

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

**Special Meeting of the Board**

October 17, 2013, 1:00 p.m.  
Room 540 South (BEGA Board Hearing Room)  
One Judiciary Square

**AGENDA**

**I. Call to Order**

The Monthly Meeting of the Board was called to order at 1:01 pm by Chairman Robert Spagnoletti in Hearing Room 540 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001.

**II. Ascertainment of Quorum**

All Ethics Board Members were present (Robert Spagnoletti, Deborah Lathen, and Laura Richards), constituting a quorum.

**III. Public Hearing**

- a. #1087-001 – Ronald Moten, Financial Disclosure Statement filing

**IV. Public Meeting**

- a. Discussion of testimony on FOIA Amendment

The Director of Open Government Traci Hughes discussed a proposed amendment by the Public Service Commission (“PSC”) to protect critical infrastructure information from FOIA requests. Director Hughes met with the Commissioner of the PSC and with the Attorney General’s office and concluded that the issue is that there are certain plans and blueprints that members of the private community will not submit for fear that they will be subject to production under FOIA. There is a Council meeting scheduled to discuss this amendment on October 21, 2013. While meeting with the PSC, Director Hughes expressed to them after her review that she generally supports the amendment being added to the FOIA. However, further clarification is needed. For example, transportation, water, and electricity are not defined, noting that the language in the amendment pulls directly from the federal definition of critical infrastructure and critical infrastructure information. Additionally, Director Hughes is concerned that the amendment was drafted solely by the PSC without any input from impacted agencies such

as the Department of Homeland Security and Emergency Management Agency, the Department of Transportation, and the Office of Unified Communications. Director Hughes recommended to the board that the amendment should be delayed until other agencies get a chance to review and weigh in on the measure. Also, Director Hughes recommended that Mr. Quander, the Deputy Mayor for Public Safety, should be brought in to review and come up with a process for the PSC to receive critical infrastructure information from agencies and privately owned businesses, and criteria for the public to review such information.

Chairman Spagnoletti said that it was his understanding that this amendment took away so many things from the public view that it seemed over inclusive. Director Hughes agreed and informed the Chairman that after speaking with the Commissioner and the attorney advisor who drafted the measure for the PSC, she concluded that this wasn't their intention and that they are working to refine the amendment. Director Hughes informed the Commissioner and the attorney for the PSC that because they are using federal language to draft the amendment they should mirror the federal language as closely as possible. In the interim, if there are requests the PSC can rely on the Federal FOIA since local law is silent on the matter.

Board members Lathen and Richards agreed with Director Hughes' proposal and believed that other agencies should get a chance to weigh in on the amendment and the amendment should strike a balance between public safety and making necessary documents available for public view.

a. Discussion of BEGA legislation

The Director of Government Ethics, Darrin Sobin, spoke first about the Best Practices Legislation. Mr. Sobin discussed why the legislation was important emphasizing the following 3 points: (1) clarifies to which agencies, employees, and elected officials the Ethics Act applies; (2) recognizes the District's need for a Universal Code of Conduct applicable to all employees and elected officials serving the District of Columbia; and (3) gives BEGA necessary tools to perform its statutory functions including access to government records, mandatory reporting by employees of misconduct of others, penalties for untruthfulness to BEGA and civil contempt by the Superior Court for failure to comply with BEGA orders.

Mr. Sobin then discussed what happened when BEGA testified before the DC Council on Monday, October 7, 2013. Mr. Sobin recounted that Inspector General Charles Willoughby protested the legislation on the basis that it would undermine his independence. BEGA countered with the history of the problems we have gone through to get documents from the Inspector General. The Council hearing ended with Councilmember McDuffie extracting a commitment from both sides to meet and try to work out a formal document exchange agreement. Director Sobin informed the Ethics Board that BEGA reached out to the Inspector General the next day. The Inspector General's Office responded stating that it was satisfied with the existing arrangement and saw no need to meet. BEGA notified Councilmember McDuffie, who then wrote a letter to the Inspector General demanding that he meet with us. The Inspector General responded on October 16, 2013, disputing that he refused to meet with us and further criticizing BEGA. The Inspector General copied BEGA on the letter as well. The Inspector General's General Counsel and BEGA's General Counsel, Stacie Pittell spoke on October 16, 2013, with the Inspector General's General Counsel asking what the specific subject area of a meeting might be. When Ms. Pittell explained, the General Counsel said she would have to discuss their conversation internally and get back to her. Mr. Sobin noted that what Ms. Pittell explained to her was the very issue we have been raising with them for months and which Councilmember McDuffie directed us to discuss. As of 10/17/13, BEGA has yet to hear back from the Inspector General's Office.

Director Sobin then discussed that the permanent BEGA legislation that allows BEGA to do negotiated dispositions, informal admonitions, and *sua sponte* advisory opinions is being marked up in Committee. Director Sobin informed the board that the one big change to it is a requirement that *sua sponte* opinions go through a public comment period of 30 days before being formally issued. Director Sobin then told the Ethics Board that the source behind the Council marking up the legislation is a Constituent Services advisory opinion that EGA issued on August 29, 2013. During a public meeting with the Council Director Sobin, informed the Council that he gave them a draft of the opinion and incorporated their comments in the opinion. Director Sobin informed the Ethics Board that the Council didn't indicate how much weight the BEGA should give to public opinion. Director Sobin believes that this attempt at changing the legislation was an attempt to rollback BEGA's authority and it sets a bad precedent. Director Sobin then

stated he believes that if the Council insists on these changes, BEGA should be allowed to do it through our own rulemaking.

