

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

**MINUTES OF MEETING
January 10, 2019**

The District of Columbia Board of Ethics and Government Accountability held a meeting on Thursday, January 10, 2018, at 12:00 p.m. at One Judiciary Square, 441 Fourth Street, N.W., Room 540 South, Washington, D.C. 20001. The Board's Chairperson Tameka Collier was present, as well as Board Members Shomari Wade and Darrin Sobin; Board Member Norma Hutcheson was present via phone. Also present was Senior Attorney Advisor Rochelle Ford.

Members of the public are welcome to attend. Questions about the meeting may be directed to bega@dc.gov.

AGENDA

- I. Call to Order
Chairperson Collier called the meeting to order at 12:05 p.m.
- II. Ascertainment of Quorum
Chairperson Collier established that a quorum was present
- III. Adoption of the Agenda/Approval of Minutes
The Board voted unanimously to adopt the amended agenda. The Board approved the following:
 1. December 19, 2018 Meeting Minutes

IV. Report by the Director of Open Government

I. INTRODUCTION

Good morning Chairperson Collier and Members of the Board. I am Niquelle Allen, Director of the Office of Open Government (OOG), and I am pleased to present this monthly report on the activities of the OOG. 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.

II. REPORT BY THE DIRECTOR OF OPEN GOVERNMENT

A. Open Meetings Act (OMA) and Freedom of Information Act (FOIA) Advice

1. Advisory Opinions: On January 7, 2019, OOG issued a FOIA Advisory Opinion (OOG-0004_12.11.18_FOIA AO) to the Public Service Commission of the District of Columbia (PSC) concerning the application of D.C. Official Code §2-534(e) to a FOIA request for the

PSC's budgetary and financial records. The PSC sought to withhold records pursuant to the attorney-client, attorney work product, and deliberative process privileges. The PSC is currently in arbitration with the FOIA requester and contended that providing the requested records would reveal its theory of the case. OOG advised that the records related to the PSC's budget and expenditure of public funds are available to the public without a FOIA request under D.C. Official Code §§2-536(6) and (6A). However, the PSC's attorney billing records could be redacted under D.C. Official Code §2-534(e), if they revealed privileged information. OOG advised that the dollar amount spent was factual data not subject to the privilege. With respect to deliberative process privilege, OOG advised that the privilege might apply if the records concerning budget formation are pre-decisional and deliberative. The PSC did not offer its responsive records for OOG to review, but OOG offered to conduct such a review if it would assist the PSC in making its determination.

2. Informal OMA/FOIA Advice: Since December's Board meeting, the OOG responses for informal and technical FOIA and Open Meetings Act (OMA) responses are as follows: (1) three (3) FOIA and four (4) OMA substantive responses; and three (3) responses to OMA requests for technical assistance.

B. OMA/FOIA Audits:

The OOG completed a preliminary FOIA Audit in December 2018, as reported to the Board. District agencies are required to make certain information available online under D.C. Official Code §2-536. The audit reviewed the webpages of 95 public bodies, which included DC agencies, DC independent agencies, and the Office of Attorney General, and DC Council. The audit reviewed the website's FOIA page to determine if six(6) categories of the required records were available on the webpage. These categories included employee information, administrative manuals, agency publications, agency policies, agency decisions, and financial information. Of the 95 websites reviewed, 23 were compliant with all categories. OOG will contact the entities reviewed and inform them of the preliminary results this month and make recommendations for corrective action where appropriate.

C. Fiscal Year 2020 Budget:

The OOG along with the Office of Government Ethics will continue working on the fiscal year 2020 Budget (FY20). There are no updates on the OOG's budget enhancement request at this time.

D. Training/ Outreach:

(1) The OOG in connection with the DC Bar has completed the full film, which is published on YouTube. The full film consists of nine (9) short films concerning the District of Columbia Freedom of Information and information concerning the Office of Open Government. OOG will publish and release the videos on the open-dc.gov webpage in the near future.

