

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

DRAFT MEETING MINUTES – DECEMBER 1, 2022

The District of Columbia Board of Ethics and Government Accountability held a meeting on December 1, 2022 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. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting. 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 12:01 pm.

II. Ascertainment of Quorum

Chairperson Hutcheson and Board Members Charles Nottingham, Darrin Sobin, and Melissa Tucker were present at the start of the meeting. The four Members present constitute a quorum for the meeting. Chairperson Hutcheson noted that Board Member Smith was in the process of joining the meeting.

III. Adoption of the Agenda/Approval of Minutes

The four Board Members present voted to adopt the agenda for the meeting. Chairperson Hutcheson and Board Members Nottingham and Sobin approved the minutes for the November meeting. Board Member Tucker recused herself from the vote on approval of the minutes for the November meeting and Board Member Smith was not present for the vote.

IV. 2023 Meeting Schedule

The Board Members approved the following schedule for the 2023 monthly Board meetings:

January 5, 2023	July 13, 2023
February 2, 2023	August 3, 2023
March 2, 2023	September 14, 2023
April 6, 2023	October 5, 2023
May 4, 2023	November 2, 2023
June 8, 2023	December 7, 2023

All meetings will be held remotely at 12:00 pm.

V. 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, 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

- a. On November 14, 2022, I issued #OOG-2021-0004-M, concerning Calvin Coolidge High School Local School Advisory Team’s (“Coolidge LSAT”) compliance with the OMA. The anonymous complaint alleged that the Coolidge LSAT violated the OMA by failing: (1) to provide a location or link for the public to view its monthly meetings; (2) to provide the public with records of its meetings; and (3) to notify the public when it entered closed sessions during its meetings. I found that the Coolidge LSAT violated the OMA by failing: (1) to provide timely and accurate notice to the public on the website of its May 2021 meetings (D.C. Official Code § 2-576) and on the OOG’s Central Meeting Calendar (D.C. Official Code § 2-576(2)(b)); (2) to provide a meeting link, telephone number, or reasonable accommodations for the public to remotely attend its May 2021 meetings (D.C. Official Code § 2-577(a)(1)); and (3) to record its May 2021 meetings by electronic means (D.C. Official Code §§ 2-577(a)(2); 2-578(a)).
- b. On November 28, 2022, I issued #OOG-2022-0009-M Resolution of Complaint ANC, dismissing an OMA complaint filed against two Advisory Neighborhood Commissioners (ANCs). As the Board knows, D.C. Official Code § 2-574(3)(F) excludes ANCs from the definition of public bodies and the OMA’s statutory meeting requirements. Due to allegations of theft of government funds, the matter was referred to the Office of the Inspector General.

Copies of these opinions are in the Drobox.

2. Informal OMA/FOIA Advice

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

OOG responded to four (4) requests for OMA advice.

OOG responded to six (6) requests for FOIA advice; and

OOG responded to twenty-three (23) requests for technical assistance with open-dc.gov.

B. Remote Meeting Monitoring

OOG attorneys attend remote public meetings to ensure compliance with the OMA and inspect public body websites and the OOG's central meeting calendar for public meeting notices and records. We provide legal advice on OMA compliance and take corrective action if necessary.

During November 2022, OOG attended four (4) remote public body meetings. As a result of the monitoring, one (1) instance of a written corrective measure was taken. The public meeting notice was incomplete, and the public body lacked an administrative point of contact. The OMA requires the timely posting of meeting notices. D.C. Official Code § 2-576(5); 3 DCMR § 10410.

C. Training/Outreach

1. 2022 AINS Annual Summit and User Conference

On November 3, 2022, Chief Counsel Barton and Attorney Weil attended AINS Annual Summit, Good Enough for Government isn't Good Enough. Data from the conference revealed FOIA complaints have resulted in the following for the federal government: 46,000 FOIA appeals filed from 2019-2021; 600 FOIA lawsuits filed in 2021; \$120 million in litigation fees from 2020-2021, \$40 million in 2021.

Chief Counsel Barton attended Track A: Building Trust in Public Institutions. Track A included multiple sessions focused on FOIA and how to utilize FOIAXpress. Attorney Weil attended the Keynote address, Preparing Government Professionals for the Workforce of the Future.

