

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

MEETING MINUTES – January 11, 2024

The District of Columbia Board of Ethics and Government Accountability will hold a hybrid meeting at the Board of Ethics and Government Accountability, 1030 15th Street, NW, Suite 700 West, and virtually on January 11, 2024 at 12:00 p.m. Chairperson Norma Hutcheson and Board Members Charles Nottingham, Felice Smith, Darrin Sobin and Melissa Tucker participated in the 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.

I. Call to Order

The meeting was called to order at 12:00 pm.

II. Ascertainment of Quorum

All Board members were present at the start of the meeting.

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously adopted the agenda for the meeting and approved the minutes from the December 2023 meeting 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, OOG has continued to fulfill its mission of ensuring that all persons receive full and complete information regarding the affairs of the District of Columbia government and the actions of those who represent them.

I would like to begin my report by introducing the Office of Open Government's new Chief Counsel, Louis L. Neal, Jr.

Chief Counsel Neal joined the Office of Open Government on January 2, 2024. He is the former General Counsel at the Office of Administrative Hearings (OAH), where he also served as the senior attorney mediator. Prior to his 10 years at OAH, Chief Counsel Neal worked as a private attorney, specializing in family law and landlord/tenant matters. Although he is a long-time resident of the District of Columbia and the surrounding areas, Louis is a native of Ocala, Florida. He is a graduate of both the University of Maryland at College Park and the University of the District of Columbia David A. Clarke School of Law. Chief Counsel Neal is also an honorably discharged U.S. Marine, having served for 8 years. We are extremely pleased that he has joined OOG.

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

1. Advisory Opinions

a. Dismissal of OOG Complaint, OOG-2023-0009

On November 30, 2023, Director Allen dismissed a complaint against the Department of Forensic Sciences (DFS) because it did not raise issues within the Director’s authority under the Open Meetings Act. However, because the allegations showed a possible abuse of position by a DFS staff member intervening to stop a public body from meeting, Director Allen referred the matter to the Office of the Inspector General.

The dismissal and the complaint are in Dropbox.

2. Informal OMA/FOIA Advice

Since the last Board meeting, OOG has responded informally, via e-mail or telephone, to requests for assistance as follows:

OOG responded to 2 requests for OMA advice;
OOG responded to 2 requests for FOIA advice; and
OOG responded to 15 requests for technical assistance with open-dc.gov.

B. Remote Meeting Monitoring

OOG’s legal staff attends remote public meetings to ensure compliance with the OMA and inspects public body websites and OOG’s Central Meeting Calendar for public meeting notices and records. OOG’s attorneys also provide legal advice on OMA compliance and take corrective action if necessary.

Since the last Board meeting, OOG’s legal staff attended 10 remote public body meetings. As a result of the monitoring, OOG’s attorneys communicated one corrective measure to a public body because it failed to post a meeting agenda.

C. Training/Outreach

1. Advancing Racial Equity

On December 14, 2023, Director Allen completed the Advancing Racial Equity training course that is required for all managers. The 4-hour course was designed to build a shared language of racial equity and facilitate staff understanding about what racial equity means for themselves and their respective agencies; understand the legacy of opportunities and racial inequities within the District of Columbia; develop a shared racial equity analysis, including messaging and

definitions of key terminology; and increase skills analyzing policies, procedures, and practices from a racial equity perspective.

2. Records Management

On December 28-29, 2023, Attorney Advisor Anthony J. Scerbo took the six-module Records Management training offered by the D.C. Office of Public Records to receive certification as BEGA's new Records Manager. Effective January 2, 2024, Attorney Scerbo is serving as BEGA's Records Manager and is responsible for BEGA's record retention schedule and coordinating with the Office of Public Records on behalf of the agency.

D. Litigation and Legislative Update

1. Litigation

Since the Board's last meeting, I have no litigation updates to report.

2. Legislation

a. Proposed New D.C. FOIA Exemption: Physical and Mental Evaluations and Reports (Bill 25-0545)

I have previously reported on the Health Occupations Revision General Amendment Act of 2023. That bill would provide for "[m]edical records, Orders for Fitness to Practice Evaluations, or other types of physical and mental evaluations, and the resulting reports" to be exempt from disclosure under D.C. FOIA.

On December 7, 2023, the D.C. Council's Health Committee held a hearing on the bill, but the FOIA exemption was not mentioned.

E. Administrative Matters

1. Office Relocation:

I along with Director Cooks, Chief of Staff Mitchell, and IT Specialist Brown continued to meet with the Department of General Services and its contractors regarding BEGA's new facility at 1030 15th Street, NW. We are closing out outstanding matters with the acceptance of the facility and installation and operation of the technology in the building. We last met on December 20, 2023. DGS' information technology (IT) vendors met with IT Specialist Brown and several BEGA staff members on January 8, 2024, regarding the technology in the hearing room.

