

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

DRAFT MEETING MINUTES – July 1, 2021

The District of Columbia Board of Ethics and Government Accountability held a meeting on July 1, 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, and Melissa Tucker. 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 will be made available on open-dc.gov and BEGA’s YouTube channel.

<https://www.youtube.com/watch?v=LO8VOsuLB7c>

I. Call to Order

12:05 PM

II. Ascertainment of Quorum

Quorum established, Board Member Darrin Sobin not in attendance.

III. Adoption of the Agenda/Approval of Minutes

Board Members unanimously approved the Agenda and June 3, 2021 minutes.

IV. Report by the Director of Open Government

Good afternoon Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, 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

1. Advisory Opinions: OOG has not issued any advisory opinions since the last Board meeting.

2. Formal FOIA Advice:

a. FOIA Requests to BEGA: The rules concerning processing FOIA requests continue to be impacted by the public health emergency. BEGA’s offices are currently closed to the public due to COVID-19 and BEGA’s staff is working in a posture of full telework. So, if a FOIA request to BEGA requires BEGA’s FOIA Officer or BEGA’s staff to search for record’s in BEGA’s physical offices, those FOIA requests will not be due until 45

days after the public health emergency has concluded. All other FOIA requests that BEGA receives are processed under the normal FOIA rules. BEGA is providing BEGA's pending FOIA requesters with a letter detailing the COVID-19 related changes to FOIA requirements and the impact of those changes on processing FOIA requests.

- b. FOIA Policy Advice to OCTO: OOG's Chief Counsel, Johnnie Barton, responded to a request for policy assistance from the Office of the Chief Technology Officer ("OCTO"). OCTO requested assistance on how to handle D.C. FOIA requests for telephone logs of numbers used and controlled by another District of Columbia government agency. On June 11, 2021, the Office of Open Government issued a legal and policy memorandum regarding the process for handling FOIA requests for telephone logs. The document provides guidance for responding to telephone log FOIA requests. The OOG opined that t FOIA requests for telephone logs should be submitted to the agency assigned the telephone number, and not to the custodian of the telephone logs, which in this case is OCTO. Similar to the procedures for emails and contracts, OOG advised that OCTO's role as custodian should be simply to collect potentially responsive telephone log data upon a request from an agency and forward it to the agency. Therefore, the agency would carry out the formal response to the requester, including producing the responsive records, if any.

3. Informal OMA/FOIA Advice: Since the last Board meeting, OOG responded informally, via e-mail or telephone, to requests for assistance as follows:

- The Office responded to 15 requests for OMA advice;
- The Office responded to 11 requests for FOIA advice; and
- The Office responded to 27 requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. Tipped Workers Coordinating Council ("TWCC") OMA Training: On June 8, 2021, Chief Counsel Barton conducted an OMA training for the TWCC. The Council's purpose is to improve coordination and functioning of the wage policies for tipped workers. The Department of Employment Services serves as the administrative point of contact for this public body. The training was well received by the public body and Attorneys Orji and Weil attended the training.

2. Production/Filming of Open Meetings Act Training Video: On June 10, 2021, I visited the Office of Cable Television, Film, Music, and Entertainment's ("OCTFME") production studio and filmed the OOG's Open Meetings Act Training video. I read an 11-page script that will be the basis of the training video. The script includes instruction and voice-over vignettes. OCTFME is utilizing animation in place of live talent due to pandemic and the remainder of the video is currently under production. The video is slated to be completed in August and will be broadcast on OCTFME's public channels.

3. Open Government Advisory Group Meeting (“OGAG”): On June 10, 2021, Chief Counsel Johnnie Barton attended the OGAG meeting on my behalf. OGAG evaluates the District's progress on and makes specific recommendations on improving information access. The group makes recommendations regarding open government issues including the District's data policy and best practices concerning access to records. This was OGAG's first meeting since the commencement of the public health emergency. The meeting concerned the group's strategic priorities and there is a new Chairperson, Vanessa Natale, of the Mayor's Office of Legal Counsel.

4. Live Online Privacy Training by the International Association of Privacy Professionals (IAPP): On June 15, June 17, June 22, and June 24, 2021, I attended a professional development course on privacy and data protection. The course provided an in-depth view of critical privacy laws and concepts relevant to U.S. organizations.

5. FOIA Training for New Employees: On June 23, 2021, Attorney DeBerry conducted a FOIA training for OOG's new staff members. Chief Counsel Barton, Attorney Orji, and Attorney Weil attended the training.

