

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

MINUTES OF MEETING

January 9, 2020

The District of Columbia Board of Ethics and Government Accountability held a meeting on January 9, 2020 at 10:00 a.m., in Room 540 South of the One Judiciary Square Building, 441 4th Street, N.W., Washington, D.C. The Board’s Chairperson Norma Hutcheson was present as well as Board Members Charles Nottingham, Felice Smith, Darrin Sobin, and Melissa Tucker.

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

I. Call to Order at 10:02

II. Ascertainment of Quorum

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously approved the agenda and the December 2019 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 Opinions: The OOG has not issued any Advisory Opinions since the last Board meeting.

2. Informal OMA/FOIA Advice:

Since the last Board meeting, the OOG responses for informal and technical FOIA and OMA advice and assistance are as follows:

- 4 provisions of FOIA substantive advice;

- 6 OMA substantive responses; and
- 87 responses to requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. On December 15-18, I along with Board member Tucker and OGE Attorney Sonya King attended the 41st Annual Conference on Government Ethics Laws (“COGEL”) in Chicago. As you may know COGEL is the preeminent organization of government ethics administrators and government transparency experts. During the conference local and international COGEL members who work in the fields of governmental ethics, freedom of information, elections, lobbying, and campaign finance conduct workshops and lead discussion that provide guidance and updates to the latest trends and laws in these areas.
2. On December 20, 2019 I along with Karuna Seshasai, Deputy General Counsel to the Mayor, met with members of the members of the Open Government Coalition for a Brown Bag luncheon. The purpose of the meeting was to have open discussion about FOIA issues in DC Government.
3. OOG ANC FOIA Training: Provisions of the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (D.C. Official Code § 1-309.12(e)(6)) require the OOG to provide a training session at least twice per calendar year on Commission obligations under FOIA. The first of several ANC FOIA trainings will take place Saturday, January 11, 2020.

C. Legislative Update:

On December 17, 2019, the D.C. Council passed the companion temporary bill to expand access to Body Worn Camera footage from DC Metropolitan Police Department Body Worn cameras to the family of a deceased person who was depicted in the video footage. The title of the bill is the “Access to Body Worn Camera Temporary Amendment Act of 2019.”

D. Administrative Matters:

I am pleased to announce that Johnnie Barton has accepted the position of General Counsel to the Office of Open Government. We will be working to hire an Attorney-Advisor in the near future. I am working with DCHR to post the position vacancy this month.

This concludes the Office of Open Government’s January 9, 2019 report.

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	
Open	30
Open - Negotiations	3
Open - Show Cause Hearing	5
Grand Total	38

OPEN "UNDOCKETED MATTERS"	
Grand Total	2

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	23
Closed - Pending DC Superior Court Case	1
Closed - Pending External Action	1
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	8
Stayed - US District Court Case	2
Grand Total	39

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	1
Grand Total	25

	Current	Last month	Nov. 2019
Investigations Currently Open:	38	51	58
Investigations Stayed:	14	14	12

The number of total open investigations went down substantially this month, but most promisingly, our number of active investigations decreased from 36 last month to 30 this month. These 30 active investigations include 7 new investigations that have been opened since our last meeting.

I want to take this time to thank the staff for their diligence and hard work during the holidays and this time of transition at the agency.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

OGE's Auditor completed the following webinar trainings:
Communicating with Confidence, Becoming an Accountable Professional,
and Acting with Diplomacy and Tact.

Attorney Sonya King and Board Member Melissa Tucker attended the
Council on Governmental Ethics Laws' (COGEL) Annual Conference in
Chicago.

As of January 3rd, all OGE staff members have completed OCTO's Cyber
Security Awareness training.

2. Conducted by staff:

Since the date of the last meeting, OGE conducted 3 trainings, which is 2
less than the 5 conducted last month. The 3 trainings included 2 new
employee orientations and 1 monthly ethics training. In addition, 184
employees completed the online ethics training through PeopleSoft during
the month of December.

