

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

DRAFT MINUTES OF MEETING

October 3, 2019

The District of Columbia Board of Ethics and Government Accountability held a meeting on October 3, 2019 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 Darrin Sobin, Charles Nottingham, Felice Smith, and Melissa Tucker. Senior Attorney Advisor Rochelle Ford was also present.

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

These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting date.

AGENDA

I. Call to Order

Chairperson Hutcheson called the meeting to order at 10:02 a.m.

II. Ascertainment of Quorum

Chairperson Hutcheson established that a quorum was present.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda.

The Board voted unanimously to approve the September 5, 2019 meeting minutes.

IV. Report by the Director of Open Government

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

- a. On September 26, 2019, I issued an opinion letter that updated to the OOG's 2016 Advisory opinion regarding whether the **Department of Consumer and Regulatory Affairs** ("DCRA") is in compliance with the mandatory disclosure requirements of D.C. Official Code §§ 2-536(a)(8A) and 2-536(b). As the Board is aware, these provisions require that DCRA make publicly available, on the on its website or the Internet, all pending applications for building permits and authorized building permits, including the permit file. My findings were that while DCRA has made a significant effort to comply with D.C. Official Code §§ 2-536(a)(8A) and 2-536(b) in FY20, the agency still is non-compliant with these provisions.
- b. On September 19, 2019, I issued #OOG-2019-0006-M, a Resolution of Complaint Concerning the **Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings** ("COST"). My findings were that: (1) the OOG had previously addressed and dismissed the complainant's previous allegations that COST violated the OMA on specific dates in July 2016: (2) that the April 8, 2016, complaint allegation is time barred by the OOG's regulations; and (3) that the relief sought, rescinding the actions of a public body and to sanction and remove its members, is not within my authority under the OMA. Based on the foregoing I had no other recourse than to dismiss the complaint.

2. Informal OMA/FOIA Advice:

Since September's Board meeting, the OOG responses for informal and technical FOIA and Open Meetings Act (OMA) responses are as follows: 7 FOIA and 5 OMA substantive responses; and 35 responses to OMA requests for technical assistance.

B. OMA/FOIA Audits:

The OOG completed the comprehensive FOIA/OMA audit. The audit results were released to the public on September 30, 2019 via open-dc.gov. The FOIA audit of 74 DC.GOV agency websites revealed that agencies under the Mayor's Authority were largely compliant with the mandatory disclosure requirements. The FOIA pages now include a link to "certain records" which takes you to the dc.gov/open-government webpage. That page contains much of the information that DC FOIA law requires agencies to make available to the public on the Internet. The websites of some independent agencies were found to not contain the required information.

Also, some agencies have satellite websites for its larger offices, such as the Office of the Chief Financial Officer's Office of Tax and Revenue, and it may be confusing to the user where to locate the FOIA information. In the case where there is a large satellite office, we recommend a FOIA tab with a link to agency's FOIA page. The OOG will reach out to those agencies and offer assistance with compliance with the mandatory disclosure requirements.

With respect to the OMA portion of the audit, we reviewed 187 public bodies' websites and our own website, open-dc.gov, to determine whether the minutes of the meetings were posted, as FOIA law requires. We also checked for notices and agendas, as the OMA requires. The public bodies reviewed were also largely compliant. We found 30 public bodies with OMA and FOIA compliance issues. We will contact them directly to resolve those issues.

As we are planning for our FY20 program activities, we are evaluating whether to commence with an annual audit or recommend some other compliance mechanism.

C. Training/ Outreach:

1. On September 17, 2019, I attended the "Budget Camp" held by the Office of Budget and Performance Management. The FY21 Budget process was discussed.
2. On September 19, 2019, OOG Attorney Advisor Barton conducted FOIA training for the DC Housing Authority.
3. On September 25, 2019, I attended Mayor Bowser's Third Quarter Cabinet Meeting. At the meeting there were presentations on the FY21 budget, the DC Public Library construction, and the Deputy Mayors provided updates on their activities.
4. On September 26, 2019, I had a lunch meeting with the Mayor's General Counsel Betsy Cavendish. I updated her on the OOG's activities and recent Advisory Opinions.

D. Administrative Matters:

1. Board Room Upgrade: OOG is working with OCTO to plan for the full renovation of the BEGA Hearing Room in FY20. The plan is to modernize all of the audio/visual equipment in this space. If the Board members have any specific suggestions or needs, please let us know as we are currently planning for the upgrade.
2. Suite 540 South Expansion and Reconfiguration: I am pleased to report that this suite has been expanded to include new workspaces for

employees. The OOG intends to add another full time employee its staff this calendar year and this reconfiguration is necessary to accommodate the new employee.

