: OOG continues to remotely monitor oversee that the approximately 292 public bodies are conducting remote meetings in compliance with the OMA. We are regularly reviewing public meeting notices to ensure they provide remote meeting access information for the public to observe these meetings. We are also attending and observing meetings. The majority of public bodies that we are observing are complying with the OMA.

C. Litigation and Legislative Update:

1. D.C. FOIA Lawsuit update: As previously reported, on July 13, 2020, Terris, Pravlik & Millian, LLP (“TPM”), filed suit alleging that the District of Columbia government failed to produce and post online various budget-related documents as required by FOIA. The Complaint alleges that the Executive Office of the Mayor failed to produce documents related to the Office of the State Superintendent of Education and District

of Columbia Public Schools (Civil Action No. 2020 CA 003087 B). As requested by the court, on January 29, 2021, the parties filed supplemental briefings in support of their respective *Motions to Dismiss*. The issues discussed were the deliberative process privilege, separation of powers, and standing. The court has not issued its ruling. OOG continues to monitor this matter. Copies of the briefs are in DropBox.

2. D.C. FOIA Tolling Legislation: On January 13, 2021, the Mayor signed, the FOIA Temporary Amendment Act of 2020 (DC Act 23-0595). On February 1, 2021, it was submitted for Congressional Review. The projected law date is March 19, 2021. The Act adjusts the time that agencies must respond to FOIA requests during the public health emergency. It restarts the FOIA response clock as of January 15, 2021, but allows 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. On January 22, 2021, I sent a memorandum to D.C. FOIA officers to ensure they are informed of these new deadlines. I also sent a form letter for D.C. FOIA officers to send to requesters notifying them of the impact of these changes on their FOIA request. I also worked with the Office of the Chief Technology Officer to alter the FOIA Xpress system to reflect the new changes in the law, including drafting a notice of the changes that now appears on the landing page of the D.C. Government FOIA portal. I consulted with the Open Government Coalition of the changes that OCTO needed to make to the FOIA portal to ensure it complies with the new FOIA law.

D. Administrative Matters:

1. Attorney-Advisor and Trial Attorney Vacancies: We hope to fill the Attorney-Advisor position this month. The Trial Attorney position received applications until February 2, 2021. The D.C. Department of Human Resources is conducting a preliminary evaluation of the candidates and we hope to begin interviews of the most qualified candidates in the next two weeks.
2. Performance Oversight Hearing: The Committee on Human Services has scheduled BEGA's Performance Oversight Hearing for February 26, 2021. The Office of Open Government is crafting responses to questions from the Committee and the agency responses are due on February 19, 2021.

This concludes the Office of Open Government's February 4, 2021 report.

Board member Darrin Sobin asked for us to send an invitation for the board members to join the meeting to watch our oversight testimony.

V. Report by the Director of Government Ethics

Good afternoon Chairperson Hutcheson and Members of the Board. 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	53
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	53

OPEN "UNDOCKETED MATTERS"	
Grand Total	0

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	28
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	41

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

	Current	Last month	December
Investigations Currently	53	49	56
Investigations Stayed	12	12	12

The number of open preliminary investigations includes 5 new matters opened since the Board last met. Last year OGE’s staff resolved 53 preliminary investigations.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

During the month of January, nearly all OGE employees completed mandatory training from the D.C. Office of the Chief Technology Officer on Cybersecurity.

Auditor Tujuba completed the following trainings offered by DCHR:

- The Business Analysis (BA) Planning and Monitoring Knowledge Area
- Leading a Cross-functional Team
- Building a Leadership Development Plan
- Taking Final Steps to Bring a Project to its Close

Attorney Stewart-Mitchell attended a two-day training on Cognitive Interviewing, Communication, & Influence given by the National White Collar Crime Center (NW3C).

