

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

MEETING MINUTES – December 14, 2023

The District of Columbia Board of Ethics and Government Accountability held a meeting on December 14, 2023, at 12:00 p.m. The meeting was held remotely via WebEx. Chairperson Norma Hutcheson and Board Members Charles Nottingham, Felice Smith, Darrin Sobin and Melissa Tucker participated in the 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 12:00 pm

II. Ascertainment of Quorum

A quorum was established with four members – Chairperson Hutcheson and Board members Nottingham, Smith, and Tucker present at the start of the meeting. Board member Sobin joined while the meeting was in progress.

III. Adoption of the Agenda/Approval of Minutes

The Board members present voted unanimously to adopt the agenda and approved the minutes from the November 2023 meeting.

IV. Approval of 2024 Schedule of Meetings

The Board approved the 2024 schedule of meetings.

V. Report by the Office 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

I have not issued an advisory opinion since the Board’s last meeting.

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 12 requests for OMA advice.

OOG responded to 9 requests for FOIA advice; and

OOG responded to 9 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 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 2023, OOG's legal staff attended 22 remote public body meetings. As a result of the monitoring, five instances of corrective measures were communicated. The public bodies failed to do the following: (1) post meeting agendas; (2) provide meeting links on agendas; (3) cite the OMA regulatory statement; and (4) improperly insisted on attendees identifying themselves.

C. Training/Outreach

1. Paralegal Legal Writing Skills to Boost Your Career

On November 9, 2023, Paralegal Specialist Kimberly Brown attended Practicing Law Institute's "Paralegal Legal Writing Skills to Boost Your Career" training. The training provided an overview of the power of citations and how they relate to the substance of the content. The session included best practices and common mistakes in legal writing as well as methods on how to build workflow to ensure accuracy through cite checking.

2. Confidentiality for Paralegals

On November 8, 2023, Paralegal Specialist Brown attended Practicing Law Institute's "Confidentiality for Paralegals" training. The online discussion featured a PLI faculty presentation, a video, and illustrations to demonstrate key concepts in client confidentiality, privilege, and privacy.

3. Paralegal Professionals: Becoming an Effective Communicator

November 8, 2023, Paralegal Specialist Brown attended Practicing Law Institute's "Paralegal Professionals: Becoming an Effective Communicator" training. The session provided tips on navigating ethical communication issues and best practices for productive lines of communication inside and outside of an organization.

4. Understanding Legal Citations

November 7, 2023, Paralegal Specialist Brown attended Practicing Law Institute's "Understanding Legal Citations" training. The training provided basic principles and practical tips on Bluebook citation. The session provided insight into the components of legal citations, identifying various types of sources, and citation formats.

5. Finding the Law of the District of Columbia

On November 13, 2023, Attorney Advisor Anthony J. Scerbo and Paralegal Specialist Brown attended OAG's Finding the Law of the District. This 1.5-hour webinar, by James McKay, Senior Assistant Attorney General from the Office of the Solicitor General and author of the first chapter of the D.C. Bar's District of Columbia Practice Manual, entitled "Finding the Law of the District," explained the various types of laws pertaining to the District of Columbia-- unique political entity. It included legislative enactments and resolutions, both by the Council and Congress; judicial decisions and rules of court, both local and federal; and executive actions, both District and federal, including agency decisions.

6. Cross Examination Skills

On November 14, 2023, Attorney Advisor Sheree DeBerry and Paralegal Specialist Brown attended the Cross Examination Skills training presented by the Office of the Attorney General (OAG). The training discussed preparing and executing cross-examination and impeachment skills. The training also covered the nuts and bolts of the chapter method of cross-examination and offered practical tips to maximize effect.

7. OAG Opening Statements

On November 28, 2023, Attorneys Scerbo and DeBerry attended OAG's Opening Statements training. The training was facilitated by Deborah Sines, formally with the United States Attorney's Office, and covered the dos and don'ts of opening statements, how to prepare for them, including why you should not waive them, and the importance of the opening statement—the first opportunity to tell the trier of fact what the case is all about. It emphasized that an effective and forceful opening statement will persuade the fact finder to find favorably even before you begin presenting evidence.

8. OMA Training for Local School Advisory Teams (LSATs)

On November 30, 2023, Attorney Scerbo facilitated an Open Meetings Act training for Local School Advisory Team ("LSAT") Chairpersons. The training provided basic instruction on the OMA and provided the opportunity for a question-and-answer session after the presentation. OOG's legal staff attended the training.

