

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

DRAFT MEETING MINUTES – SEPTEMBER 2, 2021

The District of Columbia Board of Ethics and Government Accountability held a meeting on September 2, 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, Darrin Sobin, 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://youtu.be/or2EIEkHCsA>

I. Call to Order

12 pm sharp

II. Ascertainment of Quorum

Quorum established with all Board members present.

III. Adoption of the Agenda/Approval of Minutes

Board Members unanimously approved the Agenda and August 5, 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: I have not issued any advisory opinions since the last Board meeting.

2. Formal FOIA Advice: The rules modifying FOIA requests have expired due to the reopening of some District of Columbia agencies and Mayor’s Order 2021-096 ending the Public Health Emergency. BEGA’s offices remain closed to the public due to COVID-19 and the majority of BEGA’s staff is teleworking, including BEGA’s

FOIA officer. So, if a FOIA request to BEGA requires BEGA's FOIA Officer or BEGA's staff to search for records in BEGA's physical offices, those FOIA requests will not be due until 45 days after BEGA's offices reopen. All other FOIA requests that BEGA receives are processed under the normal FOIA rules. FOIA requesters are given a letter detailing the changes to FOIA requirements and the impact of those changes on processing FOIA requests.

3. Directive on Conducting Remote Meetings: On August 20, 2021, I issued a written directive that provided public body members and their administrative points of contacts with guidance on conducting remote meetings after expiration of the public health emergency. The directive includes an overview of the statutory requirements for conducting remote meetings and best practices recommendations. The directive is published on the OOG's website and a copy for your review is in the Dropbox.

4. Formal OMA advice: On August 30, 2021, I responded to the District of Columbia Public Charter School Board's (the "Board") request for request for clarification regarding the OMA's public meeting record retention and public inspection requirements. Based upon OOG's previous advisory opinion and an analysis of the OMA, I required the Board to maintain non-electronic meeting materials on its website for at least one year and for up to five-years if the server capacity on its website allows. If the Board was unable to meet that requirement, I permitted the Board to store the information offsite and be made available upon request after one year. The public portions of electronically recorded meetings do not need to be posted, but they must be made available to the public upon request. However, if the Board has the capacity to post electronically recorded meetings to the Board's website, the files should be posted with non-electronic meeting materials. If server capacity will be jeopardized, electronically recorded meetings may simply be stored elsewhere and made available upon request. I requested that the Board notify me within thirty days of my issuance of the advice whether its server capacity would be jeopardized. This advice is consistent with a 2016 advisory opinion issued by the OOG and our current analysis of the OMA. I published this information on OOG's website to be instructive to all public bodies on the issues contained therein.

5. 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 5 requests for OMA advice;
- The Office responded to 8 requests for FOIA advice; and
- The Office responded to 17 requests for technical assistance with open-dc.gov.

B. **Training/ Outreach:**

1. Public Employees and Online Speech: On August 3, 2021, the Office of Attorney General offered the *Public Employees and Online Speech* training. The training reviewed the emerging legal landscape on the use of social media by government employees. The discussion focused on First Amendment Guidance balanced with internal policy and internal rules. OOG legal staff attended this training.

2. Homeland Security and Emergency Management Agency (HSEMA) FOIA Training: On August 12, 2021, Chief Counsel Barton presented a FOIA training to HSEMA's FOIA Officer and other staff members. The training on FOIA basics and was well received and attended by Attorneys DeBerry, Orji and Weil.

3. LexisNexis Training: On August 12, 2021, Attorney Orji attended the third session of a three-part legal research training hosted by LexisNexis. The training is designed to demonstrate effective utilization of LexisNexis when conducting legal research.

4. ANC FOIA Trainings: D.C. Official Code § 1-309.12(d)(6) requires OOG 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 August 16, 2021, I, along with the Executive Director of ANCs Gottlieb Simon, presented a FOIA training for the ANCs. On August 19, 2021, Simon Gottlieb, and Chief Counsel Barton, presented an additional FOIA training for the ANCs. Attorney DeBerry, Orji and Weil attended the August 19, 2021 FOIA training for ANCs session.

