

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

DRAFT MEETING MINUTES – DECEMBER 2, 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. 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 12:02 pm.

II. Ascertainment of Quorum

A quorum was established with four Members present at the start of the meeting – Chair Hutcheson and Board Members Felice Smith, 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 November 4, 2021 meeting.

IV. Approval of 2022 Schedule of Meetings

The Board Members in attendance voted unanimously to approve the schedule of meetings for 2022.

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, 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

OOG has not issued any advisory opinions since the last Board meeting.

2. Formal FOIA Advice

BEGA provided FOIA requesters with correspondence advising them of the rules modifying the time period for responding to FOIA requests due to COVID-19, if it was applicable to their FOIA request. 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 FOIA requests under the tolling provision, the agency will respond to all FOIA requests tolled due to BEGA's closed facilities on or before January 4, 2022.

3. Informal OMA/FOIA Advice

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

OOG responded to fifteen (15) requests for OMA advice;
OOG responded to twelve (12) requests for FOIA advice; and
OOG responded to twenty-seven (27) requests for technical assistance with open-dc.gov.

B. Training/ Outreach

1. Mandatory Cybersecurity Training

On November 1, 2021, Attorney DeBerry attended the D.C. Government Mandatory Cybersecurity Training. This year's scenario-based training course identifies the most common cybersecurity threats.

2. 16th AINS Annual USER Conference

AINS, the provider of the FOIAXpress platform that many District agencies use to process FOIA requests, hosted a User Conference on November 3-4, 2021, which OOG attended. The conference featured online workshops, demonstrations, and seminars on FOIAXpress and eCase filing over two days. OOG staff and I attended the following webinars:

- "What's New in FOIAXpress v11" – This course detailed the product updates in the software and detailed how to use the features to respond to FOIA requests faster and more efficiently;
- "What is a Record"- This course concerned the federal FOIA definition of a record and the court's guidance on how to identify records;
- "FOIA in the News" – This webinar detailed recent FOIA cases regarding procedural issues, reading room access, and deliberative process privilege;
- "FOIAXpress 10.7 Training Workshop" – This webinar went through the lifecycle of a FOIA request through the FOIAXpress platform;
- "Product Roadmap; Audit & Investigations Overview" – This webinar detailed the litigation hold, security, and reporting features of FOIAXpress and detailed how to use the platform for audits and investigations;

- “Accident Investigations & Record Keeping Demo” – This webinar tracked safety modules that are available on the platform; and
- “Ergonomics of Working from Home” – Discussed guidelines for improving workplace practices at home including how to set up your workspace and taking breaks from screentime.

3. FOIA ANC Meeting

On November 11, 2021, I along with Chief Counsel Barton, met remotely with Schannette Grant, the Interim Executive Director of the D.C. Office of Advisory Neighborhood Commissions (“OANC”) and Attorney Kathy S. Williams, Special Assistant to Interim Executive Director. We discussed the OOG’s statutory duties, pursuant to D.C. Law 21-269, the “Advisory Neighborhood Commissions Omnibus Amendment Act of 2016” to: (1) coordinate with the OANC to include OOG-developed FOIA training materials in Commissioner training sessions provided by the OANC; (2) provide a training session at least twice per calendar year on Commission obligations under FOIA, to which all Commissioners must be invited; and (3) coordinate with the OANC to maintain and improve public transparency, including coordinating with assisting Advisory Neighborhood Commissions in fulfilling FOIA requests.

4. Mayor Bowser’s Cabinet Meeting

On November 12, 2021, I attended Mayor Bowser’s Cabinet Meeting at Banneker High School. The meeting featured updates on the District’s vaccination rates and COVID-19 pandemic response. The meeting also featured discussions regarding plans for the post-pandemic workplace and the DC One Fund.

