

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

**MINUTES OF REGULAR MEETING
February 1, 2018**

The District of Columbia Board of Ethics and Government Accountability held its Regular Monthly Meeting on Thursday, February 1, 2018, at 10:00 a.m. at One Judiciary Square, 441 Fourth Street, N.W., Room 540 South, Washington, D.C. 20001. The Board's Chairperson Tameka Collier was present, as well as Board Members Norma Hutcheson and Shomari Wade. Also present on the dais was John (Jack) Grimaldi, the Board's Senior Counsel.

The full discussion and the meeting is on audio file, and may be found at <https://www.open-dc.gov/meeting/board-ethics-and-government-accountability-monthly-meeting>

- I. Call to Order
Chairperson Collier called the meeting to order.
- II. Ascertainment of Quorum
Chairperson Collier established that a quorum was present.
- III. Adoption of the Agenda
Board Member Hutcheson moved to adopt the agenda, Member Wade seconded the motion. The motion was unanimously approved.
- IV. Report by the Director of Open Government
 - A. February 8, 2018 Performance Hearing/Budget – The Board of Ethics and Government Accountability will appear before the Committee on Public Safety and the Judiciary on February 8, 2018. Both the OOG and the OGE have submitted to Chairperson Collier the offices' combined responses to the pre-hearing questions posed by the Committee. The responses are due to Chairman Allen's office by close of business on February 5, 2018. During past performance hearings the chair of BEGA has testified on behalf of both offices. Last year, the OOG testified separately. What is the Board's guidance for this year?

Additionally, Director Wolfinbarger and I met with Department of General Services Personnel on Wednesday of this week to discuss the BEGA's options for obtaining a larger office space to contain both OGE and OOG. DGS believes it can provide to us a cost estimate for the Board to consider. However, if BEGA intends to include this with its budget request for FY 19, we must inform the Mayor's Office of the enhancement request by Monday, February 5th.

B. EOM FOIAXpress Training – On February 26, 2018, the Mayor’s Office convened a meeting of agency FOIA officers to announce that all agencies will now have access to FOIAXpress, the online processing system for FOIA requests. The vendor, AINS, will conduct 16 trainings at the Office of the Chief Technology Officer (OCTO) between March and December of this year.

Equally important, is that the EOM announced that it will propose amended legislation and regulations updating FOIA. There weren’t many specifics supplied, other than amendments to the FOIA fee structure under DCMR 1-408. I have asked Karuna Seshasi, the open government officer for the EOM, if she would please consider including the OOG in discussions on the front end regarding the amendments -- many of which are likely already included in the Strengthening Access to Government Transparency Amendment Act of 2017.

C. United Medical Center - #OOG-0014 and #OOG-0015 – On January 25, 2018, the OOG issued two opinions regarding complaints about the December 13, 2017 meeting of the United Medical Center Board in which the board entered into a closed/executive session to debate and take final action on a resolution resulting in the closing of the hospital’s obstetrics unit. The OOG found that the Board improperly entered into closed session, and that the deliberation regarding the closing of the unit and the final action of approving the resolution are not matters that fall under any of the exceptions to the OMA, and therefore should have been discussed in open session. To preserve the authenticity of the debate, rather than requiring the UMC Board to deliberate and vote again on the resolution, the OOG required the UMC Board to publish the audio recording of that portion of the closed session on the UMC website, and to publish meeting-related records relied upon to reach a final vote. I continue to communicate with the counsel to the UMC Board, and have offered to extract for UMC just that portion of the audio recording so that it can be timely published. The attorney for the Board has agreed to notify me on Friday about when the recording will be posted. The UMC opinion was the subject of an article in the Washington Post on January 29th and a story on WTOP.

D. Commission on Selection and Tenure Training - #OOG-0013 – As required of all public bodies who violated the OMA, the OOG required as part of the October 30, 2017 opinion issued to the Commission on the Selection and Tenure of Administrative Law Judges, that the public body arrange for a training to be conducted by the OOG on the requirements of the OMA. To date, the OOG has not heard from the chair of the COST, only from Chief Judge Adams who has declined to set a date for the COST to participate in an OOG training. He has instead expressed a preference to arrange a training with the EOM. 3 DMCR 10406.1 makes binding any corrective action advised.