9. OAG Webinar on Closing Arguments

On November 30, 2023, Attorneys Scerbo and DeBerry attended OAG's Closing Statements training. The training was facilitated by Glenn Kirschner, formerly the Chief of Homicide within the United States Attorney's Office, which covered how to prepare and deliver a powerful and persuasive closing argument; how to structure and organize a summation and how to marshal evidence and rebut the opposition's case.

10. 45th Annual Council on Governmental Ethics Laws (COGEL) Conference

From December 3rd – 6th, 2023, OOG's staff attended COGEL's 44th Annual Conference, in Kansas City, MO. The conference included plenary, educational, and professional development sessions that focused on elections, campaign finance, enforcement, governmental ethics, multi-disciplinary topics, lobbying, and freedom of information. OOG team members attended the following sessions:

a. First-Timers Conference Preview

On December 3, 2023, Attorneys Scerbo and DeBerry attended the First-Timers & Conference Preview. The session provided an overview of the Council on Governmental Ethics Laws and introduced the conference topic categories.

b. Come Together: Legislative Change, We Can Work It Out

On December 3, 2023, I attended "Come Together: Legislative Change, We Can Work It Out", moderated by the Manager of Communications and Outreach at the Office of the Integrity Commissioner of Ontario. This discussion highlighted how other agencies have successfully tackled the challenge of achieving legislative change.

c. Embracing Innovation: Top 10 Training Upgrades for Ethics Commissions by Ethics Commissions

On December 3, 2023, Trial Attorney Nicholas Weil, and Attorneys Scerbo and DeBerry attended "Embracing Innovation: Top 10 Training Upgrades for Ethics Commissions by Ethics Commissions," which featured different panelists from state and local ethics commissions across the U.S., unveiling the Campaign Legal Center's latest addition of its Top 10 report. BEGA's Director of Government Ethics, Ashley Cooks, was a panelist.

d. Enforcement Update 2023: Trends, Challenges and Charges in Enforcements and Investigations

December 3, 2023, I, along with Attorneys Weil and Scerbo attended "Enforcement Update 2023: Trends, Challenges and Charges in Enforcements and Investigations," which examined trends and emerging

developments in investigations and enforcement actions across all levels of government.

e. Elevate Your E-Learning with Effective E Tools

On December 3, 2023, Attorney DeBerry attended “Elevate Your E-Learning with Effective E-Tools,” which discussed re-evaluating training platforms to consider making a change based on better technology, pricing, or need.

f. The 5’3” General: An Insider’s Perspective on Power and Influence

The December 4, 2023, Plenary Session featured Heather Foster, former White House Public Engagement Advisor to President Obama and current Head of Public Policy/Lyft. She candidly shared her leadership journey, how she’s challenging stereotypes, and thoughts on the possession of power. I, along with Attorneys Weil and Scerbo, and Paralegal Specialist Brown attended this plenary session.

g. Hot Topics in FOI

On December 4, 2023, panelists presented an overview of emerging hot topics in the Freedom of Information. I, along with Attorneys DeBerry and Scerbo attended the session.

h. Preparing the Case I & II: Best Practices in Writing Complaints; Gathering Evidence; Interviewing Witnesses; and Drafting Settlement Agreements

On December 4, 2023, Attorney Weil and Paralegal Specialist Brown attended both interactive sessions, which provided tips on how to effectively execute fundamental aspects of enforcement, highlighted best practices in enforcement, and covered proper procedure, legal standards, discovery, settlements, and hearings.

i. A First-Person Perspective on U.S. Democracy, Elections, and Threats to Voting Access from a Veteran and Former Missouri Secretary of State

On December 4, 2023, Former Missouri Secretary of State, Jason Kramer shared his personal account from Veteran and former politician with PTSD to champion for voting access and campaigning against voter suppression. I, along with Attorneys DeBerry and Weil, and Paralegal Specialist Brown attended this plenary session.

j. The Fight for Access to Public Records: An Insider’s View of How Major News Stories Come to Light

On December 4, 2023, a panel of journalists discussed the importance of open records laws and challenges encountered when gathering information for the public. I, along with Attorneys DeBerry and Scerbo, and Paralegal

Specialist Brown, attended the session.

k. Cutting Through the Noise: Best Practices in FOI Compliance

On December 4, 2023, panelists shared knowledge, experience, and resources to help attendees improve best practices in FOIA compliance. I, along with Attorneys DeBerry and Scerbo attended the session.

l. Quotes, Deadlines, and News Cycles: Political News and Powerful Players

On December 5, 2023, Missouri journalists facilitated a discussion on story development, the search for truth, and shining light on government politics. Attorneys Weil, DeBerry, and Scerbo, and Paralegal Specialist Brown attended the session.

