

**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 September 3, 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.

Members of the public were welcome to attend, and a recording of the meeting is available at:
<https://www.open-dc.gov/meeting/board-ethics-and-government-accountability-5>
Questions about the meeting may be directed to bega@dc.gov.

I. Call to Order – 10:00 am

II. Ascertainment of Quorum

Quorum established.

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously approved the agenda and the August 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

1. Advisory Opinion: On August 28, 2020, I issued a FOIA Advisory Opinion (#OOG-002_2.26.20_AO) regarding whether the Office of the State Superintendent of Education (“OSSE”) is in compliance with the mandatory disclosure provisions of D.C. FOIA, that require the government to disclose certain information on the Internet without a FOIA request (Official Code §§ 2-536(a)(3); 2-536(b)). These provisions specifically require that agencies make final opinions, orders, and other adjudications publicly available on the internet.

My findings were: (1) Letters of Decisions issued by OSSE are Final Opinions; (2) the State Complaint Office is the decision maker charged with issuing Letters of

Decisions; (3) the process of disposing of Letters of Decisions by the State Complaint Office are adjudications as defined by statute and case law; (4) Letters of Decision are not advisory recommendations from the State Complaint Office to OSSE; (5) Letters of Decisions are not pre-decisional documents that would be exempt from disclosure; and (6) that OSSE's current state of non-compliance with the statute is not willful.

OSSE is making efforts to comply with the statute. OSSE has published Letters of Decisions from the previous two fiscal years and is posting new Letters of Decisions proactively going forward. However, in order to fully comply with D.C. FOIA, OSSE must make all of its Letters of Decisions from November 1, 2001 to present, publicly available on the internet.

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's responses for informal and technical FOIA and OMA advice and assistance are as follows:

- The Office responded to 14 requests for FOIA advice;
- The Office responded to 15 requests for OMA advice; and
- The Office responded to 6 requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. Joint OOG and OGE Staff Meeting: On August 10, 2020, OOG and OGE had a joint staff meeting. The purpose of the meeting was to introduce the new OOG staff members to OGE staff and to provide an opportunity to socialize with our colleagues in a virtual environment.

2. Cybersecurity Webinar: On August 13, 2020, Attorney DeBerry attended “The Evolving Cybersecurity Needs of Teleworkers During COVID-19 Webinar.” The webinar focused on the shift agencies made to telework as a result of the pandemic and how their remote work needs have shifted over time. Government leaders discussed how their agencies were able to implement mandatory teleworking policies rapidly and what telework measures are being looked at moving forward. The panel also discussed fruitful communication techniques, helpful insights on how to collaborate on interagency projects effectively throughout the pandemic, tools and systems used for efficiency and how classified information is being handled. Employees also discussed what they have learned to increase their accountability and efficiency while working remotely.

3. When Docs Talk Program: On August 16, 2020, I was a featured panelist on the online video show “When Docs Talk.” The program was titled, “This is an Emergency: Part 3 Racism from the Frontlines.” I presented on the

effective use of open records law and participation in local and state government to combat systemic racism in America. The target audience of this program are physicians and other professionals seeking to participate in and support protestors in the wake of mass demonstrations due to law enforcement's consistent use of excessive force.

4. Drupal Training Course: On August 17, 2020, IT Specialist Kevon Bridges commenced a Udemy course, titled "Drupal Tutorial: Beginner to Advanced in 8 Projects." This course provides instruction on how to install, build, deploy and maintain a customized Drupal website.

5. Ethics Day Planning Meeting: On August 19, 2020, I along with Attorneys Barton and DeBerry, met with the Office of Government Ethics concerning Ethics Day. Given the remote work status of most of the District of Columbia government, we agreed that the format of the training should be adjusted to accommodate remote work schedules. The Office of Open Government still plans to offer three courses targeted to Boards and Commissions members and staff, along with DC government FOIA Officers. We will offer 2 FOIA courses and 1 OMA course.

6. Corporate Business Journal Webcast: On August 28, 2020, Attorney Barton attended the Corporate Counsel Business Journal's webcast "Future-Ready Lawyer." The panelist discussed: (1) how organizations that already leveraged technology were the ones that were best prepared to meet the COVID-19 crisis; (2) that strategic goals and the need to optimize their delivery of legal services do not change due to the crisis and how everything just happens much faster; and (3) the need for organizations to be well organized and have planned for these types of events in advance.

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 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 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 August 17, 2020 and August 31, 2020, I participated in the COVID-19 Coordination and Support Plan Briefing with the District of Columbia Homeland Security and Emergency Management Agency. The District of Columbia remains in Phase 2 of the reopening plan. On August 28, 2020, Mayor Bowser hosted a virtual Cabinet meeting, which I attended.

C. Litigation and Legislative Update:

1. Update on D.C. FOIA Lawsuit: The Initial Scheduling Conference for the Terris, Pravlik & Millian, LLP ("TPM") lawsuit alleging that the District of Columbia government failed to produce and post online various budget-related documents as required by FOIA, will take place on October 23, 2020, before the Honorable Judge Heidi M. Pasichow.

Board Member Sabin asked if BEGA is named or involved in this case. Director Allen stated that BEGA is not named. The agency is simply monitoring the litigation because it is of relevance to OOG.