This concludes the Office of Open Government's October 3, 2019 report. Thank you.

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	51
Open - Negotiations	1
Open - Board NOV Hearing	1
Grand Total	53

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	15
Closed Pending Appeal to DC Court of Appeals	1
Closed - Pending External Action	3
Stayed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	2
Stayed - OIG Investigation	7
Stayed - US District Court Case	4
Grand Total	33

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	23
Open – Board Appeal	1
Open	1
Grand Total	25

	Current	Last month	August 2019
Investigations Currently Open:	53	27	21
Investigations Stayed:	14	15	14

Our number of open investigations increased dramatically this past month primarily due to converting cases that previously had been classified as undocketed matters into preliminary investigations to properly reflect the amount of investigative activity we have conducted to date. We expect that many of those

cases will eventually end up being dismissed, but additional investigative activity is required to properly evaluate the sufficiency of the evidence related to those allegations.

B. Publication and Reporting Obligations:

We are in the process of compiling the Quarterly Complaint Report (QCR) for the fourth quarter of FY19, which will be published to our website when it is complete.

C. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

On September 15-18, Senior Attorney Advisor Rochelle Ford and Attorney Advisors Cooks, King, and Stewart-Mitchell attended the 18th Annual Compliance and Ethics Institute held by the Society of Corporate Compliance and Ethics at the National Harbor. Although the conference was widely attended by corporate ethics professionals, it offered a wealth of information regarding public sector ethics and compliance matters. On September 22 to 25, Program Support Assistant Dow and Administrative Officer Peterson attended the 27th Annual Administrative Professional Conference conducted by the American Society of Administrative Professionals, which included best practice discussion groups and several breakout sessions on office manager, technology, leadership and multi-tasking strategies. Lastly, I have continued my leadership development efforts with the Center for Creative Leadership, including executive coaching calls with the trainer I partnered with at the CCL training program last year.

2. Conducted by staff:

Since the date of the last meeting, we conducted 8 trainings, 3 more than the 5 we conducted last month. The 8 trainings included 3 new employee orientations, 1 monthly ethics training, and 2 ethics trainings for the Office of Administrative Hearings, 1 ethics training for the Public Charter School Board and 1 ethics training for the DC OneFund campaign. In addition, 82 employees completed the online ethics training through PeopleSoft during the month of September.

3. Ethics Day 2019:

Ethics Day is scheduled for October 3, 2019 from 11:30 am to 5:00 pm immediately following the Board Meeting.

D. Advisory Opinions/Advice:

Informal Advice: approximately 61, which is 14 more than the 47 reported at the last meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

Formal Advice requests: We have one pending request for a formal advisory opinion regarding whether a particular organization needs to register with BEGA as a lobbying entity and whether its Executive Director needs to register as an individual lobbyist. Attorney Adviser King has been tasked with formulating a draft response to the request, subject to edits and modifications by Rochelle and myself, and our deadline to complete the opinion is October 18.

E. Ethics Legislation/Comprehensive Code of Conduct:

Chairman Allen has introduced this year's version of the CCC for the Council's consideration, and CM Brianne Nadeau introduced another bill on March 19, 2019 entitled the "Ethics Reform Amendment Act of 2019." We met with Michelle Loggins from CM Nadeau's staff on Monday, August 13, 2019 to discuss the ERAA, and we have had productive discussions with Chairman Allen's staff to discuss how BEGA can help move the CCC forward this year. We have also scheduled a meeting with Chairman Mendelson on October 9, 2019 at 10:00 am to discuss both bills, and we will keep the Board informed as developments occur.

F. Rulemaking:

We are considering amending our Rules to allow the parties to submit dispositive motions in connection with our adversarial hearings, and to allow the Board to issue rulings on such motions.

G. Budget:

As of September 18, the Office of Finance and Resource Management (OFRM) was projecting that BEGA would end FY19 with a surplus of Local funds in the amount of \$65,119.00. The contractor is still working on the project to renovate the Bullpen and soundproof some of our space on the 8th floor with an anticipated completion date of October 18. We also acquired a new Toyota Prius that is currently in DPW's possession while the tags and registration are processed. DPW will let us know when that process is complete, at which point we will be able to pick up the vehicle and begin using it. Lastly, we are continuing to use the services of a private IT vendor to analyze and improve the architecture of our new FDS and LRR e-filing systems as well as develop and implement needed enhancements for those systems.

