

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

MEETING MINUTES – November 14, 2024

The District of Columbia Board of Ethics and Government Accountability held a hybrid meeting at the Board of Ethics and Government Accountability, 1030 15th Street, NW, Suite 700 West, and virtually on October 10, 2024, at 11 a.m. Chairperson Norma Hutcheson and Board members Charles Nottingham, Felice Smith, Darrin Sobin, and Melissa Tucker participated in the meeting.

Members of the public were welcome to attend, and a recording of the meeting will be made available on open-dc.gov and BEGA’s YouTube channel.

I. Call to Order

The meeting was called to order at 11:02 a.m.

II. Ascertainment of Quorum

Four Board members - Chairperson Hutcheson and Board Members Nottingham, Sobin, and Tucker were present at the start of the meeting.

III. Adoption of the Agenda/Approval of Minutes

The members present approved the agenda and the minutes of the October 2024 meeting.

IV. Report by the Director of Open Government

Good morning, Chairperson Hutcheson, and Members of the Board. I am Louis Neal, Chief Counsel for the Office of Open Government (“OOG”) and I am pleased to present this report on the activities of the Office of Open Government, on behalf of Director Niquelle Allen. Since the last Board meeting, OOG has continued to fulfill its mission of ensuring that all persons receive full and complete information regarding the affairs of the District of Columbia 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 Director of Open Government has not issued an advisory opinion since the Board’s last meeting.

2. Informal Advice

Since the last Board meeting, OOG has responded informally, via e-mail, telephone, or teleconference to requests for assistance as follows:

12 requests for OMA advice;
4 requests for FOIA advice; and
8 requests for technical assistance with open-dc.gov.

B. Meeting Monitoring

OOG's staff attends public bodies' meetings, in person and remotely, to ensure compliance with the OMA. They also inspect public bodies' websites and OOG's Central Meeting Calendar for public meeting notices and records. OOG attorneys provide legal advice on OMA compliance and take corrective action if necessary.

Since the last Board meeting, OOG's legal staff attended 22 public body meetings. As a result of the monitoring, 3 corrective measures were communicated. The public bodies failed to do the following: (1) post detailed agenda; (2) record open sessions; and (3) post meeting minutes timely.

C. Training/Outreach

1. Case Management Tracking System Demonstration

On October 8, 2024, representatives of WingSwept, LLC facilitated introductory training on how to use their Case Management Tracking System (CMTS) software program. The presenters demonstrated how to navigate through the system, explained features of the Tracking System step-by-step, and responded to questions on specific capabilities of the System relating to the workflow of the office. I, along with Director Niquelle Allen, Attorney Advisor Anthony J Scerbo, Attorney Advisor Brandon Lewis, Attorney Advisor Joan Lelma, and Paralegal Kimberly Brown attended the training.

2. Ethics Week 2024 – Sessions Attended by OOG

a. Global to Local: Lessons for Open Government & Civic Engagement for DC

On October 15, 2024, Director Allen participated as a panelist at “Global to Local: Lessons for Open Government & Civic Engagement for DC” hosted by the federal General Services Administration (GSA). The event was held in person at the Martin Luther King, Jr., Public Library and explored how international and national open government efforts relate to local communities, such as Washington, D.C. Kathy Patterson, Auditor for the District of Columbia, served as the keynote speaker. The Director, along with Attorney Scerbo and Attorney Lewis, attended the session.

b. Introduction and Opening Remarks from Director

On October 15, 2024, OGE Director Ashley Cooks provided opening remarks and a brief overview of the Office of Government Ethics. I, along with Attorney Scerbo, Attorney Lewis, and Attorney Lelma attended the session.

c. Can They Do That?

On October 15, 2024, BEGA General Counsel Rashee Raj, Senior Assistant to the Attorney General Dave Rosenthal, Deputy Inspector General for External Affairs Matt Wilcoxson, and Deputy Director of the Mayor's Office of Legal Counsel Vanessa Natelle served as panelists for the session "Can They Do That." The panel discussion featured real life ethics scenarios discussed through a DC Code of Conduct lens. Director Allen, along with Attorney Scerbo, and Attorney Lewis attended the session.

d. Local Hatch Act Game Show

On October 15, 2024, Senior Counsel to the BEGA Board Lynn Tran facilitated an interactive game show providing ethics questions and answers for participants to compete. Director Allen, along with Attorney Lelma, attended the session.

e. Financial Disclosure Workshop

On October 15, 2024, OGE Attorney Advisor Franshun Vann and OGE Program Specialist Stanley Kosick presented "Financial Disclosure Workshop." The training provided an overview of BEGA's Financial Disclosure program, explained why Financial Disclosure Statements are collected and how to file. Director Allen, along with Attorney Scerbo, and Attorney Lelma attended the session.