m. Catch and Release: A Discussion on Early Intervention and Compliance Efforts

On December 5, 2023, facilitators presented tools and techniques used to “catch” and correct a problem before enforcement is needed. I, along with Attorneys Weil and Scerbo, and Paralegal Specialist Brown attended the session.

n. Pursuing Political Transparency in Furtherance of the First Amendment: Tips From The Trenches

On December 5, 2023, Attorney DeBerry attended “Pursuing Political Transparency in Furtherance of the First Amendment: Tips From The Trenches,” which included presentations on the scope of constitutional support for campaign finance transparency laws; legislative and regulatory approaches that ensure campaign finance systems are transparent; and raised arguments that challenge and defend these laws.

o. Freedom of Information (FOI) Legislation and Litigation Update

On December 5, 2023, I along with Attorneys Weil, DeBerry and Scerbo attended “FOI Legislation and Litigation Update,” which explored the latest FOI developments from the past year across the 51 states and Canada.

p. USE THE SPACE! An Acting Workshop for COGEL Professionals

On December 5, 2023, Paralegal Specialist Brown participated in theater exercises exploring how to execute a presentation through the lens of performance using such tools as presence, composition, timing, and expressivity.

q. FOI Roundtable

On December 6, 2023, I along with Attorneys Weil and Attorney Scerbo

attended the interactive discussion about emerging government access issues. Participants shared issues they faced in their respective jurisdictions and offered solutions.

r. Small Fish, Big Fish, and Owning the Pond: Building Effective Enforcement Strategies

On December 6, 2023, enforcement attorneys facilitated a panel discussing how to develop principled frameworks for imposing penalties and how to enforce the law with consistency. I, along with Paralegal Specialist Brown attended the session.

s. Deconstructing Ethics: Where We Have Been, Where We Are Going

On December 6, 2023, Attorneys Weil and Scerbo attended “Deconstructing Ethics: Where We Have Been, Where We Are Going” a CLE continuing education session. The class provided methods on how to deconstruct ethical issues.

t. Unlocking the Power of Data and Generative AI: Transforming Analysis to Maximize Communications and Problem Solving

On December 6, 2023, Attorney DeBerry attended a panel discussion on how data analytics is reshaping organizations in fields such as ethics and how to embrace technologies for intelligent decision making, avoid common pitfalls, and maximize value in individual organizations.

u. Flipping the Script on Diversity, Equity and Inclusion

On December 6, 2023, moderators discussed the challenges of creating a work environment where people have the chance to contribute equally and bring their authentic self. The session also highlighted the importance of conscious communication. Attorney DeBerry attended the session.

D. Litigation and Legislative Update

1. Litigation

a. *Khatri v. Bd. of Trustees of U.D.C.* (Case Nos. 20-CV-0248 (D.C. Ct. App.), 2019-CA-004978-B (Super. Ct. D.C.))

In this case, the requester had sought “a copy of a D.C. Department of Human Resources (DCHR) investigative report commissioned by [the University of the District of Columbia (UDC)] in relation to [the requestor]’s claim that UDC retaliated against him in violation of its antidiscrimination policy.” UDC denied the request on the basis of D.C. FOIA Exemptions 2, 3(C), (E), and 4 (concerning privacy, disclosure of “investigative techniques and procedures,” and the deliberative-process privilege), though the plaintiff appears to have abandoned the privacy argument in his motion for summary

judgment.

The D.C. Court of Appeals handed down its opinion on October 2, 2023, affirming the Superior Court’s summary judgment in favor of the UDC Board. To qualify for exemption under the deliberative-process privilege codified in D.C. Official Code § 2-534(a)(4), a record “must be both predecisional and deliberative,” and “deliberative” means that “it reflects the give-and-take of the consultative process.” (Mem. op. at 2.) The requestor had argued that the “give-and-take” element was absent “because[,] after ‘DCHR was asked by UDC to conduct an investigation of the complaint filed by the plaintiff[,] there was no other communication between UDC and DCHR’ ” before the report’s delivery. (*Id.* at 2, 3.) However, the Court held, the “give-and-take” prong does not necessarily mean “a back-and-forth dialogue” but merely that the record was “a contribution to a broader discussion within the agency.” (*Id.* at 3.)

The full opinion and the most material documents are in Dropbox.

- b. *Zinman v. District* (Case Nos. 21-CV-0894 (D.C. Ct. App.); 2021-CA-000750-B (Super. Ct. D.C.))

On January 17, 2024, at 10 a.m., a division of the D.C. Court of Appeals will hear oral argument in a case involving body-worn camera footage (BWC).