(2) The Director of the Office of Open Government attended the Swearing-In Ceremony of Mayor Muriel Bowser, Attorney General Karl Racine, Council Chairman Phil Mendelson, and several members of the DC Council on Wednesday, January 2, 2019.

(3) OOG commends the Board for releasing its Best Practices report on December 31, 2018, which includes recommendations concerning open government. OOG will follow up with the Executive Branch and DC Council concerning first-party identification requirements for FOIA requesters and electronic mail retention.

(4) The Freedom of Information Act (FOIA) is now under the purview of the Committee of the Whole in the District of Columbia Council. I have reached out to the Committee counsel and plan to meet with him this month.

E. Rulemaking:

The Office of Open Government has submitted for consideration by the Board new and revised regulations to implement the recent changes in the law and which makes clarifying amendments to the OOG’s regulations at 3 DCMR § 104000.

F. Staffing:

The announcement to fill the IT Specialist was posted on December 19, 2018 and is to run through January 23, 2019. OOG and OGE are working with the Office of the Chief Technology Officer to procure temporary support for OOG’s information technology needs until the position is filled.

This concludes the OOG Director’s report for January 10, 2019

V. Report by the Director of Government Ethics

- a. Update on Status of Office of Government Ethics (OGE) Operations – Recap of previous month’s activities (statistics). 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	
Count of Number	
Current Status	Total
Open	27
Open - Show Cause Hearing	2
Open Negotiations	2
Grand Total	31

PENDING/STAYED INVESTIGATIONS BY STATUS	
Count of Number	
Current Status	Total
Closed - Pending Collection	12
Closed Pending Appeal to DC Court of Appeals	1
Closed Pending DC Superior Court Appeal	2
Stayed - OAG False Claims Act Case	2

Stayed - OIG Criminal Investigation	5
Stayed - US District Court Case	3
Grand Total	25

REGULATORY MATTERS BY STATUS	
Count of Number	
Current Status	Total
Closed - Pending Collection	27
Open	1
Open - Appeal to Director	2
Open - Board Appeal	1
Grand Total	31

	Current	Last month	Nov. 2018
Investigations Currently Open:	31	31	35
Investigations Stayed (Inactive):	10	10	10

b. Publication and Reporting Obligations

We are in the process of preparing the Quarterly Complaint Report for the first quarter of FY 19. As mentioned last month, although we did not adopt any new performance measures for FY19, we have identified new statistics related to our regulatory enforcement matters and audits that we will report in FY20, and we have begun to keep track of those statistics during FY19 to use as a benchmark for comparison purposes next year.

c. Trainings/Outreach –

- i. Attended by staff – None
- ii. Conducted by staff –

Since the date of the last meeting 22 days ago, we conducted or participated in only 3 trainings, less than the 9 we conducted last month. The three trainings consisted of a new employee orientation, monthly ethics training, and a training session at the State Board of Education for new members.

- iii. Newsletter –

OGE's December newsletter has been published on BEGA's website. Now that the holiday season is behind us, I am working with the Mayor's Communications Director, Anu Rangappa, to coordinate sending our January newsletter to the All DC government employees distribution list per our prior discussions with the Mayor's office.

d. Advisory Opinions/Advice –

Informal Advice: approximately 39, which is lower than the 113 reported at the last meeting.

Formal Advice requests: We have pending one formal request for post-employment advice.

e. Ethics Legislation/Comprehensive Code of Conduct

We are anticipating that Councilmember Charles Allen will introduce the Comprehensive Code of Conduct this Council Period.

f. Rulemaking

We have no new developments to report.

g. Budget:

I am working with our case management system vendor on the last phase of the data migration project, which involves importing the digital files from ProLaw – and in some instances from the Shared drive – into CMTS. Those additional services were not covered by our contract to purchase the software, but a purchase order has been issued and the vendor and I have been working on that phase of the project for about a week now. We hope to have that last phase of the project completed within the next two weeks.