f. Common Ethics Violations: Learn Them and Avoid Them

On October 16, 2024, OGE Supervisory Investigator Ronald Cook and Investigator Ileana Corrales provided an overview of BEGA's investigative process, the lifecycle of an investigation, and investigative techniques. Paralegal Brown attended the session.

g. Recusal Workshop: When and How

On October 16, 2024, OGE's Supervisory Attorney Asia Stewart-Mitchell facilitated an interactive workshop reviewing what recusal means, the circumstances when employees should recuse themselves, how to write a recusal, and with whom a recusal should be shared. Paralegal Brown attended the session.

h. Ask BEGA

On October 16, 2024, OGE Attorney Advisors facilitated a lively Q&A session answering pre-submitted anonymous ethics questions. Attorney Scerbo and Paralegal Brown attended the session.

i. Being Ethical is Harder Than You Think!

On October 16, 2024, Owner of 21st Century Learning and Consulting, Michael Bret Hood presented an exercise on how the mind can inadvertently promote unethical behavior and identified how the transformation occurs within the sub-conscious. Director Allen, along with Attorney Lelma, and Paralegal Brown attended the session.

j. FOIA and OMA Introduction

On October 17, 2024, Director Allen opened a full day of FOIA and Open Meetings courses and discussed electronic meetings and artificial intelligence with an introduction to the Office of Open Government and an update on the Office's activities. I along with Attorney Scerbo, Attorney Lewis, Attorney Lelma, and Paralegal Brown attended the Session.

k. Overview of DC FOIA

On October 17, 2024, Attorney Scerbo presented "Overview of DC FOIA." The session provided an interactive discussion of the District's Freedom of Information Act. I, along with Director Allen, Attorney Lewis, Attorney Lelma, and Paralegal Brown attended the Session.

l. Newcomers Guide to the Open Meetings Act

On October 17, 2024, Attorney Lewis presented "Newcomer's Guide to the Open Meetings Act." This presentation outlined the requirements of OMA. I, along with Director Allen, Attorney Scerbo, Attorney Lelma, and Paralegal Brown attended the session.

m. Parliamentary Procedure

On October 17, 2024, former OOG Trial Attorney Nicholas Weil provided an overview of parliamentary procedure and highlighted the District of Columbia Robert's Rules of Order Training Portal. I along with Director Allen, Attorney Scerbo, Attorney Lewis, Attorney Lelma, and Paralegal Brown attended the Session.

n. Overview of Recent OMA and FOIA Advisory Opinions and Advice

On October 17, 2024, I presented an overview of recent OMA and FOIA Advisory Opinions. Director Allen, Attorney Scerbo, Attorney Lewis, Attorney Lelma, and Paralegal Brown attended the Session.

o. Fireside Chat: Journalism and Ethics

On October 18, 2024, Director Allen served as a panelist on the discussion of open government and ethics with local journalists and Director Cooks. The Session was moderated by Supervisory Attorney Stewart-Mitchell. I,

along with Attorney Scerbo, Attorney Lelma, and Paralegal Brown attended the Session.

p. Outside Employment Overview

On October 18, 2024, OGE Attorney Advisor Maurice Echols presented “Outside Employment Overview.” The course highlighted the District’s restrictions on outside employment and provided tips on how to navigate outside employment ethically. Director Allen, along with Attorney Lelma, and Paralegal Brown attended the Session.

q. Legal Ethics for Government Attorneys

On October 18, 2024, Senior Legal Ethics Counsel at the District of Columbia Bar Nakia L. Matthews, BEGA General Counsel Raj, and Supervisory Attorney Stewart-Mitchell moderated “Legal Ethics for Government Attorneys.” This course provided an overview of the legal ethics rules for government attorneys. Attorney Lelma attended the training.

3. Finding the Law of the District of Columbia

On October 22, 2024, Senior Assistant Attorney General James Mckay from the Office of the Attorney General presented “Finding the Law of the District of Columbia.” The training covered legislative enactments and resolutions by the Council and Congress; judicial decisions and court rulings, both local and federal; and executive actions, both District and federal, including agency decisions. I, along with Director Allen, Attorney Scerbo, Attorney Lewis, Attorney Lelma, and Paralegal Brown attended the Session.

4. 1st Annual DC Bar Foundation’s 5k Walk for Justice

On October 24, 2024, Attorney Scerbo participated in the 1st Annual DC Bar Foundation’s 5k Walk for Justice.

