

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

MINUTES OF MEETING

December 5, 2019

The District of Columbia Board of Ethics and Government Accountability held a meeting on December 5, 2019 at 10:00 a.m., in Room 540 South of the One Judiciary Square Building, 441 4th Street, N.W., Washington, D.C. The Board’s Chairperson Norma Hutcheson was present as well as Board Members Charles Nottingham, Felice Smith, Darrin Sobin, and Melissa Tucker. Senior Attorney Advisor Rochelle Ford was also present.

Members of the public are welcome to attend. Questions about the meeting may be directed to bega@dc.gov.

AGENDA

I. Call to Order

Chairperson Hutcheson called the meeting to order at 10:01 a.m.

II. Ascertainment of Quorum

Chairperson Hutcheson established that a quorum was present.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda.

The Board voted unanimously to approve the November 7, 2019 meeting minutes.

The Board voted unanimously to approve the Board’s 2020 Meeting Schedule.

IV. Report by the Director of Open Government

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

- a. On November 18, 2019, I issued dismissal of an Open Meetings Act complaint (#OOG-2019-0008-M) regarding the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (“COST”) compliance with the OMA. The complaint alleged that COST violated the OMA on July 13, 2016, by not providing the public with proper notice of its meeting. The Complainant alleged that a recently discovered email message concerning scheduling was the basis of the complaint. However, in four previous complaints the complainant alleged COST violated the OMA on either July 2016, or specifically on July 13, 2016. My resolution of an August 16, 2019 complaint (#OOG-2019-0008), which resulted in a dismissal, was issued to the same complainant on September 19, 2019. It included a finding that complaints alleging COST violated the OMA during July 2016 or on July 13, 2016 were time barred.

2. Informal OMA/FOIA Advice:

Since the last Board meeting, the OOG’s responses for informal and technical FOIA and OMA advice and assistance are as follows:

- 5 provisions of FOIA substantive advice;
- 4 OMA substantive responses; and
- 58 responses to OMA requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. On November 12, 2019, OOG Attorney Advisor Johnnie Barton attended the Office of Attorney General’s training on “Investigations and Interview Techniques.”
2. On November 14, 2019, I completed an Executive Education Seminar conducted by the US Department of Homeland Security concerning the District of Columbia’s response and readiness for a disaster. The Mayor’s cabinet and independent agency directors were in attendance.
3. On November 14, 2019, OOG’s Computer Systems Analyst, Tiffany Montgomery attended “A State of Cyber” training seminar at Georgetown University School of Continuing Studies. The seminar included talks from world-class researchers in the field of cyber technologies and information sharing.

4. On November 17, 2019, OOG's Computer Systems Analyst, Tiffany Montgomery, attended an "Artificial Intelligence" training seminar at Capital One Bank headquarters. The seminar included reports from top corporate chief technology officers on the topic.
5. On November 18, 2019, OOG's Computer Systems Analyst, Tiffany Montgomery, attended a training seminar sponsored by Fed Scoop titled "Modernization of IT Infrastructure in the Government Cloud."
6. On November 20, 2019, I, along with Director Wolfingbarger, attended the swearing-in ceremony for the new members of District of Columbia Boards and Commissions. Mayor Muriel Bowser administered the oath of office to BEGA Board Members Nottingham and Smith, along with over 400 of their fellow public servants. I was honored to attend and witness the ceremony on behalf of the agency.
7. On November 21, 2019, OOG's Computer Systems Analyst, Tiffany Montgomery, completed the two-day training course "Project Management Essentials" sponsored by the DC Department of Human Resources.
8. On December 3, 2019, OOG's Computer Systems Analyst, Tiffany Montgomery, attended a training seminar sponsored by Fed Scoop regarding Cybersecurity.
9. OOG ANC FOIA Training: Provisions of the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (D.C. Official Code § 1-309.12(e)(6)) require the OOG to provide a training session at least twice per calendar year on Commission obligations under FOIA. I am currently engaged in communications with Gottlieb Simon, Executive Director of the Office of the Office of ANCs to establish a recurring training schedule and create FOIA training materials tailored to the ANCs. We had a meeting on December 3, 2019 to discuss and plan the training sessions. We have also set tentative training dates of Saturday, January 11, 2020; Tuesday, January 14, 2020; and Thursday January 16, 2020.
10. On December 4, 2019, the OOG conducted an Open Meetings Act training for members of the District of Columbia Public Schools, Local School Advisory Teams ("LSATs"), an LSAT exists in each of the 115 District Public School. As the Board is aware, my August 5, 2019 advisory opinion found that LSATs are subject to the OMA and must undergo OMA training to insure their meetings comport with the law. The training and monitoring of these 115 LSATs will increase the OOG's work load substantially.

C. Legislative Update:

On December 3, 2019 the D.C. Council passed an emergency bill from Councilmember Trayon White to expand access to Body Worn Camera footage from DC Metropolitan Police Department Body Worn cameras to the family of a deceased person who was depicted in the video footage. The title of the bill is the “Access to Body Worn Camera Emergency Amendment Act of 2019.”

