

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

DRAFT DIRECTORS' NOTES – June 4, 2020

The District of Columbia Board of Ethics and Government Accountability will hold a meeting on June 4, 2020 at 10:00 a.m. The meeting was held remotely via WebEx. The Board's Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Darrin Sobin, and Melissa Tucker. Questions about the meeting may be directed to bega@dc.gov.

These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting date.

I. Call to Order

Chairperson Hutcheson called the meeting to order.

II. Ascertainment of Quorum

Chairperson Hutcheson established that a quorum was present

III. Adoption of the Agenda/Approval of Minutes

Board Member Sobin moved to approve the agenda, and Board Member Smith seconded that motion. The motion was approved unanimously.

Board Member Sobin moved to approve the March Meeting Minutes, and Board Member Tucker seconded that motion. The motion was approved unanimously.

Board Member Sobin moved to approve all three sets of May Meeting Minutes, and Board Member Tucker seconded that motion. The motion was approved unanimously.

IV. Report by the Director of Open Government

Good morning 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 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

The Office of Open Government has not issued any Advisory Opinions since the last Board meeting. OOG continues to provide formal advice regarding the operation of the Open Meetings Act and FOIA during the public health emergency.

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. 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.

Since the last Board meeting, the OOG provided informal assistance with FOIA, OMA, and open-dc.gov, as follows:

- The office responded to 15 requests for FOIA advice;
- The office responded to 10 requests for OMA advice; and
- The office responded to 3 requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. Board and Commissions Training: On May 8, 2020, the Mayor's Office of Talent and Appointments hosted a combined OMA and Ethics training for new public body members. Approximately 190 persons attended this training. I facilitated the Open Meetings Act training and Acting Director Ford facilitated the Ethics training. MOTA's Director Steven Walker served as moderator and we responded to questions from participants.

2. WebEx Trainings: On May 12, 2020, Attorney Barton attended WebEx Meetings 101, a basic introduction to using WebEx. On May 14, 2020, he attended WebEx Events Training, a more advanced training on the use of WebEx. Both trainings were conducted by OCTO.

3. Centers for Disease Control (CDC) FOIA Webinar: On May 12, 2020, Attorney Barton and I received nearly the same number of requests in the first half of Fiscal Year (FY) 2020 as it did in all of FY 2019. Office of Government Information Services (OGIS) Director Alina Semo facilitated a conversation with CDC's FOIA leadership, who provided insight into the agency's FOIA program and suggested strategies for successful FOIA requests.

4. National Association of Attorneys General Webinar: On May 21, 2020, I and Attorney Barton remotely attended the National Association of Attorney General Webinar Wellness Series Part 5: Am I Good Enough? Working With the Imposter Confirmation. The webinar's goal was to boost attorney's moral and self-confidence. It also provided helpful ideas to reduce stress.

5. Open Government Advisory Group Meeting: On May 14, 2020, I attended the Open Government Advisory Group's meeting. The purpose of the group is to evaluate the

District's progress towards meeting the requirements of the Transparency, Open Government and Open Data Directive of Mayor's Order 2016-094 and to make specific recommendations for improvements. The purpose of this meeting was to swear in new members and to set our strategic priorities for the year.

6. Monitoring Public body meetings: OOG continues to play an important role in ensuring that Boards, Commissions, and other public bodies are able to 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 Adversary 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 "COVID-19 Response Emergency Amendment Act 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.

7. COVID-19 Cabinet Meetings: Director Ford and I participated in weekly meetings with Mayor Bowser concerning the District's response to the public health emergency on May 15, 2020; May 18, 2020; May 26, 2020; and May 29, 2020. These meetings provide us with information regarding COVID-19 cases, the District's reopening plans, and the government's reopening plans.

C. Legislative Update:

1. Michigan FOIA Litigation: On May 21, 2020, the Michigan Court of Claims upheld the Governor's Executive Order 2020-38, which tolls the processing of FOIA requests during the COVID-19 emergency. The Michigan court's findings were: (1) there was no FOIA violation because the state only delayed FOIA request processing, which was not a FOIA denial; (2) Michigan law authorized issuance of the Governor's Order; and (3) the Governor's Order was not an unconstitutional delegation of legislative authority. On June 3, 2020, Governor Whitmer announced that Executive Order 2020-38, which extends certain FOIA deadlines due to COVID-19, will be rescinded at 12:00 am on June 11, 2020. The District of Columbia has taken similar action through legislation. The Michigan case is instructive on the issue of tolling FOIA processing during the public health emergency.

2. National Archives and Records Administration's (NARA's) FOIA Advisory Committee Recommendations: The NARA FOIA Committee is a federal government entity tasked with "fostering dialogue between the Administration and the requester community, soliciting public comments, and developing consensus recommendations for improving FOIA administration and proactive disclosures." They released 22 recommendations to improve processing of federal FOIA requests. The recommendations that are germane to the District of Columbia's FOIA laws are as follows:

(1) Enhancing Online Access. OOG's federal counterpart, OGIS, should undertake an assessment of the information agencies make publicly available on their FOIA websites

to facilitate the FOIA filing process. (Note: OOG conducted a FOIA audit concerning information that must be made publicly available.)