The regulatory requirement is in step with the two statutory provisions that require the OOG to exclusively conduct trainings of public body members:

(1) D.C. Official Code § 2-580 requires the OOG to advise annually public bodies of their responsibilities under the OMA. These trainings occur when primarily in conjunction with MOTA and the swearing in of new public body members.

(2) D.C. Official Code § 2-593(3) requires the OOG to provide training to public bodies, officials, and employees related to the OMA. The OOG reads D.C. Official Code § 2-593(3) in concert with D.C. Official Code § 2-593(2) to empower the OOG to conduct trainings in conjunction with non-compliance orders.

The OOG has informed the COST of this requirement, and has urged the public body to reconsider its position. I am happy to re-engage the COST, and make the request again.

E. BEGA Compliance with EOM Data Policy – On April 27, 2017, the Mayor issued Order 2017-115 District of Columbia Data Policy. The policy was drafted by Interim Chief Technology Officer, Barney Krucoff, and the members of the Mayor’s Open Government Coalition, of which I am a member. The data policy requires that all agencies identify and categorize, by security level, all agency datasets and publish all low-level/publicly available data online and through OCTO’s data portal. The data is classified according to accessibility, sensitivity (containing Personal Identifying Information/PII), and sharing level (inter or intra agency).

Waddah Kittab is the chief information officer assigned to work with OCTO to fulfill BEGA’s obligations under the policy. He identified financial disclosure and lobbyist data to be structured public data with low level sensitivity, excluding any PII. The data contained within Pro Law is categorized as strict/high level sensitive data, and will not be shared. Additionally, the data contained within the OOG’s data management system is categorized as low level, and will be shared, excluding PII.

BEGA submitted its meta-data dataset, approved by agency general counsel. All of the requirements were met in August of this year.

F. FOIA/OMA Advice – Since the last board meeting, OOG has fielded advice requests for 9 FOIA and 3 OMA. Since the last meeting, OOG received an OMA complaint pertaining to the failure of the UMC Board to provide audio recordings of a 2/21/17 UMC Board meeting.

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)

	Current	Last month	Nov 2017
Investigations Opened:	6	0	1
Investigations Closed:	0	1	11
Investigations Currently Open:	8	8	9
Investigations Stayed (Inactive):	9	9	9

Stayed (Inactive) Cases		
Nature of Stay	Number	Date Rec
Court (fugitive)	1	Jan. 2016
OEA (pending motions)	1	
OIG	5	Jan. 2016
OAG (pending civil False Claims Act complaint)	2	Sept. 2016
Total Stayed Cases	9	

b. Publication and Reporting Obligations

We have no outstanding publication or reporting obligations. Our Quarterly Complaint Report will be posted to the website early next week. Our Agency Performance Measures were completed and uploaded into the City Administrator’s Quickbase Database. A copy of that report can be found on that website and in the DropBox for today’s meeting.

You will note, by reference to the last column on pages 2 and 3 that we met or exceeded all of our Key Performance Indicator goals, including resolving more than 80% of our investigations by dismissal, negotiated disposition or issuance of a Notice of Violation within 120 days of initiation. The report also reflects that we responded to 700 requests for informal ethics advice, and received 183 complaints. We conducted 129 trainings last fiscal year.

c. Trainings/Outreach –

- i. Attended by staff – We verified through PeopleSoft yesterday that all BEGA staff have completed the online training course “Sexual Harassment Prevention for Employees” as outlined in Mayor’s Order 2017-313, dated December 19, 2017.

ii. Conducted by staff –

Since the date of the last meeting, we conducted 11 training session, considerably more than 2 before our prior meeting. The trainings consisted of 2 new employee orientations, 2 MSS/FDS presentations, 2 Board and Commission trainings, 2