

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

**MINUTES OF MEETING
NOVEMBER 1, 2018**

The District of Columbia Board of Ethics and Government Accountability held a meeting on Thursday, November 1, 2018, at 11:30 a.m. at One Judiciary Square, 441 Fourth Street, N.W., Room 540 South, Washington, D.C. 20001. The Board's Chairperson Tameka Collier was present, as well as Board Members Norma Hutcheson, Shomari Wade and Darrin Sobin. Also present was Senior Attorney Advisor Rochelle Ford.

The full discussion and the meeting is on audio file, and may be found at: <https://www.open-dc.gov/meeting/board-ethics-and-government-accountability-monthly-meeting-7>

Meeting Minutes

I. Call to Order

Chairperson Collier called the meeting to order.

II. Ascertainment of Quorum

Chairperson Collier established that a quorum was present.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the meeting agenda. The Board approve the following meeting minutes.

1. October 4, 2018 Meeting

IV. Report by the Director of Open Government

Good morning Chairperson Collier and Members of the Board. I am Niquelle Allen, Director of the Office of Open Government (OOG), and I am pleased to present this monthly report on the activities of the OOG. 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. Resolution of FOIA Complaint; Informal OMA/FOIA Advice:

(1) On October 30, 2018, the OOG issued an Advisory Opinion regarding the Freedom of Information Act (OOG-0002_8.23.18_FOIA). The OOG advised that FOIA does not support an identification requirement for FOIA requests. An agency should not require a requester to present valid identification to submit a first-party FOIA request. An agency should also not require a requester to present valid identification and to obtain the first-party record. This is not a case of first impression with the OOG. The frequency of this issue arising indicates

the need for either legislation or regulations to address the matter. The OOG suggested models for such legislation or regulations in the Advisory Opinion.

(2) Since October's Board meeting, the OOG responses for informal and technical FOIA and Open Meetings Act (OMA) responses are as follows: (1) 6 FOIA and 4 OMA substantive responses; and 5 responses to OMA requests for technical assistance.

B. OMA/FOIA Audits:

The OOG plans to complete two audits of public bodies' DC.GOV websites for compliance with the OMA and FOIA. The FOIA audit will consist of a review of the DC.GOV FOIA tab for the information that the District government is supposed to proactively release under the FOIA statute. The OMA audit will review DC.GOV for information regarding public meetings. This audit will consist of a review for information such as notices, agendas, and meeting minutes. The scope of the audits is to determine whether the information posted on DC.gov is current up to FY2018 (for example, in the case of a Board, we will be examining whether the Board Administrator has posted meeting minutes and agendas through September 30, 2018). The OOG plans to provide notice of the audit to the Mayor and independent agencies. The letter will provide the scope of the audit and when results will be published.

C. Fiscal Year 2020 Budget:

The OOG along with the Office of Government Ethics is working on the fiscal year 2020 Budget (FY20). OOG is seeking three budget enhancements. First, the OOG is seeking a FY20 budget enhancement to add an attorney to the OOG staff. The additional attorney is requested because of the anticipated increase in workload due to compliance audit results, the provision of advice to FOIA appellants, and an increased training load. Moreover, the law requires FOIA officers to have eight (8) hours of training upon appointment. OOG anticipates the demand for training to increase as new FOIA officers are continually appointed. Second, the OOG is seeking a FY20 budget enhancement to update the hearing room audio/visual (A/V) equipment, to wire the hearing room when it is moved, and to provide for maintenance of the A/V equipment. Lastly, OOG is seeking a FY20 budget enhancement to produce a training course that may be accessed online for DC employees to receive training credit.

D. Training:

(1) On October 4, 2018, the OOG conducted an OMA and FOIA Training during Ethics Day. The OOG has created new slides for the OMA and FOIA training, which are available on open-dc.gov.

(2) On October 18, 2018, the OOG conducted a FOIA training for the Office of Unified Communications.

(3) On October 30, 2018, the OOG conducted a FOIA training for the District of Columbia Sentencing Commission.

E. Rulemaking:

The Office of Open Government is working on new and revised regulations given the recent changes in the law. As you know, the new law that permits the Board to review certain Advisory Opinions issued by the OOG. The OOG will continue the drafting process and update the Board as we complete the project. The OOG provided the Board with draft revisions to 3 DCMR § 10406, titled “Advisory Opinions,” in October. The OOG has provided draft revision to 3 DCMR § 10408, titled “Public Body Request for Advisory Opinions,” this month. This section was revised to clarify the process for submitting a request for an advisory opinion and to set forth the appeals process for these opinions.