2. OMA Training for District of Columbia Public Charter School Board of Trustees ("Board of Trustees")

On November 17, 2022, the OOG moved forward with our initiative to offer OMA trainings to the Board of Trustees and other school personnel. OOG offered two training sessions on the basics of the OMA. Attorney Weil presented the first training, "OMA Training for New Board Members and Staff." The training was tailored to address issues and concerns of new board members and staff. The training also included practical advice for ensuring OMA compliance and common issues of non-compliance that public bodies may face. The training was well received by the attendees. I, along with the OOG legal staff, attended the training. Chief Counsel Barton presented the second training, "OMA Refresher Course for Returning Board Members and Staff." The training consisted of an OMA presentation that included questions and answers for active participation among the attendees. I, along with Attorney Weil and Paralegal Brown, attended the training.

3. DIFS Expense Entry Training

On November 22, 2022, I along with Chief Counsel Barton and Attorney

DeBerry, attended DIFS Expense Entry training facilitated by Amanueil Tujuba from the Office of Government Ethics. The training included instruction on the aspects of the financial system that DC government employees must use to enter travel expenses into the DIFS system.

4. Meeting with the DC Open Government Coalition

On November 28, 2022, Chief Counsel Johnnie Barton and I met with Fritz Mulhauser of the DC Open Government Coalition (the “Coalition”). We met to discuss issues of concern to the Coalition including FOIA legislation and record retention. With respect to FOIA, the Coalition would like to see DC government employees’ obligations under FOIA to be expressly included in the Comprehensive Code of Conduct that the Board recommends to the Mayor Attorney General, and DC Council. Chief among the Coalition’s concerns are the digitization of DC government records, the failure of adjudicatory bodies to publish its written opinions online (mentioned the Office of Contract Appeals and Office of Administrative Hearings). We committed to continue to advocate for transparency within our authority over FOIA matters.

5. Meeting with the Office of Advisory Neighborhood Commissioners

On November 29, 2022, Director Cooks and I met with the Office of Advisory Neighborhood Commissioners (OANC) regarding ethics and FOIA training. We also met virtually the new Executive Director Kent Boese. The OANCs will be providing training for new ANCs this month and BEGA may provide ethics and FOIA training during this session or separately soon.

C. Litigation and Legislative Update

1. Litigation

There is one case-update this month, about the exemption of congressional records from federal FOIA, and under the speech-and-debate clause - No common-law right of access to congressional records (Case Nos. 1:22-cv-00162-TNM (D.D.C.), 22-5290 (D.C. Cir.))

As I reported last month, radio host Robert Schilling sued the U.S. House of Representatives and several of its officers for denying his demand for certain records. Though 5 U.S.C. § 552 does not apply to Congress, the plaintiff asserted a “common law right of public access.” The District Court granted the defendants’ motion to dismiss because of the speech-and-debate clause.

On November 1, 2022, the plaintiff appealed. The notice of appeal, the Court of Appeals scheduling order, and the docket sheets are in the Dropbox.

2. Legislation

- a. Post–Public Health Emergency Protections Extension Temporary Amendment Act of 2022 (D.C. Act 24-615); and

b. Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022 (D.C. Act 24-620)

I have reported on these measures before. On October 31, 2022, the Mayor signed these acts, and they were transmitted to Congress on November 7, 2022, to begin the 30-day review period. The signed acts are in the Dropbox.

c. Back-to-School Safely Acts of 2022 (D.C. Acts 24-544 (first emergency), 24-598 (congressional-review emergency), 24-576 (temporary))

Under this legislation, the District of Columbia Public Schools (“DCPS”) and the Department of General Services are required to present a bimonthly briefing to the Council and its staff, for each school operated by DCPS, with respect to: “(1) The percentage of exterior doors with locks that securely lock; (2) The percentage of interior doors with locks that securely lock; (3) The condition of the school’s public address system; (4) The condition of the school’s fire alarm system; and (5) The condition of the school’s security surveillance system.”