5. Certification Trainings for District of Columbia Records Managers

On November 7, 2024, Attorney Lelma completed the six-part “Certification Training for District of Columbia Records Managers” developed by the Training Unit of the DC Office of Public Records and Archives.

6. Mayor's Office of Veterans Affairs Veteran’s Day Reception

On November 7, 2024, Attorney Scerbo attended the Mayor's Office of Veterans Affairs Veteran’s Day reception and photo with other District government veterans and Mayor Bowser at the John A. Wilson Building.

D. Litigation and Legislative Update

1. Litigation

a. DC Open Government Coalition v. District (Case No. 2023-CAB-007251 (D.C. Super. Ct.))

Director Allen has previously reported on this case which involves DCOGC's suit seeking an accounting of the backlog of public-records requests submitted through the FOIA Xpress Public Access Link.

The Plaintiff asked the court to set a briefing schedule for motions for summary judgment. The Government opposed this on the basis that no new issues had been raised since the last time the parties had briefed the issue. On September 18, 2024, the Court ordered the plaintiff to provide a supplemental brief explaining why new motions for summary judgment are necessary.

The Plaintiff filed its supplemental brief as well as a motion for leave to amend its complaint on October 2, 2024. The District responded with an Opposition to Plaintiff's Motion for Leave to Amend the Complaint on October 23, 2024.

In its motion, the District argues that the parties' cross-motions for summary judgment are ripe for determination and that the plaintiff is seeking to add new facts and claims based on two additional FOIA requests that post-date the filing of its Complaint. The District contends that the plaintiff should have sought leave to *supplement*, rather than amend its Complaint, but that regardless, the plaintiff's belated motion should be denied because it unduly prejudices the District as the Plaintiff's Complaint is moot.

The Plaintiff filed a reply to the defendant's opposition to plaintiff's motion for leave to file first amended complaint on October 30, 2024. Plaintiff argues that the previous summary judgment briefing primarily concerned a spreadsheet titled as Defendant's Exhibit 13 and that the District subsequently introduced additional Exhibits 15-17 that the plaintiff had no opportunity to respond to.

The next status hearing is scheduled for November 22, 2024, at 10:30 a.m. Both the District's motion and the plaintiff's reply have been added in DropBox. OOG Staff will continue to monitor.

2. Legislation

a. DC Water Critical Infrastructure Freedom of Information Clarification Amendment Act of 2024

As Director Allen reported last month, the Council passed the “DC Water Critical Infrastructure Freedom of Information Clarification Amendment Act of 2024,” unanimously, and the bill was signed by the Mayor on October 18, 2024. It was returned on October 21, 2024, and enacted with Act Number A25-0573. The Bill was published on October 25, 2024, in the DC Register Vol 71, Page 012816, and transmitted to Congress on the same day, with a Projected Law Date of December 21, 2024. To reiterate, with the temporary bill in effect, any DC FOIA advice issued is covered by the temporary legislation in effect and will be permanent once the permanent act becomes law.

b. Review of Agency Action Clarification Amendment Acts

At the Tuesday, November 12, 2024, legislative meeting, during “Reading And Vote On Emergency Legislation, “the Council passed both B25-1023, the “Review of Agency Action Clarification Temporary Amendment Act of 2024” and PR25-1056, the “Review of Agency Action Clarification Emergency Declaration Resolution of 2024.” These temporary and emergency measures “amend...the District of Columbia Administrative Procedure Act to codify agency deference and clarify that a reviewing court or tribunal shall defer to an agency’s reasonable interpretation of a statute or regulation it administers so long as that interpretation is not plainly wrong, or inconsistent with the statutory or regulatory language or legislature’s intent.” These measures are in response to the recent Supreme Court Chevron decision, due to the substantial similarity between the District’s Administrative Procedure Act and the parallel federal law. Both measures and related documents have been added to DropBox.

c. Rulemaking Public Comment Modernization Amendment Act of 2024

The Committee on Executive Administration and Labor, to which B25-0790, the “Rulemaking Public Comment Modernization Amendment Act of 2024” was referred, reported favorably and recommended approval by the full Council. On Tuesday, November 12, 2024, The Council voted to pass this legislation, which requires that the Office of Documents and Administrative Issuances accept submission of comments in electronic form for all documents published in the District of Columbia Register which require a public comment period. The Bill and related documents are in DropBox.

E. Administrative Matters

1. FY26 Budget Kickoff

On October 10, 2024, Director Allen, Director Cooks, Chief of Staff Mitchell, and Administrative Officer Dow attended the kickoff meeting for formulating the FY26 budget hosted by the Office of the City Administrator. The meeting included an update on budget forecasts and instructions on how to make budget

requests. BEGA will meet with the Office of the City Administrator on November 20, 2024, regarding its FY26 budget.