This concludes the OOG Director’s report for November 1, 2018.

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 may not reflect matters that we are waiting to enter into the new case management system.

	Current	Last month	June 2018
Investigations Opened:	0	2	4
Investigations Closed:	4	4	4
Investigations Currently Open:	35	37	39
Investigations Stayed (Inactive):	7	10	8

Stayed (Inactive) Cases		
Nature of Stay	Number	Date Rec
Maryland Court (fugitive)	1	Jan. 2016
DC Superior Court (from OEA)	1	Feb. 2017
OIG	6	Jan. 2016
OAG (pending civil False Claims Act complaint)	2	Sept. 2016
Total Stayed Cases	10	

- b. Publication and Reporting Obligations

We completed our performance report for the 4th Quarter of FY18, as well as the Quarterly Complaint Report for the last quarter of FY 18. Both reports are in the Dropbox.

- c. Trainings/Outreach –

- i. Attended by staff – None, other than attendance at Ethics Day presentations conducted by both BEGA staff as well as third parties.
- ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 6 trainings, not including our Ethics Day event which was held on October 4 and consisted of virtually all the training programs we offer. The six other trainings consisted of 2 new employee orientations, our Monthly Ethics Training, 3 Hatch Act trainings (just in time for the general election), and a LEAP presentation. This month, we will resume the regular trainings held in conjunction with the Mayor's Office of Talent and Appointments for new Board and Commission appointees.

iii. Newsletter –

We relaunched OGE's monthly newsletter, which was prepared by Attorney Sonya King with assistance from Waddah Kitab. You will note that it is in a more user-friendly html format, and we are continuing to work on securing permission from EOM to have OCTO directly distribute the newsletter to all District government employees via email.

d. Advisory Opinions/Advice –

Informal Advice: approximately 72, which is higher than the 60 reported at the last meeting.

Formal Advice requests: We received one formal advice request since the Board's last meeting. That request is for post-employment advice, and whether a former employee is permitted to serve as an expert witness if it is determined that the employee participated personally and substantially in a particular matter while they were employed by the District.

e. Ethics Legislation/Comprehensive Code of Conduct

The Council's Committee on the Judiciary and Public Safety reported out Bill 22-0107, the "Campaign Finance Reform Amendment Act of 2018". Although the bill primarily deals with campaign finance matters, as it pertains to BEGA, it clarifies that all members of boards and commissions who are confirmed by the Council must undergo ethics training within 90 days of commencing service, and that employees who are designated under the Local Hatch Act to engage in partisan political fundraising may do so only while on annual or unpaid leave. Further, the bill clarifies the reporting obligations of those employees and BEGA. First reading on the bill would normally be in November. Legislation that does not have two readings before the end of this Council Period will lapse and have to be reintroduced.

f. Rulemaking

As we informed the Board at our last meeting, we have been contemplating rules to further flesh out the procedures and standards to be applied to both FDS and Lobbyist waivers and appeals, and to ensure that our lobbying rules are consistent with the changes the Council made in the recent Budget Support Act. We have a

draft prepared that addresses waivers but have not yet finalized rules that address the lobbyist changes.

g. Budget:

Waddah and I have spent a good deal of time on the data migration project to ensure that the data stored in ProLaw is successfully uploaded into the new system. Waddah is planning to upload the data related to all matters that are currently active or stayed from ProLaw into our CMTS test system later today, and if all goes well, we hope to complete the migration of that data into our CMTS live system shortly thereafter.

As part of the data migration project, we have been painstakingly reclassifying some cases that are currently classified as either “open” or “closed” in ProLaw into a new status being created in CMTS called “Closed – Pending Collection.” We have completed our investigative work and imposed fines against the Respondents in all these matters, but we have not yet successfully collected the full amount of those fines. As a result of this reclassification effort, we have identified a handful of individuals who have returned to District employment and still owe us money for previously assessed fines, and we are working with OPRS to collect those outstanding fines via garnishment of their biweekly paychecks. Once that we complete that effort for the rest of the cases that are “closed” in ProLaw, Waddah will conduct the same two-step data migration process for the “closed” cases that is currently underway for the “open” and “pending” cases.

