

Board of Ethics and Government Accountability
Minutes of the Best Practices Symposium
October 3, 2013

Chairman Spagnoletti welcomed those in attendance and gave opening remarks.

Chairman Spagnoletti was joined by Board Member Lathen and Board Member Richards, as well as Traci Hughes, Director of the Office of Open Government (OOG); Darrin Sobin, Director of the Office of Government Ethics (OGE); and OGE General Counsel Stacie Pittell.

Ms. Richards thanked all who came for their attendance and their interest in an open, transparent, ethical government. She asked for comments or questions regarding the Board's mission and operations. Ms. Lathen thanked all who came. She noted that the Board of Ethics and Government Accountability (BEGA or Board) holds monthly meetings and invited Symposium participants to come and encourage others to do so.

Mr. Sobin explained the genesis of the Best Practices Symposium and gave the history of last year's Symposium. He spoke about the recommendations that came out of last year's symposium and how they led to Council action.

Mr. Sobin then explained that the 2013 symposium would cover the specific questions required by the Ethics Act, as follows:

- (1) Whether to adopt local laws that are similar in nature to federal ethics laws;
- (2) Whether to adopt post-employment restrictions;
- (3) Whether to adopt ethics laws pertaining to contracting and procurement;
- (4) Whether to adopt nepotism and cronyism prohibitions;
- (5) Whether to criminalize violations of ethics laws;
- (6) Whether to expel a member of the Council for certain violations of the Code of Conduct;
- (7) Whether to regulate campaign contributions from affiliated or subsidiary corporations; and
- (8) Any other matter as determined by the Ethics Board.

In addition, the 2013 symposium would cover the following topics:

1. Whether lobbyists should serve on boards and commissions
2. Development of a Universal Code of Conduct
3. Whether local ethics laws similar in nature to federal laws should be enacted
4. Whether/how campaign finance should be regulated

Ms. Hughes asked participants to address the OOG's role in promoting transparency.

Public Testimony –

1. Dan Wedderburn

Mr. Wedderburn explained that he was speaking for himself, but he shared the views of DC for Democracy. He said he is excited about the performance of BEGA and stated that the Board has alienated members of the D.C. City Council. He spoke about a lack of enforcement and the need for BEGA to have more resources because laws without resources don't work. He stated that it is much more important to enforce current Council members' conflicts of interest than it is to enforce post-employment restrictions. He urged the Board to adopt nepotism and cronyism prohibitions and to ban contributions from affiliated subsidiary corporations as well as banning campaign contributions for companies seeking to do business with the District. He then spoke about Constituent Services Funds and the problems they create. He concluded with the problems the Board would face when the current Board members leave and new Board members are appointed.

Chairman Spagnoletti spoke to the resource issue and responded that it would be addressed before Council and the Mayor. The Chairman stated that the Board has a growing number of investigations, complaints and adversarial hearings and that the Board will continue to seek additional resources. He said that rather than alienating the Council, BEGA had raised a number of complex issues requiring further thought, such as constituent services.

Ms. Richards asked whether Mr. Wedderburn believed there is systemic abuse of conflict of interest rules, and if he had a suggested solution. In response, Mr. Wedderburn recommended abolishing Constituent Services Funds altogether, or at a minimum, cutting the maximum amount of the fund to \$10,000.

Ms. Lathen asked about the percentage of the Funds that went to people in need. Mr. Wedderburn stated that 10% went to people in need and that 90% went to indirect campaigning and building community goodwill (through support of events such as block parties). Mr. Wedderburn gave an example of a Councilmember who spent over \$30,000 from a Constituent Services Fund to buy season tickets to sporting events.

2. Fritz Mulhauser – American Civil Liberties Union (ACLU) (written testimony attached)

Mr. Mulhauser's focus was government transparency and access to information. He works for the ACLU and in that capacity has made frequent requests for information from the District government. Too often, he said, he has to file suit to get the information he seeks. He made four recommendations –

1. Agency budgets should be released promptly and in a comprehensible form.

2. Agency operating policies should require agencies to follow applicable rules and regulations, and those policies should be made available to the public.
3. The Board should use its authority to:
 - a. Improve job descriptions used to hire FOIA officers
 - b. Create a help line for FOIA officers.
 - c. Coordinate with OAG so that lawyers send strong messages to FOIA officers about what will not be defended in court.
 - d. Coordinate with DC Records Management on maintaining records.
4. Restart the commitment to transparency in government in regard to government data.

The Chairman responded that the Board has offered to help develop the Mayor's transparency plan. Ms. Hughes has offered to do what she can to support the City Administrator. On the FOIA side, the Board's statute isn't totally clear on what the Board's role should be.