5. Brown Bag Seminar: On August 30, 2021, I facilitated a FOIA training for attendees of the Office of Government Ethics' (OGE) monthly Brown Bag Ethics' Seminar, titled "Effectively Managing the FOIA Process." The training session took the participants through the lifecycle of a FOIA request from receiving the request, to responding to the request, and concluding with fees and appeals. The event was well attended, and we responded to several insightful questions concerning FOIA issues. OOG's legal staff also attended the training.

C. **Litigation and Legislative Update:**

1. OMA Alternative to Conciliation Meeting: On August 12, 2021, I facilitated a virtual meeting to address OMA Complaint, #OOG, 2021-0002-M. The complaint was filed on April 30, 2021 against the DC PCSB. The parties could not agree to participate in the conciliation process, so I offered the Complainant the opportunity to voice her concerns to the OOG legal and me as part of the investigation into her complaint. This was an informal meeting. After the meeting, the Complainant provided OOG legal staff with additional information to consider regarding her complaint. The investigation is ongoing.

2. Litigation: OOG is monitoring FOIA-related cases in D.C. Superior Court and the U.S. Court of Appeals for the D.C. Circuit. The agency is not a party to any 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 re: preliminary budget requests: As the Board is aware, on July 13, 2020, TPM sued the District under D.C. FOIA, alleging that the District failed to produce and post online various budget-related documents related to the Office of the State Superintendent of Education ("OSSE") and District of Columbia Public Schools (Case No. 2020 CA 003087 B).

On August 5, 2021, the District filed its notice of appeal (and mediation screening statement). The case is now ready for briefing in the D.C. Court of Appeals (Case No. 21–CV–0543). The Court of Appeals has imposed an administrative stay (Order (D.C. Aug. 5, 2021) (*per curiam*)); and the Superior Court has granted, in relevant part, the District’s motion for stay by, *inter alia*, staying the lower court’s July 23, 2021 order “pending the resolution of Plaintiff’s [sic] appeal” (Order at 4 (D.C. Super. Ct. Aug. 20, 2021) (Pasichow, J.)). OOG legal staff will view oral argument, when the opportunity arises.

b. ACLU lawsuit re: stop-and-frisk: On February 16, 2021, the American Civil Liberties Union of the District of Columbia sued the District, seeking records concerning stop-and-frisks by the Metropolitan Police Department (Case No. 2021 CA 000452 B). A new status hearing in that case is set for October 1, 2021.

The OOG will continue to monitor these matters.

D. **Administrative Matters:**

1. Parliamentary Procedure Training Portal Project: The contract to complete the training portal regarding Parliamentary Procedure training has been issued and the project is due to be completed on September 30, 2021. We expect to do a “soft launch” of the portal during Ethics Week in October 2021. The portal will include two webinars on Robert’s Rules of Order and other Parliamentary Procedure training. The target audience for the first roll out of the training portal are the Administrative Points of Contacts for Boards and Commissions. We would also like to invite the BEGA Board and BEGA staff to demonstration of the web portal, which we will schedule in the near future.

This concludes the Office of Open Government’s September 2, 2021 report.

V. **Report by the Director of Government Ethics**

Good afternoon Chairperson Hutcheson and Members of the Board. I am Ashley Cooks, 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	57
Open - Negotiations	0

Open - Show Cause Hearing	0
Grand Total	57

OPEN "UNDOCKETED MATTERS"	
Grand Total	5

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	9
Stayed - US District Court Case	1
Grand Total	42

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

	Current	Last month	July
Investigations Currently	57	53	57
Investigations Stayed	14	14	13

The number of open preliminary and formal investigations includes 9 new matters opened since the Board last met. The investigative team resolved 5 preliminary investigations since the Board last met.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

During the month of August, OGE Attorneys and I attended the 2021 National Association of Government Communicators Summer Seminar. The seminar ran Tuesday and Wednesday August 24th and 25th and included the following sessions: How to Rev-up the Relationship with Your Leader; Social Marketing Strategies for Statewide Initiatives; Why Branded Podcasts Work & Why Your Company Should Have One; Media Metrics 101: How to Start Using Metrics in Evaluation, Research and Planning; A Playbook for Communicating Ethically and Inclusively; and Speeding Up Your Multimedia Marketing: 3 Ways To Find Your Fastlane.

I completed The Supervisor's Role as Trainer and Coach presented by Skill path. The training covered topics such as: When to Handle the Training and When to Delegate It; Measuring Skill Development; and Common Causes for

Poor Performance.

