

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

MEETING MINUTES – NOVEMBER 4, 2021

The District of Columbia Board of Ethics and Government Accountability held a meeting on November 4, 2021 at 12:00 p.m. The meeting was held remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Darren Sobin, and Melissa Tucker. Questions about the meeting may be directed to bega@dc.gov.

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 12:02 pm.

II. Ascertainment of Quorum

A quorum was established with four Members present at the start of the meeting – Chairperson Hutcheson and Board Members Charles Nottingham, Darren Sobin, and Melissa Tucker.

III. Adoption of the Agenda/Approval of Minutes

The Board Members in attendance voted unanimously to approve the Agenda for the meeting and to approve the minutes of the October 7, 2021 meeting.

IV. Report by the Director of Open Government

Good afternoon Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, Director of Open Government. I am pleased to present this report on the activities of the Office of Open Government (“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

On November 2, 2021, I issued advisory opinion #OOG-002.10.18.21_AO, concerning whether the personal privacy exemption under D.C. FOIA would apply to the request for transcripts of two University of the District of Columbia (UDC) faculty members. My review of D.C. FOIA, FOIA case law, and Mayor’s FOIA Appeals led me to conclude the following:

(1) that the privacy interest an employee maintains in their personnel files, including transcripts and documents reflecting their age, are not outweighed by the public interest in disclosure of the information; and

(2) that UDC may lawfully withhold the documents pursuant to Exemption 2, D.C. FOIA's personal privacy exemption (D.C. Official Code § 2-534(a)(2)).

For your review, a copy of the advisory opinion is in the Dropbox.

2. Formal FOIA Advice

The statutory exemption under D.C. FOIA to toll the processing of FOIA requests due to COVID-19 expired on October 27, 2021. Since BEGA processed some of its request under the tolling provision, the agency will respond to all FOIA requests tolled due to BEGA's closed facilities 45 business days after October 27, 2021, or on or before January 4, 2022. BEGA provided FOIA requesters with correspondence advising them of the rules modifying FOIA requests, if it was applicable to the request.

3. Informal OMA/FOIA Advice

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

The Office responded to 15 requests for OMA advice;
The Office responded to 22 requests for FOIA advice; and
The Office responded to 28 requests for technical assistance with open-dc.gov.

B. Training/ Outreach

1. Ethics Week - "Reapproaching Ethical Values"

BEGA hosted Ethics Week from October 18-22, 2021. BEGA offered a series of webinars and virtual presentations that provided DC government employees with information on ethics, FOIA, parliamentary procedure, and the OMA. The OOG made several presentations on Wednesday, October 20, 2021. OOG's Ethics Week presentations were as follows:

- a. Attorney Orji presented, "Let the Sunshine In: understanding DC's Three Transparency Laws that Create a More Transparent Government." This webinar presented a historical overview of the D.C. Sunshine Act, D.C. FOIA and the OMA from inception to the present. The webinar gave participants a full context for the District's transparency laws.
- b. Chief Counsel Barton presented, "Best Practices for OMA Compliance." In this webinar participants learned about the OMA and were provided with scenarios and examples of how to resolve real issues that arise with public meetings.

- c. Director Allen presented, “Unveiling the Office of Open Government’s New Offerings.” The presentation began with a general introduction from me regarding the new developments in OOG. Then, proceeded with a video presentation from Susan Leahy introducing the Parliamentary Procedure Training Portal and instructing participants on how to access and use the portal. The presentation concluded with our new OMA Training Video, produced by the Office of Cable Television, Film, Music, & Entertainment, which is featured on our website and YouTube Channel.
- d. Attorney Weil presented, “Parliamentary Efficiency: YOU Can Make Your Meeting Shorter.” This webinar focused on uses of the elements of Parliamentary Procedure to make meetings more efficient and less intimidating. He touched on the basic rules and offered practical tips for effective public meetings.
- e. Attorney DeBerry presented, “FOIA 101: “The Path that Leads to Openness and Accountability.” This webinar instructed on the basics of D.C. FOIA and was a refresher course for D.C. FOIA Officers on the rules that apply to processing requests; and
- f. IT Specialist, Kevon Bridges presented, “How to Compose and Upload Video Recordings to open-dc.gov.” This webinar offered practical tips for using tools such as WebEx and YouTube to record and publish meeting records. He also provided instruction for Administrative Points of Contacts for Boards and Commissions on how to post information on the Central Meeting Calendar.