On January 22, 2021, Corey Zinman of Florida requested “copies of the footage recorded by [BWC]...during an investigation of an incident in which [Zinman] was involved on...January 19, 2021,” and certain BWC and surveillance footage from an “interaction” between Zinman and the Metropolitan Police Department (MPD) on January 20, 2021.

MPD denied the BWC request on the basis of D.C. FOIA Exemption 3(A)(iii) (interference with “ongoing investigations” by Office of Police Complaints), and the surveillance-footage request on the basis of no such records existing.

Zinman sued in the Superior Court, the District prevailed, and Zinman appealed.

The substantive documents from the record, including the appellate briefs, are available in Dropbox.

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

In a lawsuit filed on Wednesday, Nov. 29, 2023, in D.C. Superior Court by the Public Justice Advocacy Clinic at George Washington University Law School, the DC Open Government Coalition (OGC) asserts that the D.C. government is violating the city’s open records law, the D.C. Freedom of Information Act (FOIA), D.C. Official Code §§ 2-531-539, by withholding

data that would answer the Coalition’s request—provide a basic count of public records requests—those received but not closed, which the Coalition asserts had a “backlog...at one point reached 3,000 during the pandemic.” They further assert that the Office of the Chief Technology Officer (OCTO) has rebuffed the request three times over three years: 2021, 2022, and 2023.

The initial scheduling conference is set for March 1, 2024, at 10 a.m. OOG staff will monitor.

The complaint, as well as the coalition’s blog post and press release, are in DropBox.

- d. *Gooch v. District (Metropolitan Police Dep’t)* (Case No. 2023 2404 (D.C. Super. Ct.))

On April 19, 2023, the requester-plaintiff sued the District for records “related to his . . . conviction.” He had received partly redacted records.

Due to difficulties in communication with the requester-plaintiff—who is incarcerated—the Superior Court granted several extensions, but the cross-motions for summary judgment have now been filed and are in Dropbox. The District argues that the redactions were correct applications of D.C. FOIA’s privacy exemptions and an “other law” exemption, namely the Driver Privacy Protection Amendment Act of 2012’s (D.C. Law L19-0207; D.C. Official Code § 50–1401.01b.) “prohibitions on the release and use of certain personal information from motor vehicle records and accident reports.”

An initial scheduling conference is set for January 26, 2024. OOG staff will continue to monitor.

- e. *Washington Post Lawsuit Re: Records Related to Capitol Breach* (Case Nos. 23-CV-0488 (D.C. Ct. App.); 2021 CA 002114 B (D.C. Super. Ct.))

As I have reported, *The Washington Post* sued the District under D.C. FOIA for certain records relating to the Capitol insurrection. The Superior Court granted the District’s motion for summary judgment, and *The Post* appealed.

The Post’s opening brief is in Dropbox. *The Post* argues: (1) due to “variation among” 911 calls received on January 6, 2021, the District cannot categorically “withhold[] all of the 911 call recordings,” but must “conduct an individualized assessment..., withholding only those recordings that relate to pending or prospective investigations, and releasing those recordings that relate solely to closed investigations”; (2) any privacy interest in withholding Officer Brian Sicknick’s autopsy report “would be outweighed by the public interest in understanding and reconciling the various statements that public officials have made”; and (3) the District “failed to show that it conducted an adequate search for any WhatsApp

messages that Mayor Bowser sent from January 5–8, 2021.” (Emphasis in original.)

OOG staff will continue to monitor.

- f. Washington Post Lawsuit Re: Police Officer Disciplinary Records (Case No. 2023-CAB-000951 (D.C. Super. Ct.))

As I have reported, *The Washington Post* sued the District following the Metropolitan Police Department’s denial of a reporter’s requests for certain disciplinary records. *The Post* won summary judgment, but the parties remained in a fee dispute.

On December 6, the parties settled, with the District paying attorney’s fees to *The Post*.

The stipulation of dismissal is in Dropbox.

- g. Chicago Justice Project (“CJP”) FOIA Suit Against District re: Gang Database; Opposing Fee Demands (Case No. 2022 CA 001175 B (Super. Ct.))

This is an update on CJP’s suit to compel the Metropolitan Police Department to release certain records concerning the Gang Tracking and Analysis System.

As I have reported, the parties were engaged in a dispute between an advanced fee that MPD demanded for its FOIA review, and a similar amount that CJP demanded in attorney’s fees.

The parties “have reached an agreement that will likely resolve all claims.”

The joint motion for a stay is in Dropbox.

