

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

DRAFT MEETING MINUTES

The District of Columbia Board of Ethics and Government Accountability held a meeting on August 6, 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, Melissa Tucker, and Darrin Sobin. 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.

I. Call to Order 10:01 am

II. Ascertainment of Quorum

Quorum established.

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously approved the agenda and the July 2020 Meeting Minutes.

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

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. 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 has responded to 24 requests for OMA advice since the last Board meeting.

OOG also provided informal assistance with FOIA and open-dc.gov, as follows:

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

B. Training/ Outreach:

1. Roadmap to Resiliency, Webinar Training: On July 9, 2020, Attorneys Barton and DeBerry attended a remoted training titled, Roadmap to Resiliency, through the Advanced Technology Academic Research Center (“ATARC”). ATARC is a 501(c)(3) non-profit organization that provides a collaborative forum for government, academia and industry to resolve emerging technology challenges. The training provided a framework for remaining resourceful and effective while working remotely during the pandemic.

2. FOIA training: On July 9, 2020, Attorney DeBerry conducted a remote training for the Acting FOIA Officer for the Alcoholic Beverage Regulation Administration.

3. Lexis Nexis Training: On July 10, 2020 and July 17, 2020, Attorney DeBerry attended legal research training.

4. OMA Training: On July 22, 2020, Attorney Barton, with my assistance, conducted a remote OMA training for the Chair of the District of Columbia Construction Code Coordinating Board.

5. Trainings attended by IT Specialist: Between July 26, 2020 and August 3, 2020,

IT Specialist Kevon Bridges remotely attended and completed the following trainings: Sexual Harassment; the Basics of Coronavirus; the Basics of Contact Tracing; LGBT Cultural Competency; Ethics for DC Government Employees; and Drupal Training. These courses were offered by DCHR, BEGA, and OCTO.

6. American Society of Access Professionals (“ASAP”) National Virtual Training Conference: ASAP is a nongovernmental, independent, educational, not-for-profit association founded as a professional forum dedicated to bringing government FOIA and Privacy Act personnel in touch with the requester community. On July 28-29, 2020, I, along with Attorneys Barton and DeBerry, attended ASAP’s two-day remote FOIA training conference. During the conference FOIA experts and government officials conducted seminars on FOIA exemptions, the FOIA

Improvement Act of 2016, the Privacy Act of 1974, FOIA litigation and provided updates on the most recent FOIA cases.

7. 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 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 "Coronavirus Support Congressional Review Emergency Amendment of 2020." We are monitoring public meeting notices to ensure they provide remote meeting access and information for the public to observe these meetings. We are also attending meetings remotely to observe meetings as participants.

8. COVID-19 Emergency Response Meetings: On July 17, 2020, July 20, 2020, and August 3, 2020, I participated in the COVID-19 Coordination and Support Plan Briefing with the District of Columbia Homeland Security and Emergency Management Agency. On July 24, 2020, Mayor Bowser hosted a virtual Cabinet meeting, which I attended.

C. Litigation and Legislative Update:

1. The Fiscal Year 2021 Budget Support Act of 2020

The DC Council passed the "School Financial Transparency Amendment Act of 2020" as part of the FY 2021 Budget Support Act of 2020. The Act amends the OMA and subjects each public charter School Board of Trustees (the "Trustees") to the provisions of the OMA. The original draft of the bill included a broad exception to the OMA that would have permitted the Trustees to hold most of their meetings in closed session. I consulted with Councilmember Allen's staff and the Open Government Coalition regarding this issue. On July 27, 2020, I sent a letter to the Council Chairman, Phil Mendelson, and the Chairperson of the Education Committee, David Grosso, expressing my concerns. I circulated this letter to the other Councilmembers and this letter was discussed during the Council's July 28, 2020, Legislative Session. Councilmember Charles Allen offered an amendment to resolve the issue of the broad exception for Public Charter Schools Boards of Trustees (the "Allen Amendment") in the July 28 meeting of the Committee of the Whole. I sent a letter of support of the Allen Amendment to the D.C. Council. The Allen Amendment clarified that the Trustees could enter a closed session to discuss information received from outside the public body that also meets the statutory definitions of proprietary or trade secrets. This was an amendment to D.C. Code Section 2-575(b)(11). The amendment also retained two proposed new exceptions to the requirements of the OMA specific to the Trustees. They may enter into Executive Session: (1) when discussing students' personal information; and (2) when meeting with the Public Charter School Board ("PCSB"). The amendment also clarified that the Trustees may close a meeting with the PCSB only when that

meeting is for the purpose of making an evaluation of the public charter school. The Allen Amendment passed with a vote of 9-4.

With the addition of approximately 123 public charter board of trustees and 105 Local School Advisory Teams the new law increases the public bodies and entities subject to the OMA to approximately 417.

2. D.C. FOIA Lawsuit: 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 (OSSE) and District of Columbia Public Schools (Civil Action No. 2020 CA 003087 B). TPM seeks injunctive and declarative relief. On a related note, OOG is working on an Advisory Opinion concerning OSSE's proactive release of electronic documents. As a result of our discussions with OSSE, they have released additional records on their website. OOG will continue to monitor this lawsuit.