D. Administrative Matters:

1. Office Space: Director Ford and I have been meeting with the Department of General Services (DGS) on space needs for the agency. With respect to OOG, our current space is not conducive to social distancing, especially with the addition of two attorneys in FY21. We have discussed expanding our current footprint at One Judiciary Square (OJS). OAG has recently vacated OJS and relocated to 601 D. Street, N.W., so we are hoping to backfill some of the space that OAG has vacated. There is also space available on the 8th Floor that was previously occupied by the Office of Veteran's Affairs. We also discussed occupying leased space in Metropolitan Square, 655 15th Street, NW, where OCTO and the Department of Human Rights are currently located. On Friday September 11, 2020, we will meet with DGS and they will assess our current space at One Judiciary Square and make recommendations for our current space.

This concludes the Office of Open Government's September 3, 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	42
Open - Negotiations	0

Open - Show Cause Hearing	3
Grand Total	45

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	July 2020
Investigations Currently Open:	45	53	50
Investigations Stayed:	11	11	13

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

During the month of August, OGE's investigative staff and auditor attended a roundtable discussion with the Office of Contracts and Procurement's Office of General Counsel to discuss ethics issues, investigations, and the procurement process. We also used this opportunity to learn more about the agency, its legal staff, and its ethics program.

Since the last meeting, OGE's auditor completed the following trainings: Knowing When to Take Strategic Risks, Getting to the Root of a Problem, Managing a Project to Minimize Risk and Maximize Quality, Operations Management Functions and Strategies, and Managing Pressure and Stress to Optimize Your Performance.

2. Conducted by staff:

Since the last Board meeting, OGE conducted one Monthly Ethics Training on August 12 that was attended by 163 employees.

On August 11, 2020, Attorney Advisor Cooks and I provided new member ethics training for Council Member Brooke Pinto and members of her staff. In addition to providing training on the code of conduct, we also shared best practices and answered the Council Member's questions.

In addition, 113 employees completed the online ethics training.

On August 31, OGE held the fourth monthly Ethics Counselor Brown Bag Discussion, which was attended by 28 Ethics Counselors. The monthly virtual discussion program was developed to implement OGE's strategic plan to improve and expand training and outreach programs for District agencies. The goal of these regular, virtual meetings with agency ethics counselors is to provide them with an opportunity to ask questions, discuss common issues, and to receive training and guidance from OGE on how to handle specific issues. We believe that these regular trainings will help to cultivate a more unified ethical culture throughout District government and encourage ethics counselors to seek OGE's assistance more regularly.

The topic for August was on OGE investigation practices, and OGE's three investigators presented to the Ethics Counselors. At the end, 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.

C. Advisory Opinions/Advice:

Informal Advice: OGE attorneys responded to approximately 53 requests for guidance, which is 12 more than the 41 reported at the August 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 formal advisory opinions since the last meeting.

D. Budget

FY21 Budget: OGE is beginning the process of closing out the FY20 budget. As I previously informed the Board, OGE along with OOG was able to identify \$71,000 to assist with budget shortfalls caused by the public health crisis. We do not have any funding pressures for the remainder of the fiscal year.

With respect to the FY21 Budget, the Mayor signed the FY2021 Budget on August 31, 2020

E. OGE 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.

Director Allen and I met with DGS officials on Wednesday, August 26th about identifying overflow space for OGE employees. Next Friday, OGE's Office Administrator will meet with DGS staff to do an assessment of our space to determine what renovations need to be made to ensure employee safety when we resume normal government operations.

F. Financial Disclosure and Lobbyist Registration Programs:

Financial Disclosure – BEGA experienced heavy FDS activity during July 2020. By August 15, 3,525 public filers completed their filing, an 87% compliance rate. On that same date, OGE ended its grace period for the Financial Disclosure reporting year 2019. The staff has identified non-filers – designated public filers who received all notices, did not contact OGE for support or assistance, and did not complete the requirement. Non-filers have been assessed a \$300 and must still file their financial disclosure statements.

Lobbying Registration and Reporting (LRR) System – As expected, lobbyist activity slowed during the month of August. Program Specialist Stan Kosick held virtual trainings for a small number of lobbyists to assist them with the nuances of the LRR reporting system. OGE's compliance staff have identified late filers and OGE will impose fines accordingly.

Thank you. This concludes the Office of Government Ethics' September 3, 2020 report.

Board Member Nottingham had two questions:

1. What is the week of Ethics Week? RWF told him that it is the week of October 19th and that attorney Cooks will send the detailed schedule to the Board.
2. What is the number of open cases? Nottingham saw 53 but wanted to know if it is 45 as Acting Director Ford said. She confirmed that it is 45, and that OGE will make sure that the correct numbers are reflected in the minutes for this meeting.

Board Member Sabin asked to what extent the investigators were able to do interviews during the pandemic. Acting Director Ford said that most interviews are done virtually and are recorded.

Board Member Sabin advised that OGE bring up how the pandemic impacted our investigator's efficiency in the next oversight hearing.

VI. Acknowledge of Public Comment – none submitted as of the meeting.

VII. Executive Session (non-public)

VIII. Resumption of Public Meeting

Board Member Tucker exited the meeting during the Executive Session and was not able to return due to another commitment. Board Members Nottingham and Sabin had not yet rejoined the open session when Chairperson Hutcheson stated that there was nothing to report out from the closed session and adjourned the meeting.

IX. Adjournment

The Board will meet again on October 1, 2020.