2. New BEGA Records Officer –Joan Lelma, Esq.

Attorney Advisor Joan Lelma is now serving as BEGA’s Records Officer and is responsible for BEGA’s record retention schedule and coordinating with the Office of Public Records on behalf of the agency.

This concludes the Office of Open Government’s November 14, 2024, report. I am happy to answer any questions the Board may have.

Board Member Felice Smith joined the meeting during Chief Counsel Neal’s presentation.

V. Report by the Director of Government Ethics

Good morning, Chairperson Hutcheson and Members of the Board. I am Ashley Cooks, the Director of Government Ethics. I am pleased to present this report on the activities of the Office of Government Ethics (“OGE”).

A. Update on Status of OGE Operations

The information reported today regarding OGE’s cases will not reflect any status changes that may occur because of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	60
Open - Negotiations	0
Open - Show Cause Hearing	1
Grand Total	61

OPEN "UNDOCKETED MATTERS"	
Grand Total	5

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	35
Stayed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	0
Stayed - OIG Investigation	5
Stayed - US District Court Case	4
Grand Total	45

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	36
Open	259

Grand Total	295
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	Current	Last month	September
Investigations Open	61	60	63
Investigations Stayed	10	11	10

The number of open preliminary and formal investigations includes 11 new matters. The investigative team resolved 10 investigations since the Board last met. This total does not reflect the number of complaints that were dismissed for a lack of jurisdiction.

Earlier this week, OGE published its Quarterly Complaint Report and Ethics Heat map for the fourth quarter of fiscal year 2024. A copy was also placed in the DropBox.

B. Trainings/Outreach

1. Professional Development Trainings Attended by Staff

Program Support Assistant Naquita Titus attended Introduction to DC Gov Contracting as well as the orientation to become a Notary Public for the agency. Program Coordinator Stan Kosick took a course titled Statistics and Probability. Over 50% of OGE employees have completed the Annual Mandatory Cybersecurity Training Course as of this week. The annual refresher course includes information about uncovering the tactics cybercriminals will try to use against DC Government employees and agencies. All employees and contractors must take the training by Tuesday, December 31, 2024.

2. Conducted by staff

Since the last Board meeting, OGE conducted eight trainings. These included two New Employee Orientation Ethics Trainings, November Monthly Ethics and Monthly Hatch Act Trainings, the October Quarterly Board & Commissions Ethics Training, 2 ethics trainings for the Office of Neighborhood Safety and Engagement, and a customized scenario-based training for the Department of Disability Services. The office also offered 16 training courses during Ethics Week.

During the month of October, 131 employees completed ethics training using PeopleSoft and 6 employees were added to the Learning Management System.

3. Outreach

October marked the end of another successful Ethics Week, our annual conference which took place October 15-18th. This year’s theme was “Empowered by Ethics,” and the courses were designed to provide attendees with knowledge and ways to apply ethics and open government rules. The first two days of the conference took place at our office and had 129 attendees. The remaining days were virtual and

attracted over 1,090 attendees. We offered new courses such as Common Ethics Violations: Learn Them and Avoid Them, a Recusal Workshop, and a Fireside Chat: Journalism and Ethics, as well as traditional courses such as Parliamentary Procedure and Being Ethical is Harder Than You Think. I'd like to thank the Ethics Week Committee Chair, Asia Stewart-Mitchell, for her hard work and the Committee for making this Ethics Week 2024 a success.

Lastly, OGE published the fifth issue of its bi-monthly newsletter, Ethically Speaking, on October 23rd. A copy was placed in the Dropbox.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 43 ethics inquiries, which is 11 more than the 32 reported at the last Board meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

2. Formal Advisory Opinions

OGE has not issued any advisory opinions this month. OGE has two advisory opinions in the works with hopes that they can be published before the end of the year. One opinion is about Widely Attended Gatherings and the other is an advisory opinion on Lobbying. OGE is also in the process of editing the Advisory Neighborhood Commissioner Sign-on Letters advisory opinion.

D. Legislation and Rulemaking Updates

1. Financial Disclosure Rulemaking

On November 1, BEGA's most recent financial disclosure rulemaking was published in the D.C. Register for a 30-day comment period. This financial disclosure rulemaking addresses technical and minor substantive changes to the financial disclosure regulations. This rulemaking will provide clarity for regulations that are ambiguous and corrects language so that it aligns with the Ethics Act and Chapter 18 of the District Personnel Regulations. The comment period ends Monday, December 2, 2024.