- h. City of Tallahassee, Florida, vs. Florida Police Benevolent Association, INC., et al. (Supreme Court of Florida, No. SC2021-0651(November 30, 2023))

The Supreme Court of Florida recently held that officers in separate lethal force incidents could not rely on a Florida constitutional amendment that, among other things, protects the rights of crime victims, to prevent the release of their identities by the municipality.

Florida Supreme Court Justice Court stated: “This case arises from two unrelated but contemporaneous episodes in which a Tallahassee police officer, asserting self-defense, used lethal force in detaining a suspect. Each officer invoked the protections of article I, section 16(b)-(e) of the Florida Constitution, an amendment adopted by Florida voters that is colloquially known as Marsy’s Law. The amendment enumerates certain rights of crime

victims “to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims’ rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents.” Art. I, § 16(b), Fla. Const. The City of Tallahassee (City) proposed to release the two officers’ names to the public. The Florida Police Benevolent Association (FPBA) sought an emergency injunction to prevent that from happening. The trial court decided not to issue that injunction; the FPBA appealed, and the trial court’s order requiring disclosure of the officers’ names was stayed pending appeal.

The Court further stated: “[t]o determine whether the officers’ names can be released, we have been asked three questions: First, can police officers acting in an official capacity be Marsy’s Law “victims”? Second, does Marsy’s Law require the commencement of a criminal proceeding to take effect? And third, does Marsy’s Law contain a right for victims to remain anonymous? 1. We have jurisdiction because the First District Court of Appeal’s decision below in Florida Police Benevolent Ass’n, Inc. v. City of Tallahassee, 314 So. 3d 796 (Fla. 1st DCA 2021), expressly construes article I, section 16(b) and (e), provisions of the Florida Constitution. See art. V, § 3(b)(3), Fla. Const. We need only answer the third question to resolve this case: ***Marsy’s Law guarantees to no victim—police officer or otherwise—the categorical right to withhold his or her name from disclosure. No such right is enumerated in the text of article I, section 16(b) of the Florida Constitution. Nor, as a matter of structure, would such a right readily fit with two other guarantees contained in article I: the right expressed in section 16(a) of the criminally accused “to confront at trial adverse witnesses,” and the right found in section 24(a) of every person to inspect or copy public records.*** We decide only what Marsy’s Law says and does not say; we do not pass upon the validity of any statutory right of certain persons, in certain situations, to withhold their identities from disclosure.” (Emphasis added)

This case is significant because in the District, MPD has said that individual officers have a right to privacy respecting their identity when performing their duties and MPD may refuse to disclose their identity in certain instances.

The Opinion for this case is in DropBox.

2. Legislation

a. Health Occupations Revision General Amendment Act of 2023 (Bill 25-0545)

As I have reported, this measure would provide that “[m]edical records, Orders for Fitness to Practice Evaluations, or other types of physical and mental evaluations, and the resulting reports, shall be exempt from disclosure under the Freedom of Information Act of 1976.”

The D.C. Council's Health Committee held a hearing on December 7, but the D.C. FOIA language was not discussed.

- b. Addressing Crime Trends (ACT) Now Amendment Act of 2023 (Bill 25-0555)

Title VII of this bill would amend D.C. FOIA section 204(d-1) (D.C. Official Code § 2-534(d-1)) (concerning broader disclosure of law-enforcement disciplinary records) by narrowing it to apply only to disciplinary actions “that resulted in a penalty of suspension, demotion, or termination.” The current subsection—though delayed pending appropriation—would have prohibited exemption of certain records whether or not the outcome was adverse to the officer.

I provided written comments on the bill. In my comments I stressed that DC police officers' faces, and badge numbers should not be redacted under the FOIA privacy exemption; that the Committee should reject the categorical exclusion for police disciplinary records; and that BWC camera footage should not be used to draft police reports – where it is used the police report should note it on the report.

The bill as-introduced is in Dropbox. The pertinent language begins at the top of page 10. A copy of my comments for the record is also in Dropbox.

E. Administrative Matters

1. BEGA moved out of its old facility at 441 4th Street, NW, and into its new offices at 1030 15th Street, NW, on November 9, 2023. BEGA's first day in the office to view the new office space and unpack was November 20, 2023. As of December 11, 2023, BEGA is working out of the new facility.
2. Since the last Board meeting, I along with Director Cooks, Chief of Staff Mitchell, and IT Specialist Brown have continued to meet with the Department of General Services and its contractors regarding BEGA's new facility at 1030 15th Street, NW. We continue to close out outstanding matters with the construction and acceptance of the facility and installation of the technology in the building. These meetings will continue weekly until the end of the calendar year.
3. On November 20, 2023, BEGA met with the Executive Office of the Mayor to discuss the proposed FY25 budget. BEGA requested additional funds to cover cost of living increases and step increases that are expected in FY25. The agency also requested funds for an additional FTE OOG attorney to handle education entities and enforcement of the Open Meetings Act.