Director Hughes informed the meeting that she trains all DC agencies on the proper application of FOIA. She would like to see a more streamlined reporting structure, i.e., the process by which individual agencies document their FOIA compliance. Ms. Hughes said her office has no role in the reporting structure. She noted that there are extreme disconnects in the administrative application of FOIA throughout DC agencies as well as confusion over which District official bears principal responsibility for assuring consistent citywide compliance with FOIA. Ms. Hughes said he anticipates there soon will be a FOIA tracking system linked to the BEGA website where visitors can see in real time the number and status of FOIA requests processed by District agencies.

Mr. Spagnoletti asked what Mr. Mulhauser thought BEGA's role should be in the area of FOIA compliance. Mr. Mulhauser responded that BEGA should begin with an analysis of FOIA systems and practices and make recommendations based on its findings. The Board also should identify best practices and offer recommendations based on those practices.

Ms. Richards asked if there is a model District agency that handles its FOIA program well. Mr. Mulhauser responded that there was not one to single out as particularly good, although MPD has shown recent improvement.

David Zvenyach – General Counsel to the D.C. City Council

Mr. Zvenyach began by stating that an earlier witness's statement that BEGA was alienating the Council was not a fair characterization of the Council's attitude. To the contrary, he said, the Council and its staff appreciate clear guidance on what they can and cannot do, he said. He noted that Council members and the Mayor have non-delegable duties that present a challenge to these officials as they seek to avoid conflicts of interest. The Council appreciates having a neutral body to provide ethics guidance. Mr. Zvenyach also noted that the BEGA docket reflects instances and allegations of conflicts of interest and other ethical violations in all branches and at all levels of

the District government. Mr. Zvenyach declined to comment on the Universal Code of Conduct or the issue of whether lobbyists should serve on boards and commissions because these matters are or may be the subject of legislation before the Council.

Mr. Zvenyach expressed concern with the “informational asymmetry” that permits complainants to talk to the press about pending matters while prohibiting BEGA and Councilmembers from doing so. He suggested that BEGA public proposed sua sponte Advisory Opinions for public comment. He suggested using the Federal Elections Commission as a model to do so. Regarding the Constituent Services opinion, he said the feedback he received made clear that affected persons wanted an opportunity to give input before the opinion became final. With respect to FOIA, he agreed that the statute needs to be fixed and thinks that the suggestion for a FOIA helpline was a good one. He urged the Board to focus on record retention and open data. He said there is a shift going on in the open government movement toward a greater emphasis on structured data. [Structured data allows others to make automated use of information. Familiar data structures include XML, RDF and CSV.] Mr. Zvenyach said that while the Office of Open Government may lack authority to impose transparency practices on other agencies, it can serve as an example for other agencies and can use its moral authority to persuade agencies to become more open. He suggested that agencies be encouraged to post on their websites: annual reports; organizational chart; meeting minutes and meeting audio recordings; and agency records in bulk format.

Chairman Spagnoletti responded that the Board’s website is being overhauled and will incorporate many of his suggestions. The Chairman observed that informational asymmetry is common in the law enforcement arena. He added that Mr. Sobin “casts a wide net” in drafting Advisory Opinions.

Ms. Lathen asked whether the Board should offer guidance concerning the use of Constituent Services Funds. Mr. Zvenyach responded that the Board cannot do so appropriately, because the relevant enabling statute puts Constituent Services Funds within the purview of the Office of Campaign Finance.

3. Robert Becker – DC Open Government Coalition (written testimony attached)

Mr. Becker commended the Board for selecting Traci Hughes as Director of Open Government. He said that the OOG needs more resources to be effective. He said there is no way that Ms. Hughes and an IT employee can do the job alone. He thinks the OOG needs a staff attorney with experience in transparency issues and that the office needs greater visibility. He also thinks the District needs a citywide FOIA tracking system and that Ms. Hughes should be involved with its formation. Unless these things happen, the public will not have adequate access to public information. He wants the Board to stand up and say that these issues are important.

Chairman Spagnoletti thanked Mr. Becker for the Coalition’s work with the Board. He stated that there is an ongoing struggle concerning the Board’s role in the FOIA process. He said that

BEGA's statute and legislative history contains pages and pages of ethics guidance, but little on BEGA's FOIA portfolio.

Mr. Becker suggested that OOG issue advisory guidance on FOIA issues that may have weight in the D.C. Superior Court. Spagnoletti responded that such a process would require major staff power that BEGA does not have at this time. Mr. Becker responded that he fears Open Government will get lost in the other functions of the Board.

Ms. Richards asked if a study has been conducted this year on compliance with the Open Meetings Act. Mr. Becker responded the Coalition has not done so, but that ACLU interns have reviewed a number of bodies and found a lack of compliance.