Chairman Spagnoletti agreed with Director Sobin that rulemaking would be the best choice if BEGA were to make these changes. He also stated that a Best Practices advisory opinion could be something that is floated out for public opinion but an interpretation of the Ethics Act is something that shouldn't. Ethics Board member Richards indicated that she believed that we should look for public opinion on advisory opinions on a case-by-case basis. The Ethics Board concurred that we should be able to use our own discretion on this decision and that it shouldn't be imposed on us by the Council. The Ethics Board said Director Sobin could compromise with the Council if necessary, in that the Council could include legislation that requires BEGA to do a rulemaking on this, if they let BEGA decide what the specific requirements would be. This, however is not BEGA's preference. Director Sobin then informed the Ethics Board that the advisory opinion was given to the Council's General Counsel and may not have been passed along to the Councilmembers themselves.

Chairman Spagnoletti stated that the Council needs to discuss the advisory opinion among themselves to define what Constituent Services should be and Director Sobin concurred and said that he relayed this point to the Council during one of their trainings. Senior Attorney Advisor Jack Grimaldi also told the Ethics Board that BEGA had been invited back for trainings in November.

b. Discussion of policies regarding ordering and posting hearing transcripts

Director Sobin informed the board that BEGA has received a quote from our court reporting service for the cost of ordering and posting transcripts. The normal appearance fee is \$100 plus the page rates. He then told the Ethics Board that they normally don't do the reporting service if transcript is not ordered because that is where they make their money. If BEGA wants them just to record, then the rate is \$300 for a two hour minimum and then \$95.00 per hour thereafter, or \$1000 for an eight hour day compared to \$1496.25 for an eight hour day with transcripts. If BEGA orders the transcripts, there would be an additional charge for posting it on the website. So, for instance a full day proceeding which would cost \$1,496.25 if BEGA only ordered the transcript, would cost \$2,126.25 if we wished to post it on our website – an additional cost of \$630 per transcript. Depending on how many hearings BEGA has in FY 2014, this could put serious pressure on our NPS funds.

Chairman Spagnoletti said that a court reporter is obviously needed for every hearing but that we should order transcripts on a case-by-case basis. He indicated that for the most part, we probably wouldn't need transcripts for hearings that weren't complicated or are uncontested. He also said that they will make that decision at the end of each hearing.

Director Hughes told the Ethics Board that there should be a caveat on our website for why a transcript isn't posted and that we should give the public information on how to order a transcript if needed. The Ethics Board also concluded that if we do order a transcript it must be posted on our website. Ethics Board member Richards also proposed that BEGA should speak with other agencies to see how they secured funding for court reporting during their hearings. Chairman Spagnoletti also proposed that if BEGA doesn't order transcripts for a hearing but they are needed for an appeal, BEGA can split the cost with whoever needs the transcript for their appeal.

c. Councilmember Marion Barry fine due October 11, 2013

Director Sobin told the Ethics Board the \$1700 payment was received yesterday before close of business. He then informed the Ethics Board that the negotiated disposition does not have a late fee provision, but he intended to speak to the Councilmember personally about his tardiness when he meets with him October 18, 2013 to conduct his ethics training. General Counsel, Stacie Pittell then informed the Ethics Board that Councilmember Barry still owes BEGA two more payments.

d. Public Comment on issues discussed in the public meeting. No comment from the public. The open meeting ended at 2:08 pm.

**V. Executive Session (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14).** The closed meeting began at 2:08 pm. The closed meeting ended at 2:34 pm.

**VI. Resumption of Public Meeting.** The open meeting re-opened at 2:34 pm.

a. Discussion of any public items.

No members of the public were present.

Board member Richards asked where we stand on the OIG response to CM McDuffie's letter. Chairman Spagnoletti explained that it is up to the OIG to meet and the OAG has offered to broker the meeting, although he hopes that is not necessary. Chairman Spagnoletti said that we keep making the point with CM McDuffie that the legislation is not OIG directed and although it would be great to work out things with the OIG, we still need the legislations. Otherwise, we would have to issue a subpoena anytime there is resistance.

Director Sobin said that we have made the point that the legislation is beyond the OIG and the OIG has not waived. Even if we sit down with the OIG, it is likely that there will be no agreement, so we will still need the legislation regarding the OIG, and besides the OIG.

Board member Richards asked if we should correct the record regarding OAG testimony that the OAG refers things to us. Chairman Spagnoletti and General Counsel Pittell both explained that that OAG refers matters to us, such as advice requests, just not investigations. Chairman Spagnoletti said that he does not think it is necessary to mention this.

Board Member Richards asked if we are pursuing cooperation with other agencies. Director Sobin said that we are, with OAG, MPD, the USAO, and even the FBI, and there have been no problems. Board Member Richards asked if we can discuss this further at the November 4, 2013, Ethics Board meeting and Director Sobin said that we will.

## **VII. Adjournment**

At 2:40 pm, the public meeting was adjourned. The Ethics Board left the meeting room to deliberate on the In re: Moten hearing.