5. OMA Training and FOIA Training

On November 17, 2021, Chief Counsel Barton presented OMA and FOIA training for the District of Columbia Sentencing Commission. I, along with the OOG staff, attended the trainings. The training courses were OOG’s basic OMA and FOIA training designed to give introductory instruction on both topics.

6. Robert’s Rules Made Simple for D.C. Government

On November 19, 2021, Susan Leahy, and James Stewart, of Robert’s Rules Made Simple, provided a training on parliamentary procedure, for public body administrative points of contact (“APCs”). I, along with Chief Counsel Barton, and Attorney Weil attended. I provided an overview of the parliamentary procedure training portal. Ms. Leahy and Mr. Stewart taught the substantive portion of the hour, concerning “The Seven Fundamental Motions” and authorship of minutes and by-laws. The training was well attended by APCs and Board members.

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. Judicial Watch lawsuit re: autopsy records (Case No. 2021 CA 000875 B) (Case No. 2021 CA 001710 B)

On March 19, 2021, and May 24, 2021, Judicial Watch, Inc., filed the respective complaints in D.C. Superior Court seeking specific performance and appealing the denials of D.C. FOIA requests to the Office of the Chief Medical Examiner (OCME) and to the Metropolitan Police Department. The requested records relate to the insurrection at the Capitol on January 6, 2021, and death of a Capitol Hill Police Officer during the event.

On November 3, the District filed (1) an unopposed motion to consolidate the actions because both concern requests to the "OCME[]" that are likely to raise 'common questions of law' [and the p]arties are also working to narrow the issues presented in both cases"; and (2) a consent motion for extension.

On November 5, the court granted both motions, finding that the two cases "involve the same parties, records from the same District agency, and...common questions of law." The order: (1) consolidated the two cases; (2) reset the initial scheduling conference for February 4, 2022, at 9 a.m.; (3) requires "a joint status report...on the progress of [the parties'] efforts to narrow the issues in dispute," due January 19, 2022; and (4) requires the District to file its answer in both cases on or before January 19, 2022. The *Complaints, Motion to Consolidate, and Consolidation/extension Order* are in the Dropbox.

b. Tormell DuBose lawsuit re: D.C. Board of Dentistry resumes, experts, complaints, and decisions (Case No. 19-CV-1239)

On January 20, 2018, Tormell DuBose, D.D.S. sued the District under D.C. FOIA, seeking certain records from the Board of Dentistry and challenging the assessment of fees. Following the Superior Court's orders of September 13, November 18, and November 26, 2019, granting summary judgment to the District, DuBose appealed.

The Court of Appeals heard oral arguments on November 30, 2021. Attorney Weil attended virtually on behalf of OOG.

Counsel for Appellant DuBose's Argument: (1) The Board of Dentistry sought fees of over \$9000, and offered no "break down" to itemize the costs

by each of the six line-items of the request; (2) A search has to be reasonable so as to minimize its amount; (3) Some of the records requested were electronic records and already had been produced for a federal database; (4) There is no reading room provided by DC Health, though they are supposed to make “these things” available without request; (5) The requestor had an IT expert testify in Superior Court that the decisions could not be found on the Board’s website as required; (6) The large fee and lack of itemized breakdown were intended to delay and discourage the requestor’s pursuit of the records; (7) D.C. FOIA’s public policy in favor of disclosure implies a minimization of costs to requestor; and (8) The District’s delayed response compels a complete waiver of fees.