C. Advisory Opinions/Advice:

Informal Advice: approximately 51 which is 7 more than the 44 reported at the
last meeting. This number does not include responses we have provided to
questions regarding the Lobbyist and FDS e-filing systems.

D. Budget:

Our FY2020 budget remains in good shape. We are finalizing an agreement with
a private sector IT vendor to develop and implement the most pressing
enhancements needed to improve our current OCTO-designed FDS and LRR e-
filing systems. We will continue to explore other possible replacements to the
current systems.

E. Staffing:

Effective January 1, 2020, the Board appointed me as Acting Director of the Office of Government Ethics.

Additionally, the FDS team and I have been reviewing resumes from candidates for a temporary Technical Support Specialist positions. We expect the person to start next month to support the rollout of the Financial Disclosure season.

F. Litigation:

Status of pending cases.

- Gerren Price –2019 CA 005346 P(MPA). A status hearing is set in this matter for January 10, 2020 at 10:30 am before Judge Shana Frost Matini.
- A. Blaine vs. BEGA, OEA Matter No. J-0030-19. This is an employment matter involving a separated employee. We are still waiting for a decision from the Administrative Judge on our motion to dismiss.

G. Lobbyist/Financial Disclosure Matters:

Financial Disclosure –All Councilmembers filed their November FDS statements in a timely manner. Staff has completed the review of these filings. Staff is also in the process of preparing notifications and scheduling training sessions for the upcoming Financial Disclosure season.

Lobbying Registration and Reporting (LRR) System -- On December 26, 2019, OGE sent out notices regarding the upcoming January 15, 2020 deadline to file Lobbyist Registration Reports and Lobbyist Activity Reports. Since the beginning of the year to date, lobbyists have filed 38 Registration Reports and 39 4th Quarter 2019 Activity Reports.

In addition, OGE has received a substantially lower number of support requests for this filing period compared to the number of support requests that we received during this time period last year. To date, OGE has a small number of support tickets outstanding that must be handled by OCTO and OGE's staff has been able to devote their time providing customer support to registrants who have questions.

Stan Kosick, the Program Specialist, has drafted a LRR Annual Function Report, which provides further detail on the nature of the support requests. The memo has been uploaded to the DropBox.

H. Non-Confidential Investigations:

1. 18-0006-P, *In re*: Jack Evans – This formal investigation involves allegations that Councilmember Evans violated the Council Code of Conduct. In light of recent events involving the CM, we are planning meetings with our partner agencies to discuss next steps.
2. 19-0008-F, *In re*: Dr. Marla Wyche-Hall. This is a formal investigation involving allegations that while employed with her former agency, the Respondent engaged in employment discussions with an entity with whom her agency contracted and subsequently violated the District’s post-employment restrictions.
3. 20-0004-F, *In re*: Jack Evans. This is a formal investigation initiated pursuant to a sworn and notarized complaint from Alan Roth alleging that CM Evans violated DPM §1801 (a), and indirectly alleging a violation of the conflict of interest provisions. The complainant points to two Proposed Resolution votes that CM Evans participated in during this term that were related to the larger ethics investigations of his actions. The complainant argues that by not recusing himself from those votes – and by voting against stripping himself of committee chair positions and against a resolution that would have helped O’Melveny & Myers enforce subpoenas in their investigation of Evans – CM Evans failed to maintain a high level of ethical conduct in the performance of his official duties and took official action that would adversely affect the confidence of the public in the District government’s integrity. OGE is still researching the interesting potential issues of first impression raised by Mr. Roth’s Complaint.

This concludes the Office of Government Ethics’ January 9, 2020 report.

VI. Opportunity for Public Comment

Alan Roth provided public comments. He advised the Board that he had submitted additional legal arguments in support of his previously filed complaint and encouraged the Board to continue to pursue any matters involving CM Jack Evans. Dorothy Brazil also provided public comment. Ms. Brazil sought clarification on the difference between the two pending formal investigations involving CM Evans.

VII. Executive Session (non public)

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

The Board approved a Negotiated Disposition in the following matter:

- 19-0008-F, In re: M. Wyche

IX. Adjournment