On Wednesday, Brian and I met with staff members from the Council's Committee on the Judiciary and Public Safety to discuss a variety of subjects, including our request for an FY20 budget enhancement for funding to secure additional office space. We will continue working with Director Allen, the Mayor's Administration and the Council to forge an FY20 budget for the agency that is adequate for our needs.

h. Staffing –

I would also like to introduce you to our new Investigator, Ralph Bradley, who just joined us on Monday. Ralph spent 24 years conducting criminal, civil and administrative investigations with the U.S. Customs Service and the Department of Homeland Security, including 8 years managing operations and administrative functions as the Resident Agent in Charge of the agency's Tallahassee, Florida

office. Prior to joining Customs, he served as a police officer at the University of West Florida and as a Captain in the United States Air Force following his graduation from Virginia Tech.

We have also selected a candidate for our Compliance Specialist position. After initially running into some resistance at DCHR, I spoke with Associate Director Donnel Daniels this week and was able to secure his assistance to allow us to move forward with our preferred candidate. Per my conversation with Sergeant Major Daniels this afternoon, DCHR is making arrangements for our preferred candidate to report to our office on January 24, which is two weeks from today.

i. Litigation

Status of pending cases.

•Gerren Price – (CA No. 16-AA-1230), This case was submitted on October 24, 2018, and we are awaiting the Court's decision.

•Larry Hicks – (2017 CA 008091). This is an enforcement (collection) action filed to reduce the Board's \$20,000 fine imposed on Mr. Hicks to judgment. On January 8, Judge Jackson issued an order granting the District's Motion for Summary Judgment in this matter. According to the order, Mr. Hicks has sixty days to pay his \$20,000 fine, or risk additional sanction from the Court.

•Rahsaan French vs. BEGA, D.C. Superior Court (2018 CA 002306 P(MPA)). Employee appealed the imposition of a \$600 ministerial fine. The pro se case was filed on April 6. Mr. French failed to file an opening brief. On November 16, 2018, the case was dismissed for lack of prosecution. On December 27, 2018, we submitted a request to OPRS to garnish \$300 from Mr. French's next two paychecks to satisfy his fine. Once we have confirmation that Mr. French has been garnished the full \$600 fine we will close this matter.

j. Lobbyist/Financial Disclosure Matters

We still have approximately 200 PFDS non-filers. We plan to re-focus on FDS enforcement when our new Compliance Specialist is on boarded in the coming weeks. Attorney Stewart-Mitchell drafted an Ethics Counselor Financial Disclosure Manual. We are reviewing and editing the manual with the hopes of publishing it and distributing it to Ethics Counselor at the start of the 2018 FDS season in February. I will discuss the Lobbyist program in just a few moments.

k. Financial Disclosure Waiver Requests –

Pursuant to D.C. Official Code § 1-1162.21(a)(3) anyone adversely affected by a civil penalty imposed under Section 221 of the Ethics Act may appeal said penalty to the Ethics Board.

- i. #19-0010-R – Ivan Ortiz - On November 26, 2018 Respondent requested a waiver of the \$300 fine levied against him by the Office of Government Ethics due to his failure to timely file his 2017 Public Financial Disclosure Statement (“PFDS”). Respondent asked that his fine be waived because he was under the impression that he had not been designated to file this year and he did not receive the Office of Government Ethics’ notices. The Office of Government Ethics manually updated Respondent’s email address in the e-filing system on December 17, 2018. Respondent filed his 2017 PFDS on January 7, 2019. The Office of Government Ethics does not oppose Respondent’s Request.

a. Lobbyists

Lobbyist Program:

1. Last month, we partnered with OCTO to conduct four training webinars for the new lobbyist e-filing system that went live for the January registration and reporting period. This is the lobbyists’ first time filing under the new statutory amendments and their first time using our new system, and although the system appears to be functioning effectively, our rollout of the new system was not as smooth as we would have liked. OCTO has dedicated the full-time services of two IT resources during January to help resolve any customer service issues related to the new system that arise, and we are working closely with OCTO to improve the timeliness and effectiveness of our coordinated customer service responses. Our staff have been instructed to triage incoming customer service calls to identify those that involve programmatic or policy questions requiring BEGA’s intervention vs. those requiring technical support with the new system, which can be more effectively addressed by OCTO staff. Callers with IT-related issues are instructed to file a support ticket online so that OCTO can better track outstanding issues with our system and note when problems are resolved.