C. Litigation and Legislative Update:

1. Litigation: OOG is monitoring FOIA-related cases in D.C. Superior Court. The agency is not a party to either of the lawsuits. I am providing this information for the Board's awareness of litigation that may impact the operation and interpretation of D.C. FOIA law.

a. TPM Lawsuit Update: This is an update on the FOIA case filed against the District of Columbia on July 13, 2020, by Terris, Pravlik & Millian, LLP ("TPM"). The FOIA lawsuit alleges 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).

On June 11, 2021, TPM submitted, *Plaintiff's Reply in Support of Its Motion for Summary Judgment, Declaratory Judgment, and a Permanent Injunction, and Opposition to Defendant's Cross-Motion for Summary Judgment*. TPM argues that the Mayor's Motion for Summary Judgment merely restates its Motion to Dismiss without responding to the court's analysis, so it should be summarily denied on the same grounds. TPM argues both standing and a cause of action under D.C. FOIA to sue not just for denial of its request but also over failure to post docs proactively in the reading-room. TPM cites authority to argue that an unsuccessful reading-room search gives rise to cognizable injury. Moreover, TPM notes that its substantive reasons for or interest in the requested records are immaterial as to its standing. TPM argues that the proactive disclosure requirement of DC FOIA (D.C. Official Code § 2-536(a)(6A)) is applicable to the facts of the case. The District of Columbia's reply was due on June 30, 2021. A status hearing is scheduled for July 23, 2021.

b. Stop and Frisk FOIA lawsuit: On February 16, 2021, the American Civil Liberties Union (“ACLU”) filed suit against the District of Columbia (*ACLU of DC*

v. District of Columbia, No. 2021 CA 000452 B) seeking records concerning stop and frisks by the Metropolitan Police Department (“MPD”). A status hearing is scheduled for July 23, 2021. The OOG will continue to monitor these matters.

2. Legislation: B24-0311, the “Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2021”. On June 29, 2021, the Council of the District of Columbia unanimously passed Bill 24-0311. This emergency legislation focuses on improving police accountability and transparency. The legislation touches on open government issues in that B24-0311 amends the body-worn camera regulation and reporting requirements as follows:

a. Within 5 business days after a request from the Chairperson of the Council Committee with jurisdiction over the MPD, the MPD shall provide unredacted copies of the requested body-worn camera recordings to the Chairperson. The body-worn camera recordings shall not be publicly disclosed by the Chairperson or the Council.

b. Within 5 business days after an officer-involved death or the serious use of force, the Mayor shall publicly release the names and body-worn camera recordings of all officers who committed the officer-involved death or serious use of force.

c. The Mayor may on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the United States Attorney’s Office for the District of Columbia, and the Office of the Attorney General, publicly release any other body-worn camera recordings that may not otherwise be releasable pursuant to a FOIA request. The Mayor may not release a body-worn camera recording if the individual or decedent’s next of kin informs the Mayor, orally or in writing, that they do not consent to its release. In the event of a disagreement between the persons who must consent to the release, the Mayor shall seek resolution in the Superior Court of the District of Columbia. The Superior Court of the District of Columbia shall order the release of the body-worn camera recording if it finds the release is in the interests of justice. The MPD must notify the decedent’s next of kin of the impending release and date of release. The MPD must also offer the decedent’s next of kin the opportunity to view the body-worn camera recording privately in a non-law enforcement setting in advance of its release. The MPD has to consult with an organization with expertise in trauma and grief on best practices for creating an opportunity for the decedent’s next of kin to view the body-worn camera recording in advance of its release to the public. This measure mirrors the “Comprehensive Policing and Justice Reform Temporary Amendment Act of 2021”, enacted on May 25, 2021 (D.C. Act 24-89; 68 DCR 5837). The temporary act is currently undergoing Congressional review with October 22, 2021, as the projected law date.

D. Administrative Matters:

1. Virtual Training Platform for Parliamentary Procedure: OOG has been able to utilize its vacancy savings to create a virtual training portal to provide parliamentary procedure training resources for public bodies. We are working with the Office of Contracting and Procurement to secure the services of a vendor to host a web portal to provide remote training on Robert’s Rules of Order for the District’s public bodies. We are looking to launch the portal in August 2021. The portal will also include the training video that OOG is working to produce with OCTFME.

2. Council of the District of Columbia FY22 Budget Oversight Hearing: On June 16, 2021, the Committee on Human Services held BEGA's budget oversight hearing via the Zoom Platform. . OOG requested two budget enhancement requests specific to the office that will assist with BEGA's mission. First, we requested funding for a paralegal. Second, we requested additional funds to enhance the training portal we created and funds to purchase additional licenses in FY22. BEGA requested funds to move to leased facility that is of a proper size to house the agency and meet our operational needs. We also requested additional administrative staff that would enhance our operations as an agency. Subsequent to the hearing, the Council Chair requested updated data on our performance, which we provided. The performance data, along with my written testimony is in Dropbox.