General Counsel Rashee Raj took the following online trainings with the practicing law institute: IP Issues for In-House Counsel; Mental Health and Wellness for Litigators; and Women in Leadership: Building Your Personal Brand. She also attended a number of DCHR and EOM sponsored talks on the Vaccine Requirement for District Government employees. DCHR gave all agency counsel guidance on the handling of potential upcoming ADA accommodation requests and religious accommodations. Four more trainings are planned for the month of September.

Investigator Ralph Bradley took Introduction to DC Government Contracting. This basics course is an overview of the procurement process, covering the basic stages of purchasing. The training focused on developing insights into the roles and responsibilities of the requesting agency and the procurement office. Topics include identifying your need, selection and award and contract administration. The purpose of this training was to provide a general understanding of how goods and services are purchased in the District government.

Investigator Ralph Bradley also took the Certified Ethics Associate (CEA) course, developed exclusively by the Management and Strategy Institute (MSI). It is designed to provide the attendee with a solid understanding of the ethical standards required in today's business environment. The course curriculum included an Introduction of Ethics, Moral Theories and Ethics by Philosophers, Types of Ethics, Classification of Normative Ethics and Ethical behavior, Ethical dilemmas, Observation in Workplace Political Tactics, Role of Managers, Employer Expectations and Code of Ethics Audits. The course concluded in final examination which resulted in the award of the "Certified Ethics Associate" certification and 10 PCU earned.

Auditor Amanueil Tujuba completed the following trainings:

Polishing Your Skills for Excellent Customer Service - As a customer service representative, creating a support culture that focuses on customers' needs is key. The course provided lessons on how to enhance interactions with customers to project service excellence; explored how to establish effective customer relationships that involve customers in problem solving. Finally, the course focused on skills for improving communication for a better client service (CS) in a cross-cultural customer support center or help desk environment.

Getting to the Root of a Problem - This course focused on developing skills for identifying stakeholders, gaining their input and trust, and using analysis techniques to get to the root cause of a problem.

Establishing Effective Virtual Teams – Building and managing teams is enough of a challenge when everyone is in the same location. Collaboration when working on a team that's virtual requires even more commitment. This course, taught attendees

about teamwork and team leadership when working on a virtual team. The course covered remote management and tactics for communication, assessment, and meetings for virtual teams.

Expert Insights on Managing Virtual Teams - With more people working remotely, or even across state or national borders, managing virtual teams has become a hot topic. From that first meeting and for every interaction thereafter, one needs to connect team members in real time.

Being an Effective Team Member - This course covered strategies and techniques to help become a more effective and valued team member. It focused on exploring ways to adopt a positive mindset toward teamwork, so that one can make a significant contribution.

2. Conducted by staff:

Since the last Board meeting, OGE attorneys conducted 3 total ethics trainings, which included: the Monthly Ethics Training, a training for the Office of Administrative Hearings, and an Ethics Counselor Virtual Brown Bag Discussion this past Monday, August 30th. For the Brown Bag Discussion, OOG Director Niquelle Allen presented Effectively Managing the FOIA Process which covered FOIA best practices and the life of a FOIA request from cradle to grave. The virtual brown bag was attended by 43 Ethics Counselor, who were engaged in the discussion and gave positive feedback.

47 employees completed our online ethics training via PeopleSoft.

3. Ethics Week 2021:

Our annual Ethics Week is scheduled to take place on October 18-22, 2021. The theme for this year's program is "Reapproaching Ethical Values." We have scheduled presentations that address ethics concerns in a virtual world, maintaining an ethical culture, ethics pitfalls, and health and wellness. The event will include guest speaker, Marcy Maslow, the Chief Integrity Builder for "e-Factor! ®- the educational board game for business ethics." As well as a legal ethics presentation by the DC Bar Association. OOG will provide FOIA and Open Meeting Act presentations; Serve DC will present information on the Donations Process; several Ethics Counselors will participate in a panel discussion; and General Counsel Raj will two lunch-time yoga and ethics sessions. A finalized schedule was added to the Dropbox for the Board's review.