As Director Allen mentioned during her report, OOG and OGE are working together on the FY20 budget. If the Board agrees with our analysis, OGE plans to request five budget enhancements, two of which are for the benefit of the entire agency. First, OGE plans to request an enhancement to fund the agency’s relocation to new office space in accordance with the recommendations made by DGS’s consultant this past January. The consultant’s assessment of our space needs, as well as its notes regarding its analysis and the likely budgetary impact of such a move, were uploaded to the DropBox for your review.

Second, OGE plans to request an enhancement to cover the moving expenses that would be incurred to physically move BEGA’s furniture, equipment, supplies, etc. to the new space and ensure that our phone lines, data lines, network, etc. are operational when we get there from Day One.

Third, OGE plans to request an enhancement that would fully fund the net impact of the position description changes and staff salary increases we enacted during FY18, as well as up to two similar changes I would like to enact in FY19. Unfortunately, I estimate that our baseline personal services budget for FY20 falls about \$33,000 short of fully funding those changes.

Fourth, OGE plans to request an enhancement to cover the annual maintenance fees for CMTS, which were not known or taken into consideration when the budget office compiled our baseline FY20 budget.

Lastly, OGE plans to request an enhance to fund a second auditor position beginning in FY20, to provide us with a more robust and effective auditing operation by essentially doubling our auditing bandwidth for both the Lobbyist and FDS programs. I would seek to fill that position at a Grade 12, Step 1 level, which would cost approximately \$90,000 including salary and fringe benefits. Further justification for this proposed addition is discussed later in my report.

h. Staffing –

We have two permanent positions that are currently vacant: The third Investigator position and our Compliance Specialist position. Brian, Sonya and I have interviewed 5 of the top 7 candidates, and we are interviewing the last two candidates this afternoon with an eye toward making a selection tomorrow or Monday. The Compliance Specialist vacancy was posted on September 25 for a period of ten days, and we received 68 applications for that position, many of whom appeared to be highly qualified. However, for reasons that have not been clearly explained to me, DCHR’s “system” apparently failed to grade the candidates’ qualifications, which required them to repost the position. I asked DCHR if I would be able to consider qualified candidates who applied for the position during the first posting, but who might not reapply for the second posting, and was told that I could not. The last time I checked last Friday, we had only received 28 applications through the second posting, which seems like a dramatic drop-off from the first posting and concerns me. However, I will engage DCHR in further discussions regarding the possibility of considering candidates from the first pool of applicants and I may reach out to the Board for assistance in that effort.

i. Litigation

Status of pending cases.

- Gerren Price – (CA No. 16-AA-1230), This case was submitted on October 24, 2018, and we are now awaiting the Court’s decision.

- Larry Hicks – (2017 CA 008091). This is an enforcement (collection) action filed to reduce the Board’s \$20,000 fine imposed on Mr. Hicks to judgment. The Board imposed the fine in February of 2014 after a contested hearing. OAG recently filed a praecipe with the Court informing it of Mr. Hicks’s failure to file an opposition to the OAG summary judgment motion.

- Rahsaan French vs. BEGA, D.C. Superior Court (C.A. 2018 CA 002306 P(MPA)). Employee is appealing the imposition of a \$600 ministerial fine. The pro se case was filed on April 6. There has been no change in the status of this case since the last meeting. The next status hearing is set for November 30, 2018 at 2 pm. Both the District and Mr. French have been provided with briefing dates.

j. Lobbyist/Financial Disclosure Matters

There are currently 195 FDS non-filers remaining, 57 of which are ANCs. We sent the first round of PFDS fine letters on September 21, 2018. We continue to receive fine waiver requests.

k. Financial Disclosure Waiver Requests –

Pursuant to D.C. Official Code § 1-1162.21(a)(3) anyone adversely affected by a civil penalty imposed under Section 221 of the Ethics Act may appeal said penalty to the Ethics Board.