Mr. Mulhauser added that the ACLU soon will issue a report stating that there has only been a small improvement in Open Meetings Act compliance since its last report.

Tree Martshink – Web Manager, D.C. City Council

Mr. Martshink suggested that monies collected for Councilmembers' Constituent Services Funds should be placed into one large pool for all Councilmembers. He said that such a pool would alleviate concerns regarding the source of monies in members' individual funds. He also suggested requiring a Tax ID number from anyone who makes a campaign contribution as an alternative to the current practice of tracking contributions from affiliated entities. Regarding FOIA, he thinks that agencies' difficulty in providing complete and timely responses to FOIA requests stems from the agencies' outdated record-keeping systems. Maintaining agency records in "structured data" formats will make it cheaper and easier to respond to FOIA requests in the future, he said. He said also that a record of FOIA requests received by an agency, and the agency's responses, should be easily available.

Mr. Spagnoletti responded that the new FOIA tracking system will resolve that issue.

Mr. Martshink thinks a FOIA appeal process – in which a requester could appeal an agency decision to BEGA – could be helpful. As an example of inconsistent data availability, he noted that the Office of Cable Television has some Comcast rate orders posted on its website, but that the years 2006-08 are available only upon request. He said that OOG is the only office that can address such inconsistencies.

Ms. Richards asked if the District has a records retention statute. Mr. Martshink responded that there are record retention statutes in certain areas. His concern is that while records are retained, they are not easily available.

Mr. Spagnoletti responded that there may not be an overarching statute on document retention.

Ms. Hughes noted that each agency is supposed to have a document retention policy and an employee charged with enforcing the policy, but many agencies have not updated their policies because they lack the resources to do so.

Mr. Martshink thinks the OOG can be a bully pulpit to encourage agencies to comply.

4. Albrette "Gigi" Ransom – Former ANC Commissioner

Ms. Ransom addressed the issue of whether lobbyists should serve on District boards and commissions. She said that owing to the influence that board and commission members wield, she would like to see what happens if lobbyists aren't allowed to serve. She also expressed concern about having developers sit on zoning boards. She also said that members of Advisory Neighborhood Commissions (ANCs) should submit financial disclosure forms because of the influence that they have in that role. She thinks that BEGA could use citizen working groups to assist with understaffing and lack of resources. She also thinks that ANC laws need to be updated regarding the issuing of grants, because now, ANCs are held responsible for how grantees use grant funds.

Ms. Richards drew a distinction between having developers sit on zoning boards and having paid lobbyists on boards and commissions. She said the issue before for the Board is whether paid lobbyists should be permitted to sit on boards and commissions. Other potential conflicts should be addressed at confirmation hearings, she said.

5. Rebecca Williams – Sunlight Foundation

Ms. Williams recommended that BEGA support the D.C. Council's open data legislation. The District has fallen behind on open data, while the federal government is moving forward, she said. She recommends looking to the President's May 9, 2013 Executive Order on open data for guidance. She would like for OOG and Office of the Chief Technology Officer (OCTO) to have authority over agencies' per open data standards and practices.

Mr. Martshink added that allowing lobbyists on boards and commissions presents a huge opportunity to pay for influence.

The Chairman noted that President Obama prohibited federally registered lobbyists from sitting on any Federal Advisory Committees. He said that before making any recommendation to the D.C. Council on this issue, the Board will look at the roles of the District's boards and commissions and at all factors bearing on the issue. Mr. Spagnoletti thanked the participants again and concluded the symposium.

The record will remain open until October 15th if anyone wants to submit further testimony.

Written Testimony Submitted –

1. Thorn Pozen

Mr. Pozen stated that the list of things that BEGA has done right is long, especially setting up the office in a short time with limited resources. Additionally, he commended BEGA for its work on constituent services issues and on its effects to make information publicly available. He thinks that BEGA needs to improve its financial disclosure and gift reporting processes. He feels that the disclosures need to be balanced with protecting legitimate privacy interests of government employees. He noted that the treatment of how gifts are received and reported varies between the legislative and executive branches and should be reconciled. He also thinks that BEGA needs to move away from the idea of banning lobbyists from sitting on boards and commissions. He feels that the city needs to be sure it has the best and most qualified people to serve in these positions and that conflicts should be addressed on a case by case basis.

2. Kirby Vining

Mr. Vining feels very strongly that lobbyists should be prohibited from serving on all DC boards and commissions because of the probability of a conflict of interest arising. A person paid as an advocate for a topic cannot be expected to take a neutral stance on that topic. Additionally, Mr.

Vining feels that an elected Attorney General would be of immense assistance in enforcing conflicts of interest.

3. Fritz Mulhauser
4. Robert Becker