4. Learning Management System:

OGE has identified a vendor to create and host its ethics learning management system ("LMS"). The LMS will assist BEGA with training the District's 34,000 plus employees and public officials by providing remote, on-demand ethics trainings that

are specifically tailored to the District's Code of Conduct. The LMS will serve as the central online location for OGE's ethics training resources and materials and will provide data analytics, course completion, and tracking information. OGE is working with the Office of Contracting and Procurement to purchase the LMS this fiscal year.

5. Ms. Ethics Videos:

OGE plans to produce two Ms. Ethics videos with Pendragwn Productions. Pendragwn created the original Ms. Ethics video and the subsequent Ask Ms. Ethics videos. These two videos will focus on financial disclosure nuances, how and when to report an ethics violation, and ethical conduct in a virtual world. We are working with the Office of Contracting and Procurement to finalize the contract.

C. Advisory Opinions/Advice:

1. Informal Advice: approximately 39, which is 8 less than the 47 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 has not issued any advisory opinions since the last meeting but plans to issue an opinion on Seeking and Negotiating for Employment.

D. Legislation Updates:

1. On October 27, 2021, the Committee on the Judiciary and Public Safety will hold a virtual, public hearing on the Pro Bono Legal Representation Expansion Amendment Act of 2021, Bill 24-0298. The Bill is an amendment to Section 223 of the Ethics Act, 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. I plan to submit written testimony in support of the bill. A copy of the notice and proposed bill were placed in the drop box for your review.

E. OGE Administrative Matters:

1. OGE Staffing:

We are in the process of posting vacancy announcements for an Attorney Advisor and Administrative Officer. As stated at the last Board meeting, the Senior Attorney Advisor vacancy has been filled by Lynn Tran, who started on August 30th. Ms. Tran joins BEGA from the Federal Election Commission (FEC) where she served as an Assistant General Counsel in the Enforcement Division. Prior to the FEC, Ms. Tran served as Counsel and Senior Counsel to the U.S. Senate Select Committee on Ethics and as an Enforcement Attorney at the FEC. Ms. Tran began her career as an associate at a law firm in DC. She is a graduate of NYU School of Law and the University of Texas at Austin.

2. Relocation/New Office Space:

The City Administrator has approved the Department of General Services (DGS) to issue a Request for Space (RFS) on BEGA's behalf. The RFS is a solicitation for applications from commercial landlords who have vacant office space that meets our needs. Both OOG and OGE continue to work with the DGS in pursuit of future, sufficient office space.

F. Financial Disclosure Statement (FDS):

In July 2021, the Financial Disclosure Filing season ended and enforcement activities began. While the official end of filing was June 15, many filers sought extensions to file their CY 2020 Financial Disclosure Statements through the month of July. For enforcement, the FDS Team has produced a list comprised of public filers (145) who have not met the deadline or who have not filed despite receiving all notices and reminders to file. That list was provided the Office of Pay and Retirement Services (OPRS) for automatic payroll deductions of fines. OPRS is still processing the list.

The FDS Team continues to review Financial Disclosure Review Reports (FDRR) from the agencies to identify confidential filers for enforcement activities. Thus far, the review has identified approximately 226 confidential filers who have NOT Filed their 2021 confidential financial disclosure statements. The Team has sent notice of non-compliance and contacted individuals to ensure accuracy before reporting non-filers to OPRS.

Auditor Tujuba completed Public Financial Disclosure Statements audit (period July 1, 2020 thru December 31, 2020) due June 15, 2021, filed by the DC Councilmembers, minor findings noted.

Lastly, the FDS Team met with OCTO on July 22 to discuss repairs and upgrades to the e-file system. OCTO later provided a Level of Effort response detailing the work needed and the cost associated with upgrades to the Financial Disclosure e-file system.

G. Lobbying Registration and Reporting (LRR):

The LRR Team met on August 25 to discuss the Auditor's review. The team identified some technical errors with the LRR e-file system, which will be addressed with OCTO. The team will proceed with fines for those late filers.

Thank you. This concludes the Office of Government Ethics' September 2, 2021 report.

VI. Acknowledge of Public Comment – if received:

VII. Executive Session (nonpublic)

VIII. Resumption of Public Meeting

21-0043-P, In re C. Matthews: Board voted in favor of a negotiated disposition including a \$500 fine and a requirement to complete ethics training.

IX. Adjournment

The Board will meet again on October 7, 2021.