The OOG Staff and I participated in all of the webinars offered during Ethics Week, which included the following training sessions: “Ethics Updates;” “ASK BEGA;” “Ethics and YOGA;” “Unlocking the Positive Values of Ethics;” “The Intersection of Ethics and Donations;” “Ethical Pitfalls in a Remote World;” and “Legal Ethics for Government Attorneys”.

2. Mandatory Cybersecurity Training

Attorney Weil and Director Allen attended the D.C. Government Mandatory Cybersecurity Training during the month of October. This year’s scenario-based training course is designed to help identify and avoid some of the most common threats of cyber incidents.

3. Public Speaking Training

On October 7, 2021, Attorney Orji attended the Michelle Boockoff-Bajdek training on Public Speaking from A to D. The training was hosted by the District of Columbia Department of Human Resources.

4. Cybersecurity Webinar

On October 15, 2021, Attorney DeBerry attended the National Attorneys General Training & Research Institute of the National Association of Attorneys General. The training focused on understanding Cybercrime, Computers, and Cybersecurity.

5. Legal Drafting Course

On October 18, 2021, Attorney Orji, attended a legal drafting course hosted by the Maryland State Bar Association. The course was called “Opinion Letters: Nuts and Bolts” and it was a course on how to draft third party opinion letters addressed to nonclients. While the course was geared towards transactional law, the information can be applied to drafting advisory opinions. The training covered a general overview on how to structure the opinion letter. The course emphasized more structural guidance and underscored some helpful tips for writers.

C. Litigation and Legislative Update

1. Litigation

OOG is monitoring FOIA-related cases in D.C. Superior Court, the U.S. Court of Appeals for the D.C. Circuit, the United States District Court for the District of Columbia and nationwide. The agency is not a party to any of the lawsuits. I am providing this information for the Board’s awareness of litigation that may impact the operation and interpretation of D.C. FOIA law.

a. TPM lawsuit re: preliminary budget requests (Case No. 21-CV-0543)

On July 13, 2020, TPM sued the District under D.C. FOIA, alleging that the District failed to produce and post online various budget-related documents related to public schools. I have no further events to report in this matter since the last meeting. The case remains in the briefing stage in the Court of Appeals.

b. ACLU lawsuit re: stop-and-frisk (Case No. 2021 CA 000452 B)

On February 16, 2021, the American Civil Liberties Union of the District of Columbia sued the District government seeking records concerning stop-and-frisks by the Metropolitan Police Department. On October 22, 2021, the two parties agreed that all of the plaintiff’s claims have been resolved and stipulated to a dismissal of the case with prejudice. The stipulation of dismissal is uploaded into the Dropbox.

c. Judicial Watch lawsuit re: autopsy records (Case No. 2023 CA 000875 B)

On March 19, 2021, the Plaintiff, Judicial Watch, filed a lawsuit under the DC

FOIA *et seq.*, appealing the denial of the Plaintiff's two FOIA requests by the D.C. Office of the Chief Medical Examiner ("OCME"). On October 22, 2021, in response to a consent motion for extension and continuance to give OCME more time to produce non-exempt records and a Vaughn index, the Superior Court granted the motion. The Court also ordered that the OCME answer the plaintiff's amended complaint on or before November 5, 2021. The scheduling conference is now set for December 10, 2021 at 9:00 am. The order is uploaded into the Dropbox.

The OOG will continue to monitor these matters.

2. D.C. Council Legislation

- a. Bill 24-384, the "Post-Public Health Emergency Protections Extension Emergency Amendment Act of 2021," was signed by the Mayor on October 25, 2021, as Act 24-0384 and expires January 23, 2022. The measure continues amendments to the OMA previously enacted due to the public health emergency. They are now in effect from March 11, 2020, through December 31, 2022. Under the law:(1) a meeting continues to be deemed open to the public when the public body takes steps reasonably calculated to allow the public to view or hear the meeting while the meeting is taking place, or if doing so is not technologically feasible, as soon as thereafter reasonably practicable; and (2) the OMA physical posting of public meeting notices requirement is waived.