Counsel for the District’s Argument: (1) The scope of request was not just final orders and decisions to be posted on the website; it also included complaints, etc., and there were 174 complaints that needed to be reviewed, including paper files; (2) The appellant’s argument that some records were produced for the national databank is raised too late - he first raised it in his reply brief; (3) The argument only relates to orders and decisions; (4) The appellant did not show to what amount, if at all, the release to the databank would impact fees assessed against him; (5) The appellant misrepresents the situation with website—the fact that he could not find decisions does not mean they weren’t there; (6) He conceded that he found nine of them, which comports with how many actually existed; (7) As a matter of law, the District’s response was at least adequate; (8) The \$9000 was based not on the decisions that were required to be posted, but on the review of paper files; (9) The appellant was in control of the scope of this own request, and the Board of Dentistry had advised him to narrow the scope; (10) Waiver of fees is in the discretion of the public body; (11) DuBose had not indicated how the records would benefit the public; (12) The record shows that the rationale for his request was to enhance his commercial viability as a consultant; (13) Denial of fee waiver can be attacked only through a separate lawsuit, not directly on appeal; and (14) Any tardiness of response does not compel waiver. The remedy for the requestor is administrative exhaustion, not automatic free documents.

The OOG will continue to monitor these matters.

D. Administrative Matters

1. FY23 Budget Submission

On November 5, 2021, BEGA completed its FY23 Budget submission, to the Executive Office of the Mayor. On November 18, 2021, Acting Director Cooks and I along with the Office of the Chief Financial Officer attended our Budget Review Team (BRT) Meeting with the Office of Budget and Performance Management in the Office of the City Administrator to discuss BEGA’s 2023 Budget.

BEGA sought several budget enhancements to ensure it meets its statutory

mission and program goals. 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.

BEGA also made two budget enhancement requests related to OOG:

- Enhancement to Reclassify OOG Positions: OOG is looking to work with DCHR to properly classify the Chief Counsel position and Attorney Advisor position (LS-13) and is seeking funds in the FY23 budget to support that process.
- Enhancement to Add a OOG Funded Legal Fellow: BEGA is seeking to add a paid Legal Fellow position to support the Office of Open Government.

This concludes the Office of Open Government’s December 2, 2021, report.

Chair Hutcheson noted for the recorded that Board Member Charles Nottingham joined the meeting.

VI. 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 occur as a result of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	55
Open - Negotiations	2
Open - Show Cause Hearing	0
Grand Total	57

OPEN "UNDOCKETED MATTERS"	
Grand Total	6

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	27
Open	
Grand Total	27

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

The number of open preliminary and formal investigations includes 8 new matters opened since the Board last met. The investigative team resolved 17 preliminary investigations since the Board last met. Auditor Tujuba completed the third quarter CY2021 Complaint Intake and Processing audit and questions were sent to the investigation team.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

Several members of OGE took the annual mandatory cyber security training from the Office of the Chief Technology Officer. Administrative Officer Tyrell Dow completed PeopleSoft Commitment Accounting, PeopleSoft eRecruit, and FMLA Coordinator Training. Program Specialist Stan Kosick took "The Future Government Workplace: Building Innovative Workspaces to Drive Employee Productivity and Better Serve Constituents from Anywhere." Auditor Amanueil Tujuba completed the following trainings: Choosing the Right Interpersonal Communication Method to Make Your Point; Facing Virtual Team Challenges; Business Analysis Professional Effectiveness Competencies; Clarity and Conciseness in Business Writing; and Key Elements of Business Execution. I attended the Inclusion & Equity Summit's Virtual Conference.

2. Conducted by staff

Since the last Board meeting, OGE attorneys conducted 3 ethics trainings to include the monthly ethics training. The other two were Board and Commissions trainings for the DC Commission on the Arts and Humanities and the Public Employee Relations Board. OGE hosted a virtual brown bag on Monday, November 29, 2021 to address popular seasonal topics – Giving and Receiving Gifts, Holiday Parties, and the Local Hatch Act. The event was well attended by ethics counselors and even a Council member.

35 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”). Some of the courses will include: Developing an Ethical Culture, Becoming an Ethical Leader, An Ethical Decision-Making Framework, The Role of the Ethics and Compliance Program, Culture Carriers, as well as our Code of Conduct, Local Hatch Act, Council Code of Conduct, and Boards and Commissions trainings. OGE will make the LMS available to a select number of Ethics Counselors before allowing employees to access the site.