Impact relevant to D.C. FOIA and OMA

Under section 103 of each of the acts: data from the bimonthly briefings “shall not be shared over electronic communication channels or posted publicly”; “[s]chool safety system data” from the briefings “that is retained by the Council . . . or any . . . executive agency shall not be made available as a public record under section 202 of [D.C. FOIA]”; and the briefings themselves are “exempt from” the OMA.

An initial emergency version of the act expired on October 25, 2022. A Congressional Review Emergency version became law without the Mayor’s signature on November 1, 2022, and will expire on January 30, 2023. A temporary version was transmitted for Congressional review on October 20, 2022.

The enacted enrollments are in the Dropbox.

d. Revised Criminal Code Act of 2022 (Bill 24-0416)

On November 15, 2022, the Council passed through final reading a comprehensive update of D.C. criminal law, including a Revised Criminal Code. Of particular relevance to OOG’s subject matter are the following provisions:

FOIA: permissive withholding of BWC related to stalking (including electronic stalking) or sexual assault; permissive withholding of response plans or specific vulnerability assessments intended to prevent or mitigate

not just “an act of terrorism” (which already existed as Exemption (10)) but “material support for an act of terrorism”

OMA: adopting a new crime (class D misdemeanor) of 1st-degree public nuisance for “purposely caus[ing] significant interruption to...[t]he orderly conduct of a meeting by a District or federal public body”

The engrossed version (which will be identical to the finally-passed version, because the Council adopted no intervening amendments) is in the Dropbox. OOG will continue to monitor this measure through the review period

e. Medical Examiner Records Privacy Amendment Act of 2021/2022

On November 3, 2022, the Council’s Committee on the Judiciary & Public Safety reported out Bill 24-0203, now named the “Medical Examiner Records Privacy Amendment Act of 2022.” This bill would provide that Chief Medical Examiner records “contained in external examination and autopsy reports is . . . public record under” D.C. FOIA as to certain biographical information, but “permit persons to directly obtain an external examination or autopsy report from the Office of the Chief Medical Examiner . . . without those persons being required to make a request for records” under D.C. FOIA. However, the bill would also “designate certain photographs, negatives, videos, prints, and other images . . . as confidential and only subject to disclosure in limited circumstances.” Bill 24-0203 at p.1 ll.23–28, p.2 ll.59, 60, pp.3, 4, p.5 ll.106–12 (comm. print).

On November 15, 2022, the Council passed the bill through its first reading.

The committee report is in the Dropbox, and the latest version of the measure is the attachment that starts on page 70 of the file.

OOG will continue to monitor legislation. The Council meets again on Tuesday, December 6, 2022.

D. Administrative Matters

1. FY 24 Budget Presentation

On November 17, 2022, I along with Director Cooks and Chief of Staff Mitchell presented BEGA’s proposed FY24 Budget to the Office of the City Administrator. We advocated for several budget enhancements to enable BEGA to execute its program in accordance with our statutory mandates. The Budget presentation is in DropBox for your review.

2. BEGA 1030 15th Street, NW Relocation

Every Friday, I along with Director Cooks and Chief of Staff Mitchell meet with the Department of General Services to discuss the progress of the agency's relocation to its new facility at 1030 15th Street, NW. This month we continued to discuss and firm up plans for internet drops in the facility and the design and layout of the suite. We discussed the hearing room, which will be formatted to be nearly identical to the 441 4th Street, NW, facility. The target date for completion of the project is July/August 2023.

3. New Office of Open Government Attorney:

I am pleased to announce that Anthony Scerbo will begin working with the OOG as Attorney Advisor on December 5, 2022. Mr. Scerbo is a graduate of UDC Law and formerly served this office as a legal intern. I look forward to introducing him to the Board at the January 2023 meeting.

This concludes the Office of Open Government's December 1, 2022, report.

Board Member Tucker noted that the Coolidge Advisory Opinion involved meetings in 2021 but the opinion was not issued until now and asked about the reasoning. Director Allen noted that the Coolidge LSAT had apparently disbanded and OOG was waiting to see whether the group would reassemble before issuing the opinion.

Chairperson Hutcheson asked about the layout of the boardroom in the new building and Director Allen noted that they new space would have additional space available for the Board Members to use.