- i. #1715-001 – Alicia Lewis – This matter was tabled last month to allow Ms. Lewis time to file her PFDS form. As of today, she has not filed her form. Ms. Lewis appeals her fine due to financial hardship; she admits to ignoring our filing notifications and claims that she assumed that she did not need to file as she had separated from District employment. Although we are sympathetic to Ms. Lewis’ situation and were inclined to abstain from opposing it, unlike the others on this list who filed their FDS statements contemporaneously with their penalty waiver requests, she still has not brought herself into FDS filing compliance. Accordingly, OGE opposes this request. **The Board unanimously voted to deny the waiver request.**
- ii. #19-0002-R - James Armstrong - Mr. Armstrong is former DCPS employee. He claims that he had a change of address in February and did not receive our non-compliance correspondence. Mr. Armstrong timely filed his last two PFDS forms. OGE does not oppose this request. **The Board unanimously voted to grant the waiver request.**
- iii. #19-0001-R - Joseph B. Tulman – Mr. Tulman is a former UDC law professor. He claims that UDC Law faculty were not designated in the past, that he was confused by his designation and ignored our previous correspondence because he hadn’t been required to file before. He claims he has not been present at or worked at the law school since 2016 as he was on sabbatical and then ultimately left the school. OGE does not oppose this request. **The Board unanimously voted to grant the waiver request.**
- iv. #19-0003-R - Julianne Vinson – Ms. Vinson is a former DCPS employee. She claims she only received the fine notice and not the earlier

correspondence, and that she filed timely in the past. Our records indicate that she filed her 2016 form on May 15, 2018, and that she filed her 2015 form on May 26, 2016. OGE does not oppose this request. **The Board unanimously voted to grant the waiver request.**

- v. #19-0004-R - Jill Forbes – Ms. Forbes is a former CFSA employee. She claims that she only received the fine notice and not the earlier correspondence and that she was not informed upon her departure from District employment that she had to file a final PFDS form; she also notes that she had a change of address as she recently moved to Massachusetts. OGE opposes this request. **The Board unanimously voted to table this matter until the next meeting.**

a. Lobbyists

Lobbyist Program:

1. Testing out the new electronic framework for the Lobbyist program. Last week, Mark McDermott from OCTO sent me a summary of the feedback they received from the volunteer Lobbyist beta testers and OGE staff as well as OCTO's actions to incorporate it into their development efforts. I'm still reviewing that feedback and considering a Change Control request that would authorize OCTO to start the process of pushing the application Live, including scanning the production servers for security vulnerabilities. If all goes well, OCTO hopes to have the application ready to be released into production by December 1.
2. We are making good progress in the collection of the registration reimbursement owed to BEGA by nonprofit organizations who did not qualify for the \$200 credit. We sent second notices to the organization that failed to respond on October 3, 2018. So far, we have received \$8,400 out of \$10,000. Our auditor has added this procedure to the BEGA audit procedures to be performed immediately after every registration period, so that he can follow up with violators immediately to collect our funds.
3. To more proactively identify lobbyists who may be working in DC without proper registration, our auditor has recommended that we request sign-in sheets and Outlook calendars from certain public officials. These sign-in sheets and calendar entries will be compared with the lobbyist registration listings, so that persons suspected of lobbying without proper registration can be contacted immediately. Like the profit/non-profit undertaking, this project will help in strengthening lobbying enforcement, and may further enhance our budget with a wider pool of registrants.

k. Non-Confidential Investigations

1. #1634-001, *In re*: R. Wilson - We are finalizing a Negotiated Disposition to resolve Mrs. Wilson's failure to file fully completed PFDS forms that truly and accurately reflected her (and her spouse's) business interests, activities, and positions with outside organizations for calendar years 2014, 2015 and 2016. The ND will establish a payment plan for the \$2,750 ministerial fine that we imposed against Mrs. Wilson for these violations.
2. #1031-016, *In re* A. Wilson and #1031-017, *In re* J. Niles. Pursuant to D.C. Official Code § 1-1162.12 (a), we conducted formal investigations into whether the actions of former-Chancellor Antwan Wilson and former-Deputy Mayor Jenifer Niles in connection with the Chancellor's daughter's mid-year transfer to an out-of-boundary school during the 2017-2018 school year violated the Code of Conduct.
3. #1101-003, *In re*: J. Evans – This is a formal investigation into allegations that Councilmember Evans violated the Council Code of Conduct. We have stayed this matter.

VI. Opportunity for Public Comment – Michael Sindrum provided public comment.

VII. 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

- k. Discussion of any remaining public items

IX. Adjournment