2. Performance Oversight Hearing:

Director Cooks and I received correspondence from Councilmember Anita Bonds on January 5, 2024, in her capacity as Chairperson of the Committee on Executive

Administration and Labor (the “Committee”). The Committee will hold its annual performance hearing for the District of Columbia Board of Ethics and Government Accountability on Tuesday, January 30, 2024, beginning at 1:00 PM on the Zoom virtual platform. I look forward to reporting on OOG’s accomplishments in FY23 and OOG’s goals in FY24.

This concludes the Office of Open Government’s January 11, 2024, report. I am happy to answer any questions the Board may have at this time.

Board Member Sobin asked Director Allen why the oversight hearing was being held on Zoom. Director Allen indicated that she expected the hearing to be a hybrid hearing and BEGA would plan to testify in person.

V. Report by the Director of Government Ethics

Good afternoon, Chairperson Hutcheson, and Members of the Board. I am Ashley Cooks, the 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 occur because of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	29
Open - Negotiations	2
Open - Show Cause Hearing	0
Grand Total	31

OPEN "UNDOCKETED MATTERS"	
Grand Total	2

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	36
Stayed - Pending DC Superior Court Case	3
Stayed - OAG False Claims Act Case	1
Stayed - OIG Investigation	4
Stayed - US District Court Case	0
Grand Total	44

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	40
Open	3
Grand Total	43

	Current	Last month	November
Investigations Open	31	29	33
Investigations Stayed	8	9	9

The number of open preliminary and formal investigations includes 5 new matters. The investigative team resolved 3 investigations since the Board last met. This total does not reflect the number of complaints that were dismissed for a lack of jurisdiction. OGE published its Quarterly Complaint Report for the first quarter of fiscal year 2024 on January 8th. The report and related press release are in the Dropbox for your review. In addition, OGE has continued its communications and referrals to the Chief Financial Officer’s Central Collection Unit (“CCU”) for collection of delinquent debts.

B. Trainings/Outreach

1. Professional Development Trainings Attended by Staff

General Counsel Rashee Raj took the following online trainings: Ethics for Compliance Lawyers and Compliance Officers, Uncovering and Utilizing Your Talents and Skills, Women in Leadership: Mastering Key Leadership Competencies, Influencing through Positive Leadership, Leading with Executive Presence, and a 3-hour ethics CLE titled “Staying out of Trouble in 2023.”

2. Conducted by staff

Since the December Board meeting, OGE conducted two training courses, the January monthly Ethics Training held yesterday and a Lobbyist training on December 20th with 94 individuals in attendance.

During December, 97 employees completed our online ethics training via PeopleSoft and 5 users completed courses using the Learning Management System.

3. Outreach

OGE is in the process of updating and implementing new training courses for the Learning Management System. We met with LRN, the vendor that created and hosts the LMS to discuss new courses that can be added based on the existing contract, as well as updating some of the current courses. Supervisory Attorney Stewart-Mitchell is the point of contact for this project and has begun editing the Financial Disclosure training. The LMS has provided the opportunity to train and reach a broader audience of employees. With these updates, our goal is to fine tune the ethics information we provide and increase the number of courses that are available on the system.

4. BEGA Newsletter

On Friday, December 15th, OGE published volume eight, issue six of its newsletter, “Ethically Speaking.” The newsletter informs readers of recent enforcement actions taken by this agency and other federal, state, and local ethics boards; ethics advisory opinions; and notable activities at BEGA within the prior two months. This issue is on the BEGA website and in DropBox. The next issue is scheduled for publication in mid-February.

C. Advisory Opinions/Advice

1. Informal Advice

OGE’s legal staff provided advice for approximately 16 ethics inquiries, which is 26 less than the 42 reported at the last Board meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

2. Formal Advisory Opinions

OGE is in the process of drafting an advisory opinion that addresses the obligation surrounding cooperating with ethics investigations and the prohibition on retaliation. Also in the works is an advisory opinion on the use of official social media accounts as opposed to personal accounts.

3. 2023 Annual Best Practice Report

On December 21, 2023, BEGA transmitted its Annual Best Practices Report to the Council and the Office of the Mayor, per D.C. Official Code § 1–1162.02(b). The report highlights the activities of OGE and OOG and provides recommendations for actions to be taken by the Council and/or the Mayor to further strengthen the District’s public integrity and transparency laws. Regarding ethics, the report provides an assessment of ethical guidelines and requirements for employees and public officials.