VI. Report by the Director of Government Ethics

Good afternoon, 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 as a result of actions taken by the Board during today's meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	54
Open - Negotiations	1
Open - Show Cause Hearing	0
Grand Total	55

OPEN "UNDOCKETED MATTERS"	
Grand Total	2

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	27
Stayed - Pending DC Superior Court Case	5
Stayed - OAG False Claims Act Case	6
Stayed - OIG Investigation	5
Stayed - US District Court Case	1
Grand Total	44

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	29
Open	5
Grand Total	34

	Current	Last month	October
Investigations Currently Open:	55	57	44
Investigations Stayed	17	16	16

The number of open preliminary and formal investigations includes 6 new matters. The investigative team resolved 8 investigations since the Board last met. This total does not reflect the number of complaints that were dismissed for a lack of jurisdiction.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

During the month of November, BEGA employees who intend to travel for trainings and conferences completed the Travel Approval and Reimbursement training through District Integrated Financial System (DIFS). Several OGE staff members took this training in anticipation of 44th Annual Conference of the Council on Governmental Ethics Laws (COGEL), which will take place in Montreal, Canada next week, December 4th through the 7th.

General Counsel Raj completed the mandatory DC Government Cybersecurity Training course. All employees must complete this course by the end of the calendar year. Program Specialist Kosick took the following training courses: (1) LRN Bulk load Manager Training; (2) Capturing, Analyzing, and Using Project Lessons Learned; (3) Critical Thinking: Challenging Assumptions; and (4) Collaborating Effectively in Excel 365. Auditor Amanueil Tujuba took the following trainings: Expert Insights on Developing as a Leader, Expert Insights on Delegation, Expert Insights on Motivating People, and Expert Insights on Trust. Investigator Ileana Corrales took two courses: Overcoming Your Own Unconscious Biases and Planning Your Growth as a Leader.

2. Conducted by staff

Since the November Board meeting, OGE conducted 3 trainings: the November Monthly Ethics Training, the November Brown Bag session, and the first of two specific Ethics Trainings for the Office of the Deputy Mayor for Planning and Economic Development. This first session with DMPED had 58 attendees, including the Deputy Mayor, General Counsel, and Legislative Director. The second session will be held on December 14th.

Last week before the holiday, OGE hosted our Monthly Ethics Counselor Brown Bag session on gifts. Supervisory Attorney Stewart-Mitchell and General Counsel Rashee Raj provide the Ethics Counselors with a few holiday-themed hypotheticals. Several Ethics Counselors attended and engaged in meaningful discussion. Our next Brown Bag session will take place next year on Monday, January 30th. The topic will be the Latest Advisory Opinions and Dispositions.

During November, 24 employees completed online ethics training via PeopleSoft. Since the launch of the Learning Management System 354 employees have completed 712 learning modules. In the past month, 13 new users have completed 25 courses. Supervisory Attorney Stewart-Mitchell, Program Specialist Kosick, and I continue to meet with our LRN program manager to discuss ways to optimize the system and increase employee registration.

Auditor Tujuba conducted a DIFS Expense Entry training on November 22nd. Employees from both offices attended the training. The session focused on gaining access to the DIFS system, requesting pre-travel payments, and submitting expense reports for reimbursement of travel expenses. The training was extremely informative.

3. Outreach

OGE and OOG continue to meet with the Office of the Chief Technology Officer's website development staff to coordinate the BEGA website refresh. We are currently working on changes to the website's design, so that information is readily available with minimal search efforts. We submitted an updated site map of the website in early October and approved the mock-up of the website design. OCTO has imaged our current website and we are working on language and images for each new webpage.

4. Office of the Advisory Neighborhood Commissioner

On Tuesday, Director Allen and I met with Kent Boese, Executive Director of the Office of the Advisory Neighborhood Commission, and his staff. We discussed providing ethics and FOIA training to newly elected Commissioners, as well as training for current Commissioners to fulfill their annual training requirements. We also discussed BEGA's jurisdiction over Commissioners and their obligations

under the Code of Conduct. I assured Director Boese of BEGA's mission to educate Commissioners on the ethics rules and to take enforcement action when a Commissioner violates the rules. Both BEGA and the Office of the ANC are committed to ensuring that elected officials adhere the District's ethics standards.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 41 ethics inquiries, which is 6 more than the 35 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 Advice