2. Conducted by staff:

Since the last Board meeting, OGE attorneys conducted 8 total ethics trainings to include the Monthly Ethics Training, two New Employee Orientations, Supervisory Attorney Cooks and OOG attorneys worked with Simon Gottlieb to participate in two required trainings for Advisory Neighborhood Commissioners, one Boards & Commissions training for the DC Council on Developmental Disabilities, one for the DC Office of Attorney General's Ruff Fellows, and one for Councilmember Janeese Lewis George and her staff. Supervisory Attorney in consultation with Attorney Asia Stewart Mitchell, created quick reference guidance on the FDS process and Letters of Support for new Council Offices. In addition, we also provided the CM with advisory opinions related to the Council. **[See the Drop Box for the Job Aids]**

OGE's monthly online Ethics Training was attended by 76 employees. OGE attorneys resumed its Ethics Counselor Brown Bag Discussions in January with a presentation on OGE's plans to continue working with individual agency ethics counselors, training development plan, and updates on the upcoming FDS season. As a continuation of the December forum on Gifts and Donations, OGE hosted a robust discuss on virtual Widely Attended Gatherings (WAGs) and the acceptance of free food at a virtual WAG. OGE encountered this issue recently and expects this to continue to be an issue as virtual gatherings increase.

Next month's ethic lunch will feature a presentation by Marcy Maslov on ethical culture. Ms. Maslov is a former corporate compliance professional who now teaches and coaches on ethics and compliance related matters. Both Attorney Stewart Mitchell and I were very impressed with a presentation on ethical decision-making that she provided at a conference we attended last year and we are pleased to have her present to our ethics counselors and agency staff provide ethics guidance. **[Her bio is uploaded**

to the Dropbox]

C. Advisory Opinions/Advice:

1. Informal Advice: approximately 38 which is one less than the 39 reported at the January 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:

As we reported last month, the DC Council voted on committee assignments for Council Period 24 and as mentioned last month, BEGA's oversight will now be handled by CM Brianne Nadeau, chair of the Committee on Human Services. We have already reached out to the CM's office to provide them with information about the agency. The agency's performance hearing will be held on February 26, 2021. **[Oversight Questions and last year's responses are uploaded to the DropBox]**

Director Allen and I plan to meet briefly with CM Nadeau before the performance hearing.

E. OGE Administrative Matters:

OGE is seeking an Attorney Advisor. The position was posted Friday, January 8, 2021 and will close on Monday, February 7, 2021.

Two interns, Jesli A. Hernandez and Markeisha M. Lee, will be joining OGE this month through DCHR's In-School Youth Leadership program. We look forward to working with our new interns and intend for them to assist with research projects.

F. Financial Disclosure/Lobbyist Matters:

Lobbying Registration and Reporting (LRR) System – On December 29, 2020, the Lobbyist Registration and Reporting Program Specialist opened the filing for CY 2020 Q4 Activity Reports and for the 2021 Lobbyist Registrations. To date, there have been 354 Registration filings (48 New Registrations, 294 Renewals, and 12 Terminations), which reflects an increase of 21% over January 2020 Filings. Lobbyists filed 434 Activity Reports and sought staff assistance via phone, email, and 18 Support Tickets.

Auditor Tujuba has already completed the Q4 CY2020 activity report audit and noted minor findings yet to be communicated to the BEGA Director and LRR/LAR Team. He also completed the CY2020 Reduced Lobbyist Registration fee eligibility audit and identified some registrants who had paid \$50, but did not have IRS tax exempt status under 501(c)(3). Those matters were recommended to be pursued through

enforcement.

Financial Disclosure – The Financial Disclosure Team met in January to discuss and establish the itinerary for the upcoming 2021 Financial Disclosure. The Team is preparing to launch notices to the Ethics Counselors and Agency Heads to initiate the 2021 Filing season.

For the 2020 season, the first batch of FDS non-filers -- 209 employees for revenue of \$62,700 -- are scheduled for wage garnishment in the first pay period of February 2021.

OGE continues to work with the OAG, when necessary, as well as the District's collection agency in pursuing outstanding fines owed to the agency.

Thank you. This concludes the Office of Government Ethics' February 4, 2021 report.

VI. Acknowledge of Public Comment – none received

VII. Executive Session (non public)

VIII. Resumption of Public Meeting

No matters to report out.

IX. Adjournment

The Board will meet again on March 4, 2021.