This concludes the Office of Open Government's December 14, 2023, report. I am happy to answer any questions the Board may have at this time.

Board Member Nottingham thanked Director Allen for keeping the Board up to date on the ongoing litigation matters, specifically the Washington Post litigation regarding records related to the breach of the Capitol. Board Member Tucker agreed and noted her interest in the discussion of the deliberative process privilege in the *Khatri* case.

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 because of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	29
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	29

OPEN "UNDOCKETED MATTERS"	
Grand Total	3

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	36
Stayed - Pending DC Superior Court Case	3
Stayed - OAG False Claims Act Case	1
Stayed - OIG Investigation	5
Stayed - US District Court Case	0
Grand Total	45

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	27
Open	34
Grand Total	63

	Current	Last month	October
Investigations Open	29	33	35
Investigations Stayed	9	9	6

The number of open preliminary and formal investigations includes 9 new matters. The investigative team resolved 13 investigations since the Board last met. This total does not reflect the number of complaints that were dismissed for a lack of

jurisdiction. OGE published its Quarterly Complaint Summary Report for the fourth quarter of fiscal year 2023 on November 8th. The report and related press release are in the Dropbox for your review.

Pursuant to the Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022, BEGA may discretionarily transfer delinquent debts associated with settlements and judgements for ethics and Open Meeting Act violations to the Office of the Chief Financial Officer's Central Collection Unit ("CCU") for collection. The Act requires that funds collected on BEGA's behalf be deposited into the Ethics Fund or OMA Fund. OGE received a fully executed Memorandum of Agreement for Debt Collection Services with the CCU in October. Since that time, approximately 76% of OGE's closed pending collection cases were referred for collections. We will continue to send over cases that are delinquent over 90 days on a rolling basis.

B. Trainings/Outreach

1. Professional Development Trainings Attended by Staff

Last week, from December 3rd through the 6th, the legal team, along with Board member Tucker and OOG staff, attended the annual conference for the Council on Governmental Ethics Laws ("COGEL") in Kansas City, Missouri. On Sunday December 3rd, I presented on a panel titled "Embracing Innovation: Top 10 Training Upgrades for Ethics Commissions by Ethics Commissions." The panel was hosted by Delaney Marsco, Senior Legal Counsel of Ethics at the Campaign Legal Center ("CLC"), and also included Kedric Payne, Vice President, General Counsel, and Senior Director of Ethics at the CLC and Alex Kipp, Director of Education and Engagement at the New York City Conflicts of Interest Board. The premise of the panel discussion was that the CLC unveiled its annual Ethics Commissions Report, entitled Top Ten Training Upgrades, which resulted from research and interviews with state and local ethics commissions across the United States. The report features commissions that have adopted education and training upgrades with significant return on minimal financial investment. It highlights OGE's new state-of-the-art learning management system as the #1 training upgrade among commissions. A copy of the CLC Ethics Commission Report was placed in the drop box for your review and a press release was posted on the BEGA website.

During the discussion, I provided insight on what a learning management system is, the process for procuring a system and the process for creating training courses. I also provided information on the benefits of having a learning management system, such as the ability to educate large amounts of employees, relieving the burden on office staff, increasing reporting, and offering employees on-demand ethics trainings which they can utilize at any time from any location. The panel discussion and LMS were very well received and COGEL invited us to present on our LMS again at a sub-connect training before the next annual conference.

Some of the standout sessions that staff attended included:

- How to Build Confidence in Public Institutions and Programs
- Gifts Galore: Tips for Navigating Ethics Issues with Big Ticket Events
- Deconstructing Ethics: Where we have been, where we are going.
- When Everyone Knows Everybody - Managing Influence Risks at the Local Level
- Lobbying Update: U.S. and Canadian Federal, State, Provincial, and Local Lobbying Laws
- Catch and Release: A Discussion on Early Intervention and Compliance Efforts
- Ethics Update

In addition to COGEL, Attorney Advisor Fran Vann attended the following trainings offered by the D.C. Office of the Attorney General: Finding the Law of the District of Columbia; Cross Examination Skills; Direct Examination; and Closing Arguments. Program Coordinator Stan Kosick attended Problem Solving: Generating Solutions and Innovation & Creativity.