D. Administrative Matters

Suite 540 South Expansion and Reconfiguration: I am pleased to report that the former break room in this suite has been reconfigured to include two cubicles for two additional employees. We also sent excess furniture and equipment to DC Surplus Property. The project is near completion.

This concludes the Office of Open Government’s December 5, 2019 report. Thank you.

V. Report by the Director of Government Ethics

A. Update on Status of Office of Government Ethics (OGE) Operations: Recap of previous month’s activities (statistics). These reported statistics do not reflect status changes that we anticipate will occur as a result of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	36
Open - Negotiations	8
Open – Show Cause Hearing	7
Grand Total	51

OPEN "UNDOCKETED MATTERS"	
Grand Total	6

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	20
Closed – Pending DC Superior Court Case	1
Closed - Pending External Action	1
Stayed - 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	37

REGULATORY MATTERS BY STATUS

Closed - Pending Collection	24
Open	1
Grand Total	25

	Current	Last month	October 2019
Investigations Currently Open:	51	58	53
Investigations Stayed:	14	12	14

Our number of total open investigations went down slightly this month, but most promisingly, our number of active investigations decreased from 46 last month to only 36 this month. Additionally, per our discussions during last month’s Board meeting, I have added the number of open “undocketed matters” to my report to provide the Board with greater clarity on that aspect of our operations.

B. Publication and Reporting Obligations:

We have published our Quarterly Complaint Report (QCR) for the fourth quarter of FY19. We have also submitted our FY19 performance and workload measures to the City Administrator’s Office. The only performance goal we did not meet in FY19 pertained to the length of time it takes us to resolve a case after it is initiated. As I explained to the City Administrator’s Office, we experienced longer investigation closure times during FY19 primarily due in part to staff turnover and vacancies, absences due to FMLA periods (two lengthy maternity leaves from an investigative staff of only 6 people), and an increased number of incoming complaints (111 in FY19 vs. approximately 79 in FY18, which represents a 28.8% increase).

C. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

On November 14, Investigator Corrales completed a training webinar on the Dark Web and Open Source Information offered by the National White Collar Crime Center (NW3C). On November 8, Auditor Tujuba completed a training webinar on Understanding Unconscious Bias offered through DCHR’s Skillport service. And on November 22, I completed an online cybersecurity webinar through OCTO entitled Security Awareness Fundamentals.

2. Conducted by staff:

Since the date of the last meeting, we conducted 5 trainings, the same as last month. The 5 trainings included 2 new employee orientations, 1 monthly ethics training, 1 Boards and Commissions training for the UDC Board of Trustees, and 1 ethics training at the Department of Parks and Recreation.

In addition, 93 employees completed the online ethics training through PeopleSoft during the month of October.

D. Advisory Opinions/Advice:

Informal Advice: approximately 44, which is 16 less than the 60 reported at the last meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

E. Ethics Legislation/Comprehensive Code of Conduct:

Chairman Allen has introduced this year's version of the CCC for the Council's consideration, and CM Brianne Nadeau introduced another bill on March 19, 2019 entitled the "Ethics Reform Amendment Act of 2019." We are continuing to evaluate the current contents of the CCC with an eye toward potentially recommending some modifications that might improve the legislation's chances of enactment.

F. Budget:

Our FY2020 budget is currently in good shape, and after receiving a streamlined estimate from the private sector IT vendor to develop and implement the most pressing enhancements to our current OCTO-designed FDS and LRR e-filing systems, we plan to move ahead with that project while continuing to explore possible replacements to the current systems.

Additionally, I am happy to report that the Bullpen renovation project has been completed which will now has 8 work stations where staff members can work in that space. By-and-large, I believe the space feels roomier and less cramped than before, and staff members are generally happy with the results.

G. Staffing:

Attorney Ford I are still working with the Board to schedule interviews with the remaining top candidates for our vacant General Counsel position. Additionally, our FDS/Lobbyist Program Specialist (Stan Kosick) and I have been reviewing resumes from candidates for our temporary Technical Support Specialist positions and I am planning to onboard selectees around December 16.

H. Litigation:

Status of pending cases.

- Gerren Price –2019 CA 005346 P(MPA). Our Motion to Dismiss the appeal was filed on November 12 and Mr. Price’s response was filed during the scheduling hearing on November 15 where Brad Seamons from the OAG represented us. Mr. Seamons also filed BEGA’s agency record on November 26, and a status hearing has been scheduled for January 10, 2020 at 10:30 am before Judge Shana Frost Matini. Copies of the relevant documents have been uploaded to the Dropbox for your review.
- A. Blaine vs. BEGA, OEA Matter No. J-0030-19. This is an employment matter involving a separated employee. We are still waiting for a decision from the Administrative Judge on our motion to dismiss.