H. Staffing:

I would like to introduce you to Stan Kosick, our new Program Specialist who joined us on September 30 and will help manage our Lobbyist and FDS programs. Stan comes to us from Queen Anne's County, MD Department of Planning and Zoning where he served as a Senior Planner. Prior to that, he served as a Planner for more than 16 years at the City of Bothell (WA) Department of Community Development. He has experience overseeing the installation of database software and training on its use, as well as developing new operating procedures, policies and regulations, and reviewing and analyzing federal, state and local legislation. He received his bachelor's degree in History from the State College at Buffalo and a Master of Public Administration degree from the Rockefeller College of Public Affairs and Policy at the University of Albany.

During the second week of September, Senior Attorney Ford and I conducted screening interviews with a group of candidates we felt were highly qualified for our General Counsel position and reached a consensus on the top 3 candidates we felt the Board should interview for the position. The documents we received from these 3 candidates including resumes, cover letters and/or references have been uploaded to the DropBox for your review.

Lastly, I am working to schedule a retreat involving the Board, OGE and OOG toward the middle-to-end of November to give us time to fill the GC position so that person can participate in it. We will keep the Board posted on possible dates for the retreat once we firm up our plans a little further, but please let us know if there are any specific dates in November where your schedule would not permit you to attend..

I. Litigation:

Status of pending cases.

- Gerren Price – 2019 CA 005346 P(MPA). Mr. Price's appeal was required to be filed by August 13, 2019, but the Superior Court's online docket search indicates he did not file it until August 15, 2019. According to the Superior Court's online docket records, a copy of Mr. Price's appeal was served upon a case manager at the Office of the Attorney General on our behalf on September 6.
- 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.

J. Lobbyist/Financial Disclosure Matters:

This year there are approximately 3,815 designated filers and so far about 3,305 designated filers have filed the form via our e-filing system, which constitutes an 86.63% compliance rate.

We still have approximately 18 PFDS non-filers from last year, along with approximately 524 current non-filers from this year. 109 of this year's non-filers were ANC Commissioners in 2018 – some of whom were re-elected and are still serving in that capacity in 2019. Another 65 non-filers are newly-elected ANC Commissioners who were required to file because they were candidates for election in 2018, while another 55 are DCPS employees. The ANC Commissioners – both returning and newly-elected – constitute roughly 1/3 of all non-filers and combined with DCPS employees constitute 43.7% of all non-filers.

We have received the emails we requested from OCTO and Joe Thomas is currently reviewing those emails of all OGE staff who worked on FDS matters the past two years with our non-filer lists so that we will not send fine notifications to anyone who reached out to us for help with technical problems related to the new e-filing system. Once Joe's review of the emails is complete, we will continue working to help those who experienced technical problems to access the system and submit their FDS statements, while sending fine notifications to the remaining non-filers from both 2018 and 2019..

K. Lobbyist Filing Waiver Requests:

Pursuant to D.C. Official Code § 1-1162.32(c), the Ethics Board may waive the penalty imposed for untimely filing of a Lobbyist Activity Report for “good cause shown.”

1. **20-0001-R. Brown Strategy Group.** The firm requests waiver of late fees imposed for its 2019 Registration Report that it originally submitted via hard copy on August 15, 2019, not realizing that it needed to be filed online and then having difficulties navigating the new e-filing system. OGE does not oppose this request and request that the Board approve this fee waiver request.

The Board voted unanimously to approve this fee waiver request.

L. 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. We are working with our partner agencies to ensure that any

investigative actions we undertake will not interfere with the related law enforcement investigation.

Board Member Melissa Tucker did not participate in the discussion on *In re: Jack Evans* because she is recused from this matter

2. 19-0003-F, *In re: Kenneth Crosswhite*. This is a formal investigation based on allegations that former-Deputy Chief Kenneth Crosswhite violated the District's nepotism rule by entering and approving overtime for his son. A hearing was scheduled for September 10th, but was subsequently postponed.
3. 19-0008-F, *In re: Dr. Marla Wyche-Hall*. We have sent out four more requests for information and documents related to the allegations in this case which should be returned later this month

VI. Opportunity for Public Comment

There were no public comments.

VII. Executive Session (nonpublic)

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:

1. 19-0003-F, *In re: K. Crosswhite*

IX. Adjournment

BEGA's next meeting is November 7, 2019 at 10:00 a.m.