OGE's *sua sponte* Advisory Opinion entitled "Guidance on the Local Hatch Act and Fundraising Activities" has completed its 30-day public-comment period. This opinion provides guidance on maintaining ethical standards while engaging in political activity and clarifies prohibited and permissible fundraising activities. It covers permissible fundraising activities, such as fundraising for one's own campaign, fundraising for a partisan, non-district regulated campaign, and the Designation Rule. The opinion was posted on our website as a draft on September 23rd, but due to technical issues it was not posted to the register until a later date. Pursuant to D.C. Official Code § 1-1162.19(b), the opinion will be published the D.C. Register as final version.

D. Legislation Updates

1. B24-0706 Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022

This bill will allow BEGA to discretionarily transfer delinquent debts associated with settlements and judgements for ethics and Open Meeting Act violations to the District's Central Collection Unit, and for the funds collected on BEGA's behalf to be deposited into the Ethics Fund or OMA Fund instead of the General Fund. The additional funding will allow BEGA to supplement its operations budget. I am pleased to announce that the projected effective date for the Bill will be December 21st. It is currently under Congressional review. A copy of the committee report was placed in the drop box for your review.

E. OGE Administrative Matters

1. OGE Staffing

The Attorney Advisor and Program Support Assistant vacancy announcements both closed in October. Both sets of applications are under review. As an approved fiscal year 2023 budget enhancement request, OGE received funding to hire a

Supervisory Investigator. That position will be posted in the next few weeks. The Fiscal Year 2022 performance evaluations and formulation of Fiscal Year 2023 performance plans are now complete. Mid-year reviews will take place in March 2023.

2. Budget

The agency finalized its Fiscal Year 2024 budget packet. On November 17th, we submitted budget enhancement requests, and provided a presentation for the Office of Budget and Performance Management. The budget enhancement requests include funding for: two legal fellows, public information officer, senior IT specialist, upgrades to the lobbyists e-filing system and OOG website, OOG employee retention, and additional funding for the non-personal services fund.

3. Office Relocation

Our office relocation is underway! We have begun weekly meetings with the Department of General Services' construction team and architect to discuss the build-out of the space. We recently discussed the technological needs for the internet access and wiring. Given the delay in OCTO's services, the construction team has postponed the move-in date until July 2023.

F. Financial Disclosure Statement (FDS)

On October 14th, the FDS Team sent notices to all DC Councilmember informing them that their bi-annual Financial Disclosure Report was due November 15. All the DC Councilmembers filed in a timely manner, with the exception of one extension request.

In October, the FDS Team discovered that the Office of the Deputy Mayor for Public Safety and Justice (DMPSJ) did not provide a list of filers for the CY2021. When the FDS Team contacted DMPSJ, the agency responded in kind by providing a list of eight (8) current and former employees. The FDS Team provided notice to the DMPSJ filers setting December 5, 2022, as the deadline to file. To date, three of the eight employees have filed.

On November 30, 2022, the FDS Team met to discuss requiring Confidential Filers to use the FDS e-file system instead of the current PDF filing. This meeting weighed the pros and cons of the requirement and used lessons learned from previous FDS filing years to move forward. Based on our discussion and experience with the CFDS pilot program, it would benefit the confidential filers and BEGA to allow all filers to submit forms on the e-filing system. The next steps are to coordinate with OCTO on system specific issues.

G. Lobbying Registration and Reporting (LRR)

Third Quarter 2022 Activity Reports were due Monday, October 17, 2022. On September 30, the LRR team sent a reminder notice to 450 lobbyists. In response,

Registrants and Clients recorded the following: Activity Reports: 465, New Registrations: 9, Registration Renewals: 1, Registration Terminations: 20, and Support Tickets: 21. Of the 465 Activity Reports filed, two were over 15 working days late. The Registrant and Clients were identified and sent fine notices on November 22, 2022.

Thank you. This concludes the Office of Government Ethics' December 1, 2022 report.

VII. Public Comment – if received

No comments were received.

VIII. 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).

IX. Resumption of Public Meeting

The Board resumed the public meeting 1:38 pm. There were not matters to report.

X. Adjournment

The Board will meet next on January 5, 2023 at 12:00 pm.