I. Lobbyist/Financial Disclosure Matters:

We sent out the semi-annual FDS filing notification to all Councilmembers on October 15th, 2019 via email and hard copy. We sent out a one-week reminder on Friday November 8 to all Councilmembers who still needed to file, as well as a one-day reminder on Thursday, November 14, and all Councilmembers filed their FDS statements in a timely manner.

Regarding our enforcement efforts, Stan Kosick has completed his review of the emails sent to/from all OGE staff who worked on FDS matters the past two years as well as the Support Tickets submitted through the e-filing system, and after comparing them with the 551 required filers who have not yet submitted their 2018 FDS Statements, he determined that 83% of those who did not submit their FDS statements did not seek BEGA assistance either via direct email or through a Support Ticket. The remaining 17% submitted a support ticket, contacted BEGA, or were separated from employment prior to April 2019, or were found to be compliant for other reasons. Stan’s December 4 memo outlining his findings, our anticipated next steps for enforcement action, and his recommendations regarding improvements to our existing FDS customer support processes has been uploaded to the Dropbox for your review.

J. Non-Confidential Investigations:

1. 18-0006-P, *In re*: Jack Evans – This formal investigation involves allegations that Councilmember Evans violated the Council Code of Conduct. We are working with our partner agencies to ensure that any investigative actions we undertake will not interfere with the related law enforcement investigation.
2. 19-0008-F, *In re*: Dr. Marla Wyche-Hall. This is a formal investigation involving allegations that while employed with her former agency, the Respondent engaged in employment discussions with an entity with whom her agency contracted and subsequently violated the District’s post-employment restrictions.

3. 20-0004-F, In re: Jack Evans. This is a formal investigation initiated pursuant to a sworn and notarized complaint from Alan Roth alleging that CM Evans violated DPM §1801 (a), and indirectly alleging a violation of the conflict of interest provisions. The complainant points to two Proposed Resolution votes that CM Evans participated in during this term that were related to the larger ethics investigations of his actions. The complainant argues that by not recusing himself from those votes – and by voting against stripping himself of committee chair positions and against a resolution that would have helped O’Melveny & Myers enforce subpoenas in their investigation of Evans – CM Evans failed to maintain a high level of ethical conduct in the performance of his official duties and took official action that would adversely affect the confidence of the public in the District government’s integrity. OGE is still researching the interesting potential issues of first impression raised by Mr. Roth’s Complaint, and we will discuss the results of our research during the Board’s January meeting.

Board Member Melissa Tucker was not present during the discussion of matters related Jack Evans.

VI. Opportunity for Public Comment

Alan Roth provided public comments via telephone. Mr. Roth stated that he is the complainant in the matter just discussed (*In re* Jack Evans, #20-0004-F). Mr. Roth referenced emails that he had exchanged with OGE staff and on which Chairperson Hutcheson was copied. Mr. Roth explained that there seems to be a “serious procedural difference of opinion” with the staff about how to deal with legal arguments that he believes that the D.C. Council’s General Counsel may be submitting regarding his complaint. He stated that he would not discuss how he learned about potential involvement with by Council and stated that he and the Board’s General Counsel have an “honest professional disagreement” as to what constitutes an *ex parte* communication.

He believes OGE is conflating its obligation to investigate the facts with the consideration of the legal arguments involved in the matter. He stated that he has no issue with OGE receiving information from the Council, but believes that he should have the right to receive and rebut any legal arguments that OGE may receive. He then referred to Director Wolfingbarger’s comments at a November 21, 2019 Public Roundtable about potential legal issues related to the matter. Mr. Roth also believes Mr. Evans’ lawyer may weigh in with legal arguments. He then said that “any first year litigator” would recognize these as issues for a motion to dismiss for failure to state a claim. He then stated his belief that there are no facts to be discovered in this matter. He also stated that he doesn’t know who is responsible for deciding the law and facts in this matter. He also requested that the Board charged with ensuring open government instruct its staff to follow the principles of open government and share any legal arguments that the office receives with him. He does not seek facts or information, but rather any legal arguments from entities that he believes are trying to get the case dismissed.

Director Wolfingbarger responded to Mr. Roth's comments. He stated that he stands behind the discussion contained in the emails referenced. He also emphasized that it is OGE's responsibility to determine the factual and legal issue in this matter and that Mr. Roth has been offered an opportunity to submit additional materials if he would like. The Director stated that OGE does not function as an appellate court. Finally, he stated that nothing in BEGA's rules or past practices would entitle Mr. Roth to receive any information gathered by OGE while conducting its investigation.

VII. Executive Session (nonpublic)

The Board voted unanimously to deliberate in Executive Session (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b), 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), 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), and to discuss contract negotiation strategies pursuant to D.C. Official Code § 2-575(b)(2).

VIII. Resumption of Public Meeting

The Board approved negotiated dispositions in the following matters:

1. #20-0001-P, *In re* Aguilar
2. #20-0002-P, *In re* Giles
3. #20-0004-P, *In re* Goldstein
4. #20-0037-P, *In re* Alexander

IX. Adjournment

BEGA's next meeting is January 9, 2020 at 10:00 a.m.