3. Return to the Workplace: Agencies under the Mayor will return to in-office service on July 12, 2021. BEGA will remain in full situational telework status until further notice and will continue to offer its services remotely during the public health emergency. BEGA employees may provide in-office service with the permission of either Director. BEGA's leadership has committed to working in the office periodically and administrative staff is also working in the office periodically. We are currently considering future plans for employees to return to the Barry building, as the pandemic eases, sometime in FY22.

This concludes the Office of Open Government's July 1, 2021 report.

V. Report by the Director of Government Ethics

Good afternoon Chairperson Hutcheson and Members of the Board. My name is Ashley Cooks, 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 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	56
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	56

OPEN "UNDOCKETED MATTERS"	
Grand Total	3

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	29

Closed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	9
Stayed - US District Court Case	1
Grand Total	44

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

	Current	Last month	May
Investigations Currently	57	59	62
Investigations Stayed	13	13	12

The number of open preliminary and formal investigations includes 8 new matters opened since the Board last met. The investigative team resolved 9 preliminary investigations since the Board last met.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

During the month of June, several OGE employees attended trainings to prepare for the next fiscal year. These trainings included Annual Performance Planning Training and Using/Managing the DC PCard.

Program Specialist Stan Kosick attended Clarity and Conciseness in Business.

Auditor Amanueil Tujuba attended the following: Designing Conducting and Analyzing Experiments in Six Sigma; Six Sigma and Lean Foundations and Principles; Understanding DOE and Planning Experiments in Six Sigma; Six Sigma Techniques for Improvement; and Big Data Marketing Perspective.

2. Conducted by staff:

Since the last Board meeting, OGE attorneys conducted 3 total ethics trainings, which includes: 2 general ethics trainings and a Hatch Act training for OAG. OGE held an Ethics Counselor virtual brown bag ethics forum on Monday, June 28th which was well attended. The topic was how the ethics rules apply to Board and Commission Members' outside activities, interactions with their subordinate agency, and performance to official duties. This included best practices for maintaining ethical compliance with the conflict of interest statute and DPM restrictions such as capitalizing on official titles, divulging non-public information or information obtained as a result of government service, and the restriction on representation rule. During the forum, Ethics Counselor were extremely engaged in the discussion and we received positive feedback.

In addition, 640 employees completed our online ethics training via PeopleSoft.

C. Advisory Opinions/Advice:

1. Informal Advice: approximately 54, which is 9 more than the 45 reported at the June 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 June 8, 2021, Council member Allen introduced the Pro Bono Legal Representation Clarification Amendment Act of 2021, as an amendment to Section 223 of the Ethics Act by adding a new subsection which will allow employees to represent persons of limited-income, in affiliation with a non-profit organization, before District courts and federal courts, and District and federal agencies. On June 15th, the bill was referred to Committee on Judiciary and Public Safety. A copy of the bill was placed in the drop box for your review.

E. OGE Administrative Matters:

OGE Staffing: OGE hired and onboarded Maurice Echols to fill one of its Attorney Advisor vacancies. Maurice is from Chicago, IL. He attended undergrad at Fisk University in Nashville, TN where he received his bachelor's degree, majoring in Business Administration and Psychology. He received an MBA from Middle Tennessee State University and his Juris Doctorate from the University of Tennessee – Knoxville, College of Law.

Maurice has clerked for various Administrative Law Judges within D.C. Government. He has practiced transactional law, employment law, white collar defense, and lower level crimes, such as DUI and narcotics. Most recently, he worked as a Program Manager within the Department of Employment Services where he drafted revisions to D.C. Code, established and updated policies and procedures, and managed both companywide and individual audits concerning compliance issues with various D.C. wage theft laws.

Maurice spends his free time on fitness/training, movie watching, gardening and family time with his wife and three children, who that exercise his skills in logistics daily.

Lastly, the Senior Attorney Advisor vacancy has been filled by Lynn Tran, who will start on August 23rd.

Reporting: As discussed at the last Board meeting, OGE has published a finalized

quarterly complaint report for Quarter 2 of FY 2021. We plan to publish the remaining quarterly complaint reports by the end of this month.