I note that the Open Government Coalition ("Coalition") expressed concerns that there was no discussion or rationale for the emergency measure; and the emergency measure prevents in-person meetings. On October 19, 2021, I along with Chief Counsel Barton had a teleconference with Coalition Board Member Fritz Mulhauser and addressed the Coalition's concerns as follows: (1) in discussing the emergency declaration, Councilmember Cheh stated the measure was the result of the concerns of public body members that they would no longer be allowed to meet virtually. So, there was both discussion and a rationale for enacting the Act; and (2) the Act provides an option for meeting remotely but does not require all meetings be held remotely. Additionally, we provided the Coalition with details concerning OOG's legal staff's monitoring of remote meetings and offered that the OOG legal staff has found the process of remote meetings to work extraordinarily well.

During its November 2, 2021, Legislative Session, the Council approved on final reading Bill 24-385, the "Post-Public Health Emergency Protections Extension Temporary Amendment Act of 2021."

b. Metropolitan Police Department (MPD) Body-Worn Camera (BWC) Report

On October 5, 2021, pursuant to section 3004 of the Body-Worn Camera Regulation Requirements Act of 2015 (D.C. Law 21-36; D.C. Official Code § 5-116.33), MPD submitted to the Council its biannual report on the BWC program. The report provided data from July 1, 2020, through December 21,

2020, on items such as: (1) how many hours of BWC recordings were collected; (2) how many FOIA requests the MPD received for BWC recordings, the outcome of each request; and (3) how many times BWCs failed while officers were on shift and the reasons for the failures. For your review a copy of the report is in the Dropbox.

D. Administrative Matters

1. OOG Employee FY21 Performance Evaluations

OOG completed the FY21 Performance Evaluation process on November 1, 2021. Chief Counsel Barton and I provided feedback on the OOG’s legal staff’s performance on October 23 – October 26, 2021 and Acting Director Cooks assisted us and provided feedback on the IT Specialist’s performance on November 1, 2021. We have commenced the process of creating the FY22 Performance Criteria, which will be completed on November 17, 2021.

2. FY23 Budget Submission

BEGA is working on its FY23 Budget submission, which is due to the Executive Office of the Mayor on Friday, November 5, 2021. The primary Budget Enhancement request BEGA is making in FY23 is for the relocation to a leased office facility. This request is supported and authorized by the City Administrator and Department of General Services, so we anticipate approval.

This concludes the Office of Open Government’s November 4, 2021 report.

V. Report by the Director of Government Ethics

Good afternoon Chairperson Hutcheson and Members of the Board. I am Ashley Cooks, the Acting 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 will occur as a result of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	66
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	66

OPEN "UNDOCKETED MATTERS"	
Grand Total	8

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	26
Closed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	8
Stayed - US District Court Case	2
Grand Total	41

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	3
Grand Total	27

	Current	Last month	September
Investigations Currently	66	59	57
Investigations Stayed	14	13	14

The number of open preliminary and formal investigations includes 14 new matters opened since the Board last met. The investigative team resolved 9 preliminary investigations since the Board last met.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

Attorney Maurice Echols completed Intro to DC Government Contracting and Administrative Officer Tyrell Dow completed Effective Statements of Work Training. Auditor Amanueil Tujuba completed the following trainings: Gaining a Positive Perspective on Feedback; The Art and Science of Communication; Effective Team Communication; The Building Blocks of Building Trust; and Encouraging Team Communication and Collaboration.

2. Conducted by staff

During the week of Monday, October 18, 2021 through Friday, October 22, 2021, OGE hosted BEGA’s annual Ethics Week. This year’s theme was “Reapproaching Ethical Values” in which we provided information to employees of the importance of reapproaching ethical compliance in a returning work environment. As Director Allen mentioned, Wednesday October 20th was dedicated solely to OOG trainings. All the event’s sessions were well attended and we’ve received positive feedback. Some of the most well-attended sessions were:

- Unlocking the Positive Value of Ethics with Marcy Maslov – 235 attendees
- FOIA 101 – 197 attendees
- Ethics Pitfalls in a Remote World – Ethics Counselor Panel – 177 attendees
- The Intersection of Donations and Ethics – 160 attendees
- Refocusing on Ethics – Legal Ethics for Government Attorneys – 111 attendees
- Let the Sunshine In: Understanding DC’s Three Transparency Laws – 109 attendees

A copy of the final schedule was uploaded to the Drop Box. Since the last Board meeting, OGE attorneys conducted one ethics training aside from Ethics Week, which was the monthly ethics training. We did not host a virtual brown bag for October in preparation for Ethics Week. However, we intend to have 2 sessions before the year ends to address popular seasonal topics such as the Local Hatch Act and the rules regarding gifts.