C. Advisory Opinions/Advice

1. Informal Advice

OGE’s legal staff provided advice for approximately 34 ethics inquires, which is 4 more than the 30 reported at the November 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 provide pro bono legal representation before District courts and federal courts, and District and federal agencies. The Committee is preparing the Bill for mark-up at the next hearing.

E. OGE Administrative Matters

1. OGE Staffing

We advertised a vacancy announcement for an Attorney Advisor through October 20th and interviewed 4 applicants before Thanksgiving. We have tentatively reached a decision, so pending reference calls, we are prepared to make an offer by the end of this week. OGE is working with the Department of Human Resources to draft position descriptions for a Human Resources Specialist and Chief of Staff. Once those position descriptions are certified both vacancies will be posted on Careers DC and LinkedIn.

2. Budget

On November 4, 2021, Director Allen and I submitted BEGA’s 2023 Budget Submission to the Office of the City Administrator. The submission included budget enhancement requests for office relocation, legal fellows, a Supervisory Investigator, a Public Information Officer, and OOG reclassifications.

F. Financial Disclosure Statement (FDS)

On October 15, OGE notified the District Councilmembers (and Chiefs of Staff) that their Fall 2021 Financial Disclosure were due by November 15. Reminders were sent on November 4, November 12, and November 15. All Councilmembers have filed their statements. Auditor Tujuba completed the audit of Councilmembers CY2021 PFDS for November 15th filing, and only minor findings were noted.

The FDS Team met with a vendor to discuss the next phase of enhancement to the FDS e-file system and to establish OGE's priorities. We anticipate implementing enhancements to improve the filing process for Advisory Neighborhood Commissioners, implementing an e-signature certification, and administrative control enhancements.

The FDS Team continues to work on the Financial Disclosure Standard Operating Procedures Manual. Enforcement and collection activities continue with the Office of Pay and Retirement. The FDS Team is preparing for the 2022 filing period by finalizing Ethics Counselor lists and updating training materials.

G. Lobbying Registration and Reporting (LRR)

OGE received 23 filings in November. Of note, OGE received 10 New Registrations, 6 Amended Renewals, 5 Amended Activity Reports, and 2 Activity Reports. The LRR Team will host Lobbyist trainings in December and January. The trainings will focus on the definition of lobbying, how and when to file a registration and activity report, and enforcement.

H. Formal Investigations

1. **22-0002-F In re Neil Albert** – This matter is a formal investigation, pursuant to D.C. Official Code § 1-1162.12(b) and is based on allegations that the Respondent, former-Chairman of the DC Housing Authority's Board of Commissioners, voted to award contracts to Moya Design Partners ("Moya Design") and failed to disclose a close personal relationship with the owner of Moya Design. OGE is continuing its efforts to investigate this matter by gathering evidence and interviewing witnesses.
2. **22-0001-F In re Michael Redmond** – This matter is a formal investigation pursuant to D.C. Official Code § 1-1162.12(b) and is based on allegations that the Respondent maintained a full-time job as a Principal in the Providence Rhode Island school system while simultaneously working as an Assistant Principal for DC Public School, Kramer Middle School, from July 2020 until November 2020. A Notice of Violation was approved at the last board meeting. Respondent's answer was placed in the Dropbox for your review.

Thank you. This concludes the Office of Government Ethics' December 2, 2021 report.

VII. Public Comment – if received

The Board did not receive any public comments.

VIII. Executive Session (nonpublic)

IX. Resumption of Public Meeting

The Board reconvened the public meeting at 2:22 p.m. Four members were in attendance at the resumption of the public meeting – Chair Hutcheson and Board Members Nottingham, Smith, and Tucker.

The Board reported out two matters from the executive session.

21-0059-P In re A. Reitnauer – The Board approved the negotiated disposition.

22-0001-F In re Michael Redmond – The Board approved the scheduling order and notice of hearing.

X. Adjournment

The Board will meet again on January 6, 2022 at 12:00 p.m.