2. Conducted by staff

Since the November Board meeting, OGE conducted six training courses, which included the November and December monthly Ethics Trainings, the November Ethics Counselor Brown Bag Session, two ethics trainings for the District Department of Transportation, and a joint training with OOG for the Department on Disability Services.

On Monday, November 27th, Supervisory Attorney Asia Stewart-Mitchell presented the November Ethics Counselor Brown Bag Session on Gifts. Thirty-four ethics counselors were in attendance and engaged in our discussion about the holidays and the ethics rules surrounding gifts and holiday parties. A copy of the presentation was placed in the DropBox.

During the month of November, 23 employees completed our online ethics training via PeopleSoft and 11 users completed courses using the Learning Management System. The most completed training this month using the LMS was the Board of Ethics and Government Accountability Ethics Training (BGA923).

3. Outreach

On November 8th, Senior Board Attorney Lynn Tran and General Counsel Rashee Raj met with members of the U.S. Attorney's Office for the District of Columbia Fraud, Public Corruption, and Civil Rights Section as well as the D.C. Superior Court Division's Major Crimes Section. The purpose of the meeting was to establish a working relationship between our offices and to provide better coordination and referral of cases. Since that time, we have continued to remain in contact and have better access to information on criminal cases that have been stayed in our office for long periods of time. We were also able to learn more about

their case processes.

On the same day, General Counsel Raj also met with Assistant Chief of Police Jeffery W. Carroll and Commander John R. Knutsen with the Metropolitan Police Department's Internal Affairs Division for the same purpose of establishing a working relationship. They were saddened that we have moved out of the Marion Barry Building but were encouraged to have a new point of contact and open lines of communication.

On November 16th, General Counsel Raj and Supervisory Attorney Stewart-Mitchell met with the D.C. Office of Inspector General's investigators to discuss interagency partnership and what both agencies can do to enhance our relationship. DC OIG has many new investigators, and they were interested to learn more about our agency, our mission, and how we can possibly work together. Overall, November was a good month for building partnerships around the District.

Lastly, BEGA held its annual Ethics Weeks from October 23-27, 2023, and the theme was Everyday Ethics #cantgoadaywithoutit. The presentations and sessions are now available to view on BEGA's YouTube page and website (<https://bega.dc.gov/event/begas-2023-ethics-week>).

4. BEGA Newsletter

On Friday, December 15th, OGE will publish volume eight, issue six of its newsletter, "Ethically Speaking." The newsletter will inform readers of recent enforcement actions taken by this agency and other federal, state, and local ethics boards; ethics advisory opinions; and notable activities at BEGA within the last quarter. This issue will be available on the BEGA website. The next issue will be published in February 2024.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 42 ethics inquiries, which is 24 more than the 18 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 is in the process of drafting an advisory opinion that addresses the obligation surrounding cooperating with ethics investigations and the prohibition on retaliation. Also in the works is an advisory opinion on the use of official social media accounts opposed to personal accounts.

3. 2023 Annual Best Practice Report

Pursuant to D.C. Official Code § 1-1162.02(b), BEGA is drafting its Annual Best Practices Report, which will be transmitted to the Mayor and each Member of the Council by December 31st. The report will highlight the functional achievement of both OOG and OGE from fiscal year 2023 until December of this fiscal year. It will also include recommendations for actions that will strengthen the District's ethics rules and transparency laws, thereby strengthening the District's public integrity.

D. Legislation/Rulemaking Updates

1. Financial Disclosure Rulemaking

OGE is in the process of identifying boards and commissions that do not meet the definition of public official under D.C. Official Code § 1-1161.01(47) for purposes of financial disclosure, but that engage in duties that include advising and/or awarding of government funding through grants or contracts. Pursuant to § 1-1162.24(a) of the Ethics Act, "public officials, except Advisory Neighborhood Commissioners and candidates for election to public office, who are not otherwise required to file pursuant to this paragraph, shall file with the Board a public [financial disclosure] report." The definition of a public official includes "any additional employees designated by rule by the Board of Ethics and Government Accountability who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest." OGE is in the process of drafting a rulemaking that would designate those boards and commissions that should publicly file financial disclosure statements because of their official duties create a conflict of interest or the appearance of a conflict of interest. OGE believed that these boards and commissions meet the definition of public official.

2. Comprehensive Code of Conduct

The Comprehensive Code of Conduct ("CCC") is legislation that consolidates the District's ethics laws and standardizes the ethical practices between the legislative and executive branches. OGE's legal team will again review and update the CCC with the goal of submitting an updated version of the legislation to the Board and then the Council.

