

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

**MEETING MINUTES – December 5, 2024**

The District of Columbia Board of Ethics and Government Accountability held a hybrid meeting at the Board of Ethics and Government Accountability, 1030 15<sup>th</sup> Street, NW, Suite 700 West, and virtually on December 5, 2024, at 12:00 p.m. Chairperson Norma Hutcheson and Board members Charles Nottingham, Felice Smith, Darrin Sobin, and Melissa Tucker participated in the meeting.

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 p.m.

**II. Ascertainment of Quorum**

All Board members were present at the start of the meeting.

**III. Adoption of the Agenda/Approval of Minutes**

The Board unanimously approved the agenda and the minutes of the November 2024 meeting.

**IV. 2025 Meeting Schedule**

The Board members approved the schedule of meetings for 2025. Board member Nottingham noted that the Board meetings will move to 10:00 a.m. starting January 9, 2025.

**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”). Our mission is to ensure that all persons receive full and complete information concerning the affairs of the District of Columbia government and the actions of its officials. Since the last Board meeting, OOG has continued its work to ensure that District of Columbia government’s operations are transparent, open to the public, and promote civic engagement. To that end, OOG has enforced the Open Meetings Act, advised on the Freedom of Information Act’s requirements, and provided training on those transparency laws. OOG proudly served as advocates for an open and transparent government.

**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 Advice

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

- 1 request for OMA advice;
- 3 requests for FOIA advice; and
- 9 requests for technical assistance with open-dc.gov.

**B. Meeting Monitoring**

OOG's staff attends public bodies' meetings, in person and remotely, to ensure compliance with the OMA. They also inspect public bodies' websites and OOG's Central Meeting Calendar for public meeting notices and records. OOG attorneys provide legal advice on OMA compliance and take corrective action, if necessary.

Since the last Board meeting, OOG's legal staff attended nine (9) public body meetings. As a result of the monitoring, one (1) corrective measure was communicated. The public body failed to post detailed agenda.

**C. Training/Outreach**

1. The Office of the Attorney General's (OAG) "Rulemaking Training"

On December 4, 2024, I, along with Attorney Advisors Anthony J Scerbo, Brandon Lewis, and Joan Lelma attended OAG's Rulemaking Training. OAG's Legal Counsel Division (LCD) attorneys Laurie Ensworth and Josh Turner discussed the procedural and substantive requirements for rulemaking under District law, LCD's role in the rulemaking review process, and issues that LCD frequently encounters in the course of its reviews. The OAG facilitators covered the main steps of proposed, approved, and final rule, with an explanation of how emergency rules are made. They also highlighted potential legal issues and the dos and don'ts of writing rule(s).

**D. Litigation and Legislative Update**

1. Litigation

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

This case involves the DC Open Government Coalition's (DCOGC) lawsuit against the District of Columbia seeking an accounting of the backlog of public-records requests submitted through the FOIA Xpress Public Access Link. The Office of the Chief Technology Officer (OCTO) is the agency involved in the matter. An update on the status of this lawsuit follows.

The status hearing that was scheduled for November 22, 2024, was continued to December 19, 2024, and rescheduled for February 14, 2025, at 10:30 am. The Court determined upon reviewing the docket that it required additional time to review “Plaintiff’s Opposed Motion for Leave to File First Amended Complaint and Supplemental Brief,” filed on October 2, 2024, and the subsequent opposition and reply. OOG Staff will continue to monitor.

b. Pauline Stonehill v. Internal Revenue Service (IRS), Civil Action No. 06-0599 (D.D.C. 2024)

This federal FOIA case is an attempt to overturn a longstanding ruling regarding a dispute concerning a federal FOIA production of documents. The facts of this matter commenced in 1962, local authorities raided Henry S. Stonehill’s businesses in the Philippines, leading the IRS to bring a civil tax case against him and his associate. The IRS obtained a \$17.6 million judgment against them, two decades later. In 1998 and 2001, Mr. Stonehill filed identical FOIA requests with the IRS seeking documents related to the matter. Pauline Stonehill, Henry Stonehill’s wife and co-executor of his estate, became the plaintiff in this litigation when her husband died in 2002. Mrs. Stonehill died in 2023. The co-executor of the estate, Dr. Patrick Lenz, was substituted as plaintiff in 2024.

In the IRS’ response to those FOIA requests, the IRS identified only eight boxes of responsive documents. However, upon review of the boxes, the IRS found an SF-135, a form used by the National Archives and Records Administration to record its transmission and receipt of agency records. The SF-135 stated that the IRS sent eighty-six boxes of records related to the IRS’s civil tax case against the plaintiff to the Washington National Records Center (WNRC). When the IRS went to the WNRC to review those boxes, they found only eighty-four boxes. The WNRC did not have Boxes 17 and 83 nor any record of their location, so the IRS and NARA deemed the boxes missing.

In 2008, the US District Court for D.C. granted partial summary judgment to both the plaintiff and the IRS on some document-withholding claims and to the IRS on the sufficiency of its search. The plaintiff alleged that the IRS improperly withheld documents in response to the 1998 and 2001 FOIA requests.