51 employees completed our online ethics training via PeopleSoft.

3. Learning Management System

OGE is putting the final touches on its ethics learning management system (“LMS”). The LMS will serve as the central online location for OGE’s ethics training resources and materials and will provide data analytics, course completion, and tracking information. OGE will make the LMS available to a select number of Ethics Counselors before allowing employees to access the site.

4. Ms. Ethics Videos

OGE filmed and recorded two, new Ms. Ethics videos with Pendragwn Productions in September. Pendragwn created the original Ms. Ethics video and the subsequent Ask Ms. Ethics videos. The new videos focus on financial disclosure statement issues and how and when to report an ethics violation. The links to those videos are posted in the Drop Box for your review.

C. Advisory Opinions/Advice

1. Informal Advice

OGE’s legal staff provided advice for approximately 30 ethics inquires, which is 17 less than the 47 reported at the October meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

OGE has not drafted any Advisory Opinions since the last Board meeting.

D. Legislation Updates

On October 27, 2021, the Committee on the Judiciary and Public Safety held a virtual, public hearing on the Pro Bono Legal Representation Expansion Amendment Act of 2021, Bill 24-0298. The Bill is an amendment to Section 223 of the Ethics Act, which will allow employees to represent persons of limited income, in affiliation with a non-profit organization, before District courts and federal courts, and District and federal agencies. I submitted testimony in support of the bill. A copy of my testimony and the proposed bill were placed in the drop box for your review.

E. OGE Administrative Matters

1. OGE Staffing

We advertised a vacancy announcement for an Attorney Advisor through October 20th and will begin interviewing applicants in the next couple of weeks. I am happy to announce that Tyrell Dow, formerly BEGA's Program Support Assistant, was selected as the new Administrative Officer. Prior to his selection, Mr. Dow successfully conducted many of the duties and responsibilities of the Administrative Officer position, such as management of the agency's procurement practices, human resource matters, and certified business compliance. Congratulations Tyrell.

2. Relocation/New Office Space

Both OOG and OGE continue to work with the DGS in pursuit of sufficient office space. On October 13th, we visited four commercial properties which offered potential office space suitable for BEGA's growing staff. Next week we will meet with an architect to explore options for developing our top three choices.

F. Financial Disclosure Statement (FDS)

For enforcement, the FDS Team has produced lists of public filers and confidential filers who did not meet the deadline or who have not filed despite receiving all notices and reminders to file. The lists were provided the Office of Pay and Retirement Services (OPRS) for automatic payroll deductions of fines.

On October 15, OGE notified Councilmembers that their Fall 2021 Financial Disclosure is due by November 15. The Councilmembers' Chiefs of Staff also received the notice. This is the first year that Councilmembers will use the e-file system. Reminder notices are scheduled for November 5, November 12, and if necessary, November 15.

Three FDS waiver requests were received which will be discussed in the closed session. Fines from late and non-filing wage garnishment collected from 32 employees totaled \$9,136 this month.

Lastly, the FDS Team has been working on standard operating procedures: A Financial Disclosure and Enforcement Manual.

G. Lobbying Registration and Reporting (LRR)

After sending 582 notices to registered active points of contact, OGE received 57 total registrations in the e-file system. This breaks down to 16 new, 6 renew, and 35 terminations. These 35 terminations are a result of notices being sent to entities who had not previously filed termination notices with OGE. One new registration was also received in response to an enforcement letter. OGE received 499 activity reports. Activity reporting for CY 2021 has exceeded previous years by nearly 12%.

Thank you. This concludes the Office of Government Ethics' November 4, 2021 report.

Chair Hutcheson noted for the record that Board Member Felice Smith joined the meeting.

VI. Public Comment – if received

No public comments were received.

VII. Executive Session (nonpublic)

VIII. Resumption of Public Meeting

The Board reconvened the public meeting at 1:45 pm.

The Board reported out two matters from the executive session:

21-0014- P In re Michael Redmon – The Board voted to authorize a formal investigation and the issuance of subpoenas, and to make the matter public. The Board also approved a Notice of Violations.

21-00-P In re Neil Albert – The Board voted to authorize a formal investigation and the issuance of subpoenas, and to make the matter public

IX. Adjournment

The Board will meet again on December 2, 2021 at 12:00 pm.