3. Mayor's Order regarding the Public Health Emergency: Mayor Bowser issued Executive Order 2020-079 on July 22, 2020 ("Order"). The Order Extended the Public Health Emergency to October 9, 2020. Under the Coronavirus Support Congressional Review Emergency Amendment of 2020, FOIA is tolled during the public health emergency, so FOIA processing is now tolled until October 9, 2020.

D. Administrative Matters:

1. Welcome to OOG's new IT Specialist: On July 20, 2020, Kevon Bridges began work as our new IT Specialist. Mr. Bridges graduated from Gonzaga College High School in 2012 and Mercyhurst University in 2016 with a B.A. in Information Technology. He has valuable experience in the technology industry, which includes working with Apple as a technical specialist and serving multiple government agencies including, FEMA, USDA, and IRS. Mr. Bridges is also an accomplished, avid rower and has competed in many different races across the globe. Notably, in 2013, he and 9 other Mercyhurst University teammates set a world record in rowing for longest distance rowed over 24 hours indoors. We are pleased that he has joined the Board of Ethics and Government Accountability team.

2. FY21 FTE Positions: OOG will have two new attorney positions in FY21. An Attorney-Advisor position as a result of the School Financial Amendment Act of 2020 and a Trial Attorney position to bring OMA enforcement matters to Superior Court should it become necessary. We will start the hiring process on October 1, 2020.

This concludes the Office of Open Government's August 6, 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	50
Open - Negotiations	0
Open - Show Cause Hearing	3
Grand Total	53

OPEN "UNDOCKETED MATTERS"	
Grand Total	4

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	7
Stayed - US District Court Case	0
Grand Total	39

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

	Current	Last month	June, 2020
Investigations Currently Open:	53	50	57
Investigations Stayed:	11	13	13

Investigations initiated and closed: The numbers of open investigations reflects 12 complaints received since the Board last met. OGE’s investigative teams resolved 24 investigations since the Board last met.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

During the month of July, a number of OGE attorneys attended the webinar “Black Lawyers in America: A National Town Hall Series. Black Leaders in Government – Challenges, Opportunities and Solutions,” which featured DC Mayor Muriel Bowser as a panelist. General Counsel Raj completed the following trainings: Forging Ahead with Perseverance and Resilience, Intersecting Perspectives: Post-Employment Counseling and Beyond, 30th anniversary of the ADA: Improving the Working Lives of People with Substance Use and Mental Health Disorders, and a LexisNexis Advance Refresher Course. Auditor Tujuba completed the following trainings: Redefining Yourself after Organizational Change, Aligning Goals and Priorities to Manage Time, Business Strategy for the Post-pandemic Economy, Identifying Risks in Your Organization, and Leading in the Post-pandemic Workplace.

2. Conducted by staff:

Since the last Board meeting, OGE conducted one well-attended ethics webinar. The Monthly Ethics Training on July 8 was attended by 173 employees. In addition, 92 employees completed the online ethics training.

On July 27, OGE hosted its third Ethics Counselor Brown Bag Discussion, which was attended by 35 Ethics Counselors, 9 more than the 26 who attended last month. The goal of these regular, virtual meeting is to provide ethics counselors with an opportunity to ask questions and discuss common issues and to receive training and guidance from OGE on how to handle specific issues.

The topic for July’s discussion was a continuation of June’s “Best Practices for Ethics Counselors.” OGE attorneys provided information on maintaining ethics records and developing awareness about agency ethics issues. OGE staff answered questions and ethics counselors discussed common issues. We received positive feedback about the session and upon the request of participants, will share slides for the Discussion. OGE’s next Ethics Counselor Brown Bag virtual ethics discussion will be held on August 31st and feature a presentation and discussion about ethics investigations.

I also informed ethics counselors that OGE staff would be doing direct outreach to each agency to learn more about any specific issues they may have and to learn if they have supplemental agency ethics rules. I also advised them that OGE plans to send a questionnaire to each agency in order to do a District government wide ethics assessment.

C. Advisory Opinions/Advice:

Informal Advice: approximately 41 which is 4 more than the 37 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 did not issue any advisory opinions since the last meeting.

D. Legislative Update

On July 28, 2020, the D.C. Council voted to pass the Fiscal Year 2021 Budget Support Emergency Act of 2020, which in relevant part amends the Ethics Act to define conflicts of interest violations as conduct that could substantially threaten the public trust and authorizes BEGA to refer matters involving conduct that substantially threatens the public trust to the Office of the Attorney General (“OAG”) for prosecution.

E. Budget

FY21 Budget: The Council voted to pass the FY2021 Budget on July 28, 2020. As I mentioned last month, the FY21 budget includes a budget enhancement to fund a full-time attorney for the Office of Government Ethics.

Attorney Cooks and I have met with several vendors to begin the process to procure a Learning Management System. Depending on the vendor that is selected, OGE may contact for a vendor before the end of FY20.