E. OGE Administrative Matters

1. Vacancies

OGE is in the process of posting its Attorney Advisor and Human Resources Specialist vacancy as well as finalizing the position description for a Legal Fellow.

2. FY26 Budget

OGE and OOG are preparing the agency's FY26 budget submission. BEGA received its MARC, which does not include any reductions. However, BEGA will face shortfalls in its FY26 budget due to increases in fringe benefits and step increases in salaries, as well as expenses such as IT assessment fees and Human Resources services which are not assessed to subordinate agencies. We plan to request budget enhancements for additional staff and funding to the non-personnel services fund. Our budget presentation before the Executive Office of the Mayor is scheduled for November 20th.

F. Financial Disclosure Statement (FDS)

Pursuant to D.C. Official Code §§ 1-1162.24 and 1-1162.25, public officials and certain government employees must file a financial disclosure statement as a means of transparency and to prevent engaging in conduct that violates the financial conflicts of interest statute. BEGA is responsible for ensuring that employees and public officials, who meet the statutory requirement, file their annual financial disclosure statement.

The FDS team is in the final stages of enforcement measures for those Filers who did not submit their statement in a timely manner. The Office of Pay and Retirement Services has garnished the \$300 fine from delinquent Filers and fine notices were sent to former employees.

Lastly, Councilmembers' next biannual filings are due on November 15th. Reminder letters were delivered to Councilmembers and their staff on October 15, 2024, October 22, October 29, and November 7.

G. Lobbying Registration and Reporting (LRR)

Pursuant to D.C. Official Code § 1-1162.27(a), a person who receives compensation or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying shall register with the Director of Government Ethics and pay the required registration fee. According to D.C. Official Code § 1-1162.30, each registrant shall file a quarterly report concerning the registrant's lobbying activities during the previous quarter.

On September 13th, the LRR Team sent 895 registrants and clients notice that the 2024 Quarter 3 Activity Reports are due October 15th. The notice included the new fee and late penalty fee structures. To date there are 11 Registrants who have not filed their Q3 Activity Reports. Auditor Courtney Walker has completed audits that are currently being reviewed by the LRR team.

H. Public Investigations

1. 24-0009-F In re Aretha Chapman – This is a formal investigation based on allegations that the Respondent violated the outside employment restrictions by

working 5 or 6 hours per day but claiming 8 or 9 hours on her timesheet; violated the government property restrictions by obtaining confidential information under false pretenses; and violated the prohibition on using public office for private gain by using her status as DC Public School employee to obtain confidential information. A hearing is scheduled for today at 2:00 pm

2. 24-0010-F In re Marcellus Willis – This is a formal investigation based on a complaint that the Respondent, former employee of the University of the District of Columbia, used a government purchase card to make unauthorized purchases. Respondent worked at UDC for five years and was responsible for handling procurement for the University. The Board approved a Notice of Violation which contains assertions that Respondent violated DPM § 1800.3(g) by using public office for private gain and DPM § 1808.1 by failing to protect and conserve government property. A public hearing is scheduled for March 6-7, 2025.

Thank you. This concludes the Office of Government Ethics' November 14, 2024, report.

Board Member Sobin asked about the requests for additional staff in the next budget cycle. Director Cooks explained that OGE was requesting an additional auditor to allow BEGA to audit all financial disclosure filings. With current staff, BEGA can only conduct an audit of a sample of the filings. Chief Counsel Neal explained that OOG was requesting a trial attorney since the office is authorized to file litigation to enforce the Open Meetings Act and the office used the trial attorney FTE to hire non-trial attorney. Chief Counsel Neal and Attorney Scerbo noted the office was taking on OMA compliance in the educational cluster which significantly increases the demand of the office and that a new trial attorney would also handle the regular business of the office.

Both Board Members Tucker and Sobin noted the successful ethics week presentations.

Chairperson Hutcheson noted that Board Member Smith had joined the meeting during the presentations.

VI. Public Comment – if received

There were no public comments.

VII. Executive Session (nonpublic)

The Board voted unanimously to enter into Executive Session to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), 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 meeting resumed at 12:50 p.m.

The Board voted to make public **25-0002-F In re Trayon White**.

The Board approved a negotiated disposition in **24-0009-F In re Aretha Chapman**. Since the negotiated disposition resolves this matter, the adversarial hearing scheduled for 2 pm is now cancelled.

The Board dismissed **24-0013-F In re Bridgette Crowell**.

The Board will next meet on December 5, 2024, at 12:00 p.m.

The meeting adjourned at 12:51.

DRAFT