It should be noted that although constructive criticism regarding the logistics of our rollout is well-warranted and taken to heart, many users have complimented both BEGA and OCTO staff for providing high quality customer service for their questions and concerns since January 1st. We have also received favorable feedback from some users who felt that the new system constitutes a marked improvement over our old Lobbyist e-filing system, and we plan to build upon those successes to provide a more

expansive favorable experience for the rest of our Lobbying customers in the days and weeks ahead.

We have prepared a public statement regarding our transition to the new e-filing system that will be posted to our website later today and distributed via email to all persons who were Lobbying registrants in the old system. We have also updated our FAQ document for the Lobbying program to reflect the statutory changes that were enacted in October, and that document is also being posted to our website and distributed via email to the Lobbying registrants.

We are also working with OCTO to schedule two additional training webinars on the new system next week, so that any registrants who were unable to participate in the sessions we conducted in December would have another opportunity to benefit from that training. OCTO is also working a visual guide to the new system that we think registrants will find useful, but I have asked them to focus their efforts at this time primarily on quickly resolving the technical support issues that users are currently experiencing with the system, while assigning bandwidth to the development of the training guide as resources have time available to do so.

As of the close of business yesterday, 120 separate users had successfully logged into the new Lobbyist system. 77 users have submitted their 2019 Registration Reports, while another 26 users have begun the registration process. 88 registrants have submitted their Lobbyist Activity Reports for the period running from July 1, 2018 to December 31, 2018, while another 61 registrants have partially completed but not yet submitted their LARs.

k. Non-Confidential Investigations

1. #1031-016, *In re* Antwan Wilson and #1031-017, *In re* Jenifer Niles. Pursuant to D.C. Official Code § 1-1162.12 (a), we conducted formal investigations into whether the actions of former-Chancellor Antwan Wilson and former-Deputy Mayor Jenifer Niles in connection with the Chancellor's daughter's mid-year transfer to an out-of-boundary school during the 2017-2018 school year violated the Code of Conduct. Our team is still negotiating with the Respondents regarding the terms of potential Negotiated Dispositions to resolve these charges, and we anticipate presenting such agreements or Notices of Violation for the Board's consideration during its February monthly meeting. We had hoped to finalize those agreements prior to today's meeting, but with only 12 business days elapsing since the December meeting due to the holidays, that goal was overly optimistic.
2. #1101-003, *In re*: Jack Evans – This formal investigation into allegations that Councilmember Evans violated the Council Code of Conduct is currently stayed.

- VI. Opportunity for Public Comment- Michael Sindram provided public comment.**
In response to a question from Mr. Sindram as to why the investigation with respect to Councilmember Evans had been stayed, the Director stated that the investigation had been stayed because of an ongoing law enforcement investigation. Mr. Sindram also inquired about the status of an investigation into public allegations concerning Councilmember Todd. The Director stated that there are rules regarding the way BEGA has to conduct its investigations and at what stage those investigations become public, and with that being said, at this point in time he was not at liberty to discuss the status of any BEGA investigation that might be open regarding Councilmember Todd. Mr. Sindram then inquired about receiving meeting notices. Director Allen responded that she would contact Mr. Sindram to address his concerns.
- VII. The Board voted unanimously to deliberate in Executive Session** (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b), 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**
- k. Next meeting February 7, 2019
- IX. Adjournment**