(2) **Improving Training:** Offer targeted training in selected topics in federal records management to FOIA officers and FOIA Public Liaisons in federal agencies, and otherwise include a FOIA module in selected records management training courses open to all federal employees.

(3) **Embracing New Technologies:** Provide further guidance on the use of e- discovery tools to assist agencies in meeting their obligations to conduct an adequate search of electronic records; and

(4) **Providing alternatives to FOIA requests:** OGIS and the Department of Justice, Office of Information Policy should have agencies identify common categories of records requested frequently under the FOIA and/or Privacy Act, by or on behalf of individuals seeking records about themselves. They recommend establishing an alternative method, other than FOIA, for more efficiently providing access to these records. (Note: DC does not currently have a counter-part to the federal privacy act or have any law that addresses first party FOIA requests. OOG issued advisory opinions concerning this issue.)

3. **BEGA FY21 Budget Meeting:** OOG and OGE had internal FY20 and FY21 Budget meetings on May 20, 2020 and May 21, 2020 where we discussed adjustments that should be made in light of the reduced budget resulting from COVID-19. As Director Ford will discuss in her report, BEGA is foregoing its hearing room upgrade in FY20 and other expenditures to effectuate cost savings in FY20. With respect to FY21, BEGA sought two budget enhancements for OOG, which included an additional attorney position and a new paralegal position. Those enhancements were not included in the FY21 budget. OOG and OGE met with DC Council staff on May 22, 2020. I expressed that OOG would be requesting those two positions through the DC Council, as they are necessary for the office to execute its mission.

D. **Administrative Matters:**

1. **OOG IT Specialist Vacancy:** On May 18, 2020, May 19, 2020 and May 20, 2020, the OOG conducted the first round of WebEx interviews of candidates for its IT Specialist vacancy. We have scheduled the second round of interviews for June 5, 2020, and intend to fill the vacancy by June 30, 2020.

2. **ReOpen DC:** On Mayor signed an order to move the District of Columbia into Phase I of the Reopening plan. She is calling the plan “Stay-at-home Lite.” Acting Director Ford and I are still working on BEGA’s reopening plan. BEGA will remain on full telework status during Phase I and Phase II of the reopening. The public health emergency remains in effect until June 8, 2020.

I would like conclude with a statement concerning the civic unrest and mass protests that are currently occurring in the District of Columbia and throughout the world concerning the murder of George Floyd by four former Minneapolis Police officers. [BRIEF STATEMENT IN DROPBOX]

Thank you. This concludes the Office of Open Government’s June 4, 2020 report.

V. Report by the Director of Government Ethics

Good morning, Chairperson Hutcheson and Members of the Board. My name is Rochelle Ford and I am the Acting 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 Office of Government Ethics (OGE) Operations: First I will provide a recap of the previous month’s activities. Given the COVID-19 emergency, OGE’s staff has continued to investigate pending matters as is feasible given the stay at home orders. 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.

OPEN INVESTIGATIONS BY STATUS	
Open	52
Open - Negotiations	1
Open - Show Cause Hearing	4
Grand Total	57

OPEN "UNDOCKETED MATTERS"	
Grand Total	2

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	27
Closed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	7
Stayed - US District Court Case	2
Grand Total	41

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	1
Grand Total	25

	Current	Last month	March. 2020
Investigations Currently Open:	57	50	39
Investigations Stayed:	13	13	14

The number of open cases includes 15 cases initiated within the past 30 days. We are looking to revise OGE’s case intake procedures that the former director developed to improve work flow and to incorporate feedback that we have received.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

Investigator Bradley completed “Through the Lens – Tips for Conducting an Effective Video Interview” provided by i-Sight.

Auditor Tujuba completed the following webinars: Taking the Lead with Workplace Motivation and Engagement; Exploring Virtual Collaboration; Managing Your Corporate Reputation; and Developing an Effective Business Case.

General Counsel Raj completed the following webinars: COVID-19 Oversight and Investigations: Navigating Legal and Communications Challenges; Basic Negotiation Skills; and Ethics in Social Media 2020.

On May 8, 2020, Acting Director Ford also attended the webinar on COVID-19 Oversight and Investigations.

2. Conducted by staff:

Since the date of the last meeting, OGE conducted 4 ethics webinars that were well attended. The webinars included: our monthly ethics training, which was attended by 365 employees, and two Local Hatch Act trainings, which were attended by a total of 475 employees. Director Ford also provided a Boards and Commissions Ethics training on May 8, 2020.

In addition, 72 employees completed the online ethics training through PeopleSoft during the month of May.

On May 18th, OGE kicked off its Ethics Brown Bag virtual meeting series for Ethics Counselors, in which we discussed Financial Disclosure Statements, Local Hatch Act, and other ethics topics that are relevant during this pandemic. The goal of the meeting was to provide ethics counselors with an opportunity to ask questions and discuss common issues. The meeting was attended by twenty-four (24) Ethics Counselors and we received favorable feedback.