I have uploaded information a copy of the Budget Chapter to the DropBox.

F. Administrative Matters

Office Status:

OGE’s staff continues to work remotely, although some staff members go into the office on an ad hoc basis to handle mail and other matters onsite as needed.

We also have requested that DGS identify a third suite in our building for OGE staff to work. We plan to meet this month to discuss temporary options and anticipate identifying longer term space now that OAG has moved out the building. As you know, BEGA’s space is too small per a DGS space study. Considering the

public health crisis, we will need to find an overall space in our building that will allow us to work in adequately sized space to better social distance and to conduct interviews.

G. Litigation:

Status of pending cases.

- **Gerren Price –2019 CA 005346.** This matter involves an appeal of a Board decision. OAG lead counsel contacted OGE on Thursday, July 30, 2020 to inform the agency that that Judge Shana Frost Matini affirmed BEGA’s decision. Specifically, the court found that BEGA properly applied the ordinary and plain meaning of the terms “hiring decision” and “advance.” This matter is now closed.

The Order has been uploaded to the DropBox.

H. Financial Disclosure and Lobbyist Registration Programs:

Financial Disclosure – BEGA experienced heavy FDS activity during July 2020, during which 892 filers completed their Public Financial Disclosure Statements (PFDS). To date 3,303 filers have successfully filed and approximately 200 filers have not yet filed.

In accordance with the audit plan. OGE’s Auditor completed an audit of the PFDS filed by the DC Councilmembers, all were filed timely and there is no major finding to report on their filings. He also has conducted an audit of other public official public financial disclosure statements for completeness in accordance with the audit plan.

Lobbying Registration and Reporting (LRR) System – 2020 Second Quarter Lobbyist Activity Reports were due on July 15, 2020. Lobbyist Registration and Reporting activity was up in July with 43 total registrations (25 new registrations, 3 renewals, and 15 termination) and 439 activity reports. There were no requests for fee waivers since the Board’s last meeting.

E-filing system technical issues: I am happy to report that after meeting with OCTO and our vendor, Abstract Evolutions, that OCTO has implemented the e-filing system improvements that Abstract Evolutions provided to resolve system log-in issues. This fix will should significantly reduce the need to technical support to help filers access the e-filing system.

Thank you. This concludes the Office of Government Ethics’ August 6, 2020 report.

Board Member Chip Nottingham asked about the nature of the four (4) open “Undocketed Matters.” Acting Director Ford answered that these undocketed matters reflect novel issues and

the social challenges of D.C. becoming an increasingly global city. Some of these matters will be referred to other agencies, but a closer review is warranted.

Board Member Darrin Sobin offered the expertise of the D.C. Bar in OGE's search for a Learning Management System. The D.C. Bar recently procured a Learning Management System and has some recent experience with the process to share.

VI. Acknowledge of Public Comment

The Chairperson acknowledged that the Board did not receive any public comments by the submission deadline, which was August 6, 2020, 9:00am. The following comment was received after the meeting, so Board Members were unable to discuss.

In accordance with the information posted on the BEGA website, I would like to have the BEGA Board consider and discuss the following matters during the "public comment" section of the August 6th board meeting.

In an email on June 7th which was sent to Niquelle Allen (BEGA-Open Government), I indicated that since the start of the covid-19 pandemic and the subsequent shutdown of the District government, I had been concerned regarding how some DC government bodies (eg., the DC Board of Elections) were conducting the public's business, especially their required "public meetings." I went on to state that after spending two hours perusing the BEGA website, I found the minutes of the May 2020 of the BEGA board which indicated that the "Office of Open Government ... issued remote meetings advice on its website and via Twitter on March 10, 2020." However, I went on to inform Ms. Allen that I was not able to find this "advice" on the BEGA website or, indeed, anything else which would guide boards and agencies with respect to conducting remote "open meetings" during the pandemic

In a response email, Ms. Allen sent a link to four documents on the BEGA website regarding "advice and guidance from the Office of Open Government to public bodies regarding electronic meetings during the public health emergency." I would note that, although these documents were supposedly on the BEGA website, they were not available when I did a thorough review of the different sections of the website or when I tried using the website's "search" function.

While I was grateful to finally know that, in fact, "remote meeting" guidelines had been issued by BEGA back in March (and apparently shared with the Executive Office of the Mayor as well as government agencies, boards, and commissions), I don't understand why BEGA/Open Government has not prominently posted these rules/guidelines on its website so that citizens could be informed and, thereby, empowered to monitor compliance. Why did BEGA/Open Government not understand that it had a duty and obligation to District residents? Is the BEGA staff monitoring compliance with these guidelines? How? Is a written record and assessment being made regarding compliance?

Submitted by Dorothy Brizill, Executive Director, DC Watch
Dorothy@dcwatch.com

The following link includes the documents that Director Brizill referenced above:
<https://www.open-dc.gov/news/office-open-government-covid-19-updates>

VII. Executive Session (non public) – The Board did not meet in Executive Session.

VIII. Adjournment

The Board will meet again on September 3, 2020.

UNAPPROVED