Dr. Lenz moved to set the judgment aside under Federal Rule of Civil Procedure 60(b)(6) and the District Court’s inherent powers in 2024. The plaintiff argued that the IRS committed fraud on the Court by deeming boxes 17 and 83 missing, because it knew the boxes were never lost and was keeping the boxes hidden in a safe to avoid production. On November 5, 2024, the court ruled that a court may only set aside a judgment under Federal Rule of Civil Procedure 60(b)(6) for a reason not addressed by another part of Rule 60(b). Rule 60(b)(6) does not provide litigants with a way to circumvent time limits established elsewhere in that rule. Providing

false declarations to a court - that boxes containing documents sought in a Freedom of Information Act suit were lost - does not constitute fraud on the court. The motion to set aside judgment was denied. A copy of the court's decision has been placed in Dropbox. OOG Staff will continue to monitor this case.

2. Legislation

a. DC Water Critical Infrastructure Freedom of Information Clarification Amendment Act of 2024

This is an update of the "DC Water Critical Infrastructure Freedom of Information Clarification Amendment Act of 2024." As previously reported, the bill has been transmitted to Congress, with a Projected Law Date of December 21, 2024. In addition, with the temporary bill in effect, any D.C. FOIA advice issued is covered by the temporary legislation in effect and will be permanent once the permanent act becomes law. This bill exempts from disclosure critical infrastructure information or plans that contain critical infrastructure information for the critical infrastructures of the District of Columbia Water and Sewer Authority.

E. Administrative Matters

1. FY26 Budget Formulation Meeting

On November 20, 2024, Director Cooks, Chief of Staff Mitchell, General Counsel Raj, and Chief Counsel Neal conducted a virtual meeting with members of the Office of the City Administrator (OCA) regarding BEGA's FY 26 budget and delivered its budget request presentation. The proposed budget was not sufficient to cover OOG's operating expenses, so BEGA requested several budget enhancement requests for OCA to consider. BEGA's budget enhancement requests regarding OOG are as follows: to (1) restore the agency's non-personnel services funding to the FY24 level; and (2) to fund OOG's trial attorney position, whose primary responsibility is to seek relief in Superior Court for OMA violations and to argue for temporary restraining orders and injunctive relief, as the OMA requires.

**This concludes the Office of Open Government's December 5, 2024, report. I am happy to answer any questions the Board may have.**

**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.

<b>OPEN INVESTIGATIONS BY STATUS</b>	
Open	52
Open - Negotiations	0
Open - Show Cause Hearing	1
Grand Total	53

<b>OPEN "UNDOCKETED MATTERS"</b>	
Grand Total	0

<b>PENDING/STAYED INVESTIGATIONS BY STATUS</b>	
Closed - Pending Collection	36
Stayed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	0
Stayed - OIG Investigation	4
Stayed - US District Court Case	3
Grand Total	44

<b>REGULATORY MATTERS BY STATUS</b>	
Closed - Pending Collection	36
Open	78
Grand Total	114

	<b>Current</b>	<b>Last month</b>	<b>October</b>
Investigations Open	53	61	60
Investigations Stayed	8	10	11

The number of open preliminary and formal investigations includes 9 new matters. The investigative team resolved 17 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

Program Support Assistant Naquita Titus took the course Understanding the DC Budget. Program Coordinator Stan Kosick took Introduction to MicroStrategy. Attorney Advisor Brenda Keels completed Level 1 Investigative Interviewing

Techniques offered by Wicklander-Zulawski & Associates. Most of OGE's legal staff attended the Office of the Attorney General's Rulemaking Training Session.

Seventy-seven percent of agency employees have completed the Annual Mandatory Cybersecurity Training Course as of this week. All Board Members, employees, and contractors must take the training by Tuesday, December 31, 2024.

2. Conducted by staff

Since the last Board meeting, OGE conducted three training sessions: two New Employee Orientation Ethics Trainings and the Monthly Brown Bag session. On Monday, November 25<sup>th</sup>, Attorney Advisor Brenda Keels presented the November Ethics Counselor Brown Bag Session. She presented the seasonally appropriate topic of gifts to approximately 20 ethics counselors. A copy of the presentation was placed in the DropBox.

During the month of November, 27 employees completed ethics training using PeopleSoft and 5 employees were added to the Learning Management System.

3. Outreach

Next weekend, several OGE attorneys and Supervisory Investigator Cook will attend the annual conference for the Council on Governmental Ethics Laws (COGEL) in Los Angeles, California. On Sunday, December 8, Senior Attorney Advisor Tran is speaking on a panel titled "Federal Insights: How did we get here? The Good, Bad and Ugly." Also on Sunday, General Counsel Raj is presenting with Alex Kipp from the New York Conflicts of Interest Board in a session titled: "Present with Presence: Improv Skills to Boost Collaboration and Connection in your Presentations." Finally, also on Sunday, December 8, I will be speaking on a panel called "Turning Crises into Opportunities: Strategies for Building and Restoring Public Trust in Government." We are looking forward to COGEL and will give a full summary of the conference at the next board meeting.