The ethics recommendations consists of the passage of a Comprehensive Code of Conduct, which would: (1) streamline the financial disclosure reporting system to use a bright line salary threshold for determining filers; (2) increase the limits under the gifts rule; (3) implement restrictions on providing professional services for compensation; (4) add an outside employment notification requirement for all financial disclosure filers; (5) require annual ethics training for all covered individuals; and (6) include language to clarify the provisions of the nepotism statute. The report also includes recommendations regarding lobbying: (1) requiring mandatory training for Lobbyists; (2) increasing the fines for reporting from \$10 per day with a maximum of \$300 to \$100 per day with a maximum \$5,000; (3) increasing the registration fees from \$50 to \$100 for nonprofit entities

and from \$250 to \$350 for other entities; and (4) removing the exemption from registration and reporting for certain nonprofit entities.

D. Legislation and Rulemaking Updates

1. Financial Disclosure Rulemaking

OGE is in the process of identifying boards and commissions that do not meet the definition of public official under D.C. Official Code § 1-1161.01(47) for purposes of financial disclosure, but that engage in duties that create a conflict of interest or the appearance of a conflict of interest. OGE is in the process of drafting a rulemaking that would designate those boards or commissions as public financial disclosure statements filers. The draft, proposed rulemaking will be presented at the next board meeting.

2. Lobbyist Registration Fee and Civil Penalty Amendment Act of 2023

As part of the FY 2025 Budget Support Act, OGE has recommended an amendment to the Ethics Act that would increase the lobbying registration fees and fines. BEGA's fees and late filing penalty for lobbyists are on the lower end of the spectrum compared to other jurisdictions. As a follow-up by the City Administrator's office, we recently provided information regarding the number of registered lobbyists and the amount of late filings.

E. OGE Administrative Matters

1. 2024 Performance Oversight Hearing

On January 30th, Chairperson Hutcheson, Director Allen, and I will present information and testimony regarding the agency's performance before the Committee on Executive Administration and Labor. The agency will provide answers to oversight questions by January 23rd. I look forward to highlighting the achievements of OGE.

F. Financial Disclosure Statement (FDS)

Pursuant to D.C. Official Code §§ 1-1162.24 and 1-1162.25, public officials and certain government employees must file a financial disclosure statement as a means of transparency and to prevent engaging in conduct that violates the financial conflicts of interest statute. BEGA is responsible for ensuring that employees and public officials, who meet the statutory requirement, file their annual financial disclosure statement.

The FDS Team is in the process of kicking off the 2024 season. Attorney Vann drafted the new timeline and Program Coordinator Kosick is in the process of identifying ethics counselors who will serve as agency points of contact regarding notice and filings.

G. Lobbying Registration and Reporting (LRR)

Pursuant to D.C. Official Code § 1–1162.27(a), a person who receives compensation or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying shall register with the Director of Government Ethics and pay the required registration fee. According to D.C. Official Code § 1–1162.30, each registrant shall file a quarterly report concerning the registrant’s lobbying activities during the previous quarter.

The 2024 registration and fourth quarter activity reports are due on January 16th. According to the LRR team, lobbyist reporting has remained steady since the emailing system was opened on December 21. In November, 13 Registrants failed to file a timely renewal for 2023. The LRR team identified the entities and sent fine notices to these registrants.

H. Public Investigations

1. 23-0006-F In re David DeBoer: This is a formal investigation based on a complaint filed by the Criminal Justice Coordinating Council (“CJCC”) and referred by the Office of the Inspector General. According to the complaint, David DeBoer (“Respondent”), former IT Specialist with the Department of Employment Services provided IT services to CJCC through a vendor, Enlightened Inc., during his government tour of duty. Respondent’s alleged conduct violates DPM § 1807.1, which prohibits employees from using government time or resources for other than official business, or government approved or sponsored activities. Respondent also failed to report Enlightened on his 2022 Financial Disclosure Statement and failed to file a 2023 Statement. An evidentiary hearing is scheduled to take on today at 2:00 pm.

Thank you. This concludes the Office of Government Ethics’ January 11, 2024, report.

Board Member Tucker noted that she enjoyed reading the BEGA newsletter, particular the poem by Director Cooks in the latest issue.

VI. Public Comment – if received

There were no public comments.

VII. Executive Session (nonpublic)

The Board voted unanimously to enter into Executive Session to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), 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

The Board resumed the public meeting at 12:59 pm.

The Board approved negotiated dispositions in **23-0102-P In re C. Mischel and 23-0091P In re C. Garris.**

The next meeting will be held at the Board of Ethics and Government Accountability, 1030 15th Street NW, Suite 700 West, and virtually on February 1, 2024 at 12:00 pm.