3. Lobbyist Registration Fee and Civil Penalty Amendment Act of 2023

As part of the FY 2025 Budget Support Act, OGE has recommended an amendment to the Ethics Act that would increase the lobbying registration fees and fines. BEGA's fees and late filing penalty for lobbyists are on the lower end of the spectrum compared to other jurisdictions. In Chicago, IL, the registration fee is \$350 and \$75 per client, and the fine for filing a late registration or activity report is \$1,000 per day and suspension of the lobbyist's registration. In addition,

Chicago's law provides that a person who employs a lobbyist but who fails to register may be subject to a fine of up to \$20,000. The Maryland State Ethics Commission has the authority to impose a fine of up to \$5,000 for late registration and reporting. The Kentucky Ethics Commission requires legislative lobbyists to pay a registration fee of \$250 and executive lobbyist to pay a registration fee of \$500, and the penalty for filing late registration or failing to renew a registration is \$100.00 per day up to \$1,000. The Georgia State Ethics Commission may assess a fee of \$275 for each late activity report with an additional late fee of \$1,000 on the seventh or fifteenth day the report is late, increasing to a late fee of \$10,000. There are several other state ethics commissions that impose higher penalties than BEGA for late filings. Therefore, OGE is proposing to increase the District's lobbyist registration fees and penalty to an amount that is consistent with other jurisdictions and will deter noncompliance with our laws. The amendment will increase the registration fee from \$250 to \$350 for profit entities and from \$50 to \$100 for non-profit entities and will increase the late filing fine from \$300 to \$100 per day up to \$5,000. A copy of the proposed amendment was placed in the drop box for your review.

E. OGE Administrative Matters

1. FY 25 Budget

On November 20th, Director Allen, Chief of Staff Mitchell, and I presented the agency's FY2025 budget submission to the City Administrator's Office. The submission included enhancement requests to increase the non-personnel services fund, funding to hire two auditors, and funding to hire an attorney for OOG. As I previously mentioned, OGE also submitted a budget support act request to include an amendment to the lobbyists section of the Ethics Act.

2. Office Relocation

Our office relocation is complete and the space is available for occupancy. This week, we received our certificate of occupancy and staff have been able to enjoy the new space. We will continue our weekly meetings with the Department of General Services ("DGS") and the project management team to discuss final items. We are truly excited to have an office space that is suitable for the entire agency.

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 has identified designated filers who have not filed or were late in filing. A list of the late filers was sent to the Office of Pay and Retirement for wage

garnishment and former employees were sent notice to pay their fine using our online payment portal. OPRS continues to work with OGE FDS Team for the processing of 2023 enforcement matters.

Attorney Advisor Vann and Program Specialist Kosick sent notices to the 13 Councilmembers and their Chiefs of Staff reminding them of their November filing obligation. To date, all Councilmembers have filed their financial disclosure statements. Auditor Courtney Walker finished the CY2022 confidential FDS audit and will discuss her results with the team. She is currently working on an audit of Councilmember filings from November 2022, May 2023, and November 2023.

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.

According to the LRR team, Lobbyist reporting remained steady in November 2023. As a result of the enhancements, it is apparent that some entities were filing activity reports without having completed their 2023 registration. Twelve registrants failed to timely file their 2023 renewal. The LRR team identified the entities and sent fine notices to these registrants and in response seven have paid their fines.

H. Public Investigations

1. 23-0006-F In re David DeBoer: This is a formal investigation based on a complaint filed by the Criminal Justice Coordinating Council ("CJCC") and referred by the Office of the Inspector General. According to the complaint, David DeBoer ("Respondent"), former IT Specialist with the Department of Employment Services provided IT services to CJCC through a vendor, Enlightened Inc., during his government tour of duty. During this time, Respondent submitted timesheets to DOES which reflected his normal District government tour of duty from 8:30 a.m. to 5:00 p.m., Monday through Friday. Respondent's alleged conduct violates DPM § 1807.1, which prohibits employees from using government time or resources for other than official business, or government approved or sponsored activities. Respondent also failed to report Enlightened on his 2022 Financial Disclosure Statement and failed to file a 2023 Statement. An evidentiary hearing is scheduled to take on January 11, 2024, at 2:00 at the BEGA office.

Thank you. This concludes the Office of Government Ethics' December 14, 2023, report.

Chairperson Hutcheson noted that she attended multiple Ethics Week sessions and thought the programs were very thorough and informative.

VII. Public Comment – if received

No public 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 at 1:56 pm.

The board dismiss **19-0010-F In re Dawne Dorsey** and made the matter public.

The Board will next meet on January 11, 2024 at 12:00 pm at the Board of Ethics and Government Accountability, 1030 15th Street, NW, Suite 700.