C. Advisory Opinions/Advice:

Informal Advice: approximately 42 which is 13 less than the 55 reported at the May meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

OGE did not issue any advisory opinions since the last meeting.

D. Budget

As Director Allen indicated, we have received the Mayor's proposed budget for the agency for FY21. While we understand the need for cost-saving measures, given how leanly OGE is staffed, we are disappointed given the impact of COVID-19 on our ability to work in a very cramped space. I will be seeking enhancements to ensure that OGE is able to pursue our goal of expanding the District's educational outreach substantially.

As for our FY20 budget, although we were able to identify a cost-saving measures to help the District address the current shortfall, we are still in a position to purchase equipment, supplies and software to enhance our ability to work remotely.

E. Administrative Matters

Vacancies:

The Director of Government Ethics position was posted on February 3, 2020 and closed on March 6, 2020. Due to the current public health crisis, interviews have yet to be scheduled.

I would like to direct the Office Manager to work with the Chair to post the vacant Senior Attorney Advisor Board attorney position as soon as possible. It is important that BEGA fills this role immediately given that the public health crisis will continue to have an impact on the operations and obligations of public bodies such as BEGA.

Operating status:

Per the Mayor's Designation, the District has entered Phase 1 of ReOpen DC. During this time, OGE staff will continue to work remotely. Given that our office receives almost no walk in traffic, this should not impact our operations. We did raise concerns about moving forward given the small space available. Our conference room is particularly small, and we will not be able to meet in or conduct witness interviews in the space until public health restrictions are fully eased. For the last phase of ReOpening DC, we will seek out larger conference rooms on the 11th floor to conduct interviews that cannot be done remotely.

F. Litigation:

Status of pending cases.

- **Gerren Price –2019 CA 005346.** This matter involves an appeal of a Board decision. The Petitioner's brief in support of his request to reverse BEGA's decision was submitted on Tuesday, June 2, 2020. Price contests the charge on count I regarding directly or indirectly making a hiring decision regarding a

position within his own agency with respect to a relative. Price dissects every possible definition of the word “advance,” but makes no concession that he could have directly or even indirectly participated in his sister-in-law’s hiring decision. Price asks to reverse the order and fine, to remove all mention of it from the website, and attorney’s fees.

G. Financial Disclosure and Lobbyist Registration Programs:

Financial Disclosure –

BEGA experienced heavy FDS activity during May 2020, receiving 544 FDS filings and 130 support tickets.

Support Tickets have been overwhelmingly related to the filers’ inability to login. For example, 85 of 130 support tickets are from unsupported email domains such as @k12.dc.gov or @udc.edu. The remaining 45 support tickets were password issues. Abstract Evolutions, the vendor BEGA retained to address the system log-in issues, has a proposed a login fix that should reduce the number of support tickets and other requests. Production is expected to be available June 8.

Lobbying Registration and Reporting (LRR) System – 2020 First Quarter Lobbyist Activity Reports ended on April 15, 2020. BEGA saw some Lobbyist Registration and Reporting action in May with 22 total Registrations (19 New, 2 Renewals, and 1 Termination). In addition to Registration Reports, BEGA received 4 Activity Reports.

Thank you. This concludes the Office of Government Ethics’ June 4, 2020 report.

VI. Opportunity for Public Comment

Ms. Valerie Jablow provided public comment via email regarding her September 8, 2019 complaint into whether [REDACTED] is an unregistered lobbying organization. The entirety of documents Ms. Jablow enclosed will be included as a separate attachment.

I am submitting this email, in its entirety, as public comment and (as BEGA’s general counsel notes below) part of the record for your June 2020 BEGA board hearing:

I appreciate the BEGA staff investigation of my 9/8/2019 complaint (see all the way below), on whether [REDACTED] is an unregistered lobbying organization.

I would like to know more about BEGA’s investigation of my 9/8/19 complaint, since BEGA’s decision letter on it from 6/2/2020 (attached below), dismissing my complaint, was so brief.

Specifically, the letter dismisses the case with a one-sentence response that makes it impossible to know what investigation BEGA undertook or the facts that were found. Here it is: "According to the factual information gathered, there is insufficient evidence to support a reasonable belief that [REDACTED] engaged in lobbying, which would require registration with this office."

As BEGA's dismissal here means that your agency rejected multiple pieces of evidence I brought almost a year ago, of what appears to be lobbying by [REDACTED] [REDACTED] it is now publicly unclear what facts were relied on to draw BEGA's conclusion here. Like any proceeding of a public body that is unseen by the public, this dismissal without explanation undercuts the authority with which it was given.

Thus, I wanted to ask all of you to please elucidate what BEGA's investigation of my 9/8/19 complaint involved and how the conclusion was drawn that [REDACTED] members were not engaged in lobbying in the instances brought to you therein.

VII. Executive Session (non public)

The Board votes to deliberate in Executive Session (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), 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).

VIII. Resumption of Public Meeting

The Board has entered into a negotiated disposition in the following matter:

- 19-0017-P, *In re*: S. Grant (Board Member Melissa Tucker was recused from this discussion and vote).

IX. Adjournment

The Board will next meet on Thursday, July 2, 2020.