Budget: The agency's budget hearing was June 16, 2021 at which Chairperson Hutcheson, Director Allen, and I testified. Council member Nadeau and her staff have taken a strong interest in our budget enhancement requests, specifically our need for larger office space. On this past Monday, with the assistance of the Department of General Services ("DGS"), we submitted a revised decision point memorandum to the Office of the City Administrator. The decision point memorandum emphasizes BEGA's need for additional space and provides details of the vacant office space at 995 L'Enfant Plaza. We are still hopeful that with help from DGS and the Council, it is possible we can still move to the space in L'Enfant Plaza. A copy of the memo was placed in the drop box for your review.

In addition, at the request of Council member Nadeau, OGE provided updated performance data on some of the office's operations since the February 26th performance oversight hearing. As of June 24th, for FY 21, OGE has conducted a total of 107 ethics training; answered 373 informal advice requests; initiated 56 investigations; closed 24 investigations; entered into 1 negotiated disposition, issued 2 ministerial fine orders, and collected \$98,000 in lobbyists fees. A copy of OGE's submission was placed in the drop box.

F. Financial Disclosure/Lobbyist Matters:

Lobbying Registration and Reporting (LRR) System – As of June 25, LRR received 13 registration reports (10 new and 3 renewals), 1 Activity Report and 1 Support Ticket. Second Quarter Activity Reports are due July 15. LRR Team will send a notice to all Lobbyists and Clients to remind them of this requirement. The LRR team welcomed Maurice Echols to its ranks. In the coming days and weeks, the LRR team will help get Maurice up to speed.

Financial Disclosure – June 15th marked the due date of the CY 2020 Financial Disclosure. As of this date, 3417 (91%) of the 3767 PFDS filers have filed their required financial disclosure. In contrast to last year, on July 15, 2020, only 3100 PFDS filers completed their filing for a 10% increase of filers at the end of the official filing period. Over the course of the official filing period, the number of Support Tickets filed decreased from 789 to 215, a 73% reduction in the number of support tickets. Of note, password failures were down 85%.

Since the due date, FDS team received the names of approximately of 30 filers who were not included in their agencies' initial lists received in March. Of note, one agency did not respond to BEGA requests until June 24th and the filers were noticed on June 25. This will result in later filers.

Over the course of the filing season, FDS team fielded a handful of calls from filers who did not have the 2020 Filing option on their profile. These were handed

piecemeal to OCTO for remedy. On June 23, during a reconciliation effort, FDS team noted 134 who filed for CY 2019 since the start of the 2020 FDS Season (April 15). As it turns out several of these filers filed the 2019 in lieu of their 2020 filing. The FDS team is working with the filers and OCTO to remedy the situation and get filers into compliance.

At this time, the FDS Team will continue to work with filers and Ethics Counselors to achieve compliance. The Public Filer Report is due to the DC Register on July 16.

Confidential Filer Pilot Program – The Confidential Filers Pilot Program was a success. We received positive feedback that the confidential filers liked the ease of filing electronically. The goal is to allow CFDS and PFDS to use the same e-file system District wide. This will allow agency ethics counselors to more easily maintain ethics related records, analyze agency compliance, and more easily access information to address possible conflicts of interest

BEGA is also in the process of refunding some confidential filers, who claimed they filed timely. In the month of June, our Auditor completed the processing of employee fine reimbursement for 73 employees, for a total of \$22,046.

Thank you. This concludes the Office of Government Ethics' July 1, 2021 report.

VI. Acknowledge of Public Comment – if received:

June 30, 2021

Dear Chairperson Hutcheson, Members of the Board, and Acting Executive Director Cooks:

I bring to your attention a matter I hope the Board will add to its July 1, 2021, Agenda. Yesterday, I received an email, "Notice of Non-Compliance (1st Notice) from BEGA. It is my position this was sent in error. Please know I timely submitted my Financial Disclosure Statement to BEGA on April 15, 2021.

I have also learned, a 1st Notice was not only sent to me, but also to other Advisory Neighborhood Commissioners, who similarly claim to have timely filed. I bring this matter to the Board's attention for review and hopefully appropriate correction.

Respectfully,

Robert Vinson Brannum
Advisory Neighborhood Commissioner-5E08
Advisory Neighborhood Commissioner 5E

VII. Executive Session (non public)

VIII. Resumption of Public Meeting

- A. 20-0004-F and 18-0006-P In re Jack Evans: In the collections matter of Jack Evans, the parties signed a settlement agreement. Payments are due the first of the month beginning today, July 1, 2021.
- B. 20-0002-F In re Marian Foster: The Board approved the Negotiated Disposition.

IX. Adjournment

The Board will meet again on August 5, 2021.

UNAPPROVED