**C. Advisory Opinions/Advice**

1. Informal Advice

OGE's legal staff provided advice for approximately 28 ethics inquiries, which is 15 less than the 43 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 has not issued any advisory opinions this month. OGE has two advisory opinions in the works with hopes that they can be published before the end of the

year. These are on Widely Attended Gatherings and an advisory opinion on Lobbying. OGE is also in the process of editing the Advisory Neighborhood Commissioner Sign-on Letters advisory opinion.

3. Annual Best Practices Report

Pursuant to D.C. Official Code § 1–1162.02(b), BEGA is in the final stage of 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 2024 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 and Rulemaking Updates**

1. Financial Disclosure Rulemaking

On November 1, BEGA’s most recent financial disclosure rulemaking was published in the D.C. Register for a 30-day comment period. This financial disclosure rulemaking addresses technical and minor substantive changes to the financial disclosure regulations. This rulemaking will provide clarity for regulations that are ambiguous and corrects language that aligns with the Ethics Act and Chapter 18 of the District Personnel Regulations. The comment period ended Monday, December 2, 2024, and no comments were received.

**E. OGE Administrative Matters**

1. Vacancies

OGE has posted its Attorney Advisor and Human Resources Specialist vacancies. The office is in the process of posting the vacancy announcement for its Legal Fellow position and will soon post an announcement for its upcoming Administrative Officer vacancy.

2. FY26 Budget

On November 20<sup>th</sup>, OGE and OOG presented the agency’s FY26 budget submission to the Office of the City Administrator. BEGA received its MARC, which does not include any reductions. However, the agency will face shortfalls in its FY26 budget due to increases in fringe benefits and step increases in salaries, as well as expenses such as IT assessment fees. We have requested a budget enhancement for funding to the non-personnel services fund. OGE requested funding to hire two full-time Auditors who will enable the agency to meet its statutory requirement of auditing all financial disclosure statements on an annual basis. We look forward to receiving the Mayor’s decision on our requests.

Also, OGE plans to submit a Budget Support Act proposal which will amend the Lobbyist section of the Ethics Act by repealing § 1-1162.28(a)(4), which excludes 501(c)(4) organizations from registering as lobbying entities, and adding language that requires those entities to register in the same manner as 501(c)(3) organizations. Currently, 501(c)(3) non-profit organizations must register with the Director of Government Ethics and pay a reduced registration fee of \$100. The legislative history of the Ethics Act does not provide reasoning for excluding 501(c)(4) entities from the registration requirement. In fact, most jurisdictions, including the federal lobbying disclosure program, do not differentiate between nonprofit organizations and other organizations that meet the lobbying registration requirements. While public policy and the nature of 501(c)(3) and 501(c)(4) entities can justify a fee reduction for these nonprofit organizations, OGE has not identified a practical or public policy purpose for completely exempting 501(c)(4) entities from the registration and reporting requirements. OGE will submit the Budget Support Act proposal to the Mayor by the end of the month and to the Council in the Spring.

**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 is in the final stages of enforcement measures for those Filers who did not submit their statement in a timely manner. The Office of Pay and Retirement Services has garnished the \$300 fine from delinquent filers and fine notices were sent to former employees.

The Councilmembers' Fall Financial Disclosures were due November 15, 2024. As a result of several notices sent via email and mail, the majority of Councilmembers have filed their Fall 2024 financial disclosure statements.

**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.

On September 13th, the LRR Team sent 895 registrants and clients notice that the 2024 Quarter 3 Activity Reports were due October 15<sup>th</sup>. The notice included the new



fee and late penalty fee structures. To date there are 10 Registrants who have not filed their Q3 Activity Reports.

Lastly, the LRR team will host a Lobbying Registration and Reporting training on January 8, 2025. The training will cover the Lobbying rules and laws, and how to navigate the e-filing system. Notice will be sent to all registered lobbyists and the event registration is posted on our website.

#### **H. Public Investigations**

1. 24-0010-F In re Marcellus Willis – This is a formal investigation based on a complaint that the Respondent, former employee of the University of the District of Columbia, used a government purchase card to make unauthorized purchases. Respondent worked at UDC for five years and was responsible for handling procurement for the University. The Board approved a Notice of Violation which contains assertions that Respondent violated DPM § 1800.3(g) by using public office for private gain and DPM § 1808.1 by failing to protect and conserve government property. A public hearing is scheduled for March 6-7, 2025.

#### **Thank you. This concludes the Office of Government Ethics' December 5, 2024, report.**

Board Member Nottingham asked about the amount in violation in the Willis matter. Director Cooks advised that the notice of violation identified approximately \$17,000 in charges on the District card. In response to a question from Board Member Nottingham about the ANC sign-on letter advisory opinion, Director Cooks provided a summary of the request and noted that the guidance advises that ANCs should only use their title and position for matters that are before the ANC.

#### **VII. Public Comment – if received**

There were no public comments.

#### **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 meeting resumed at 1:11 p.m.

The Board approved a negotiated disposition in **24-0073-P In re A. Barnes-Johnson.**

The Board will next meet on January 9, 2025 at 10:00 a.m.

The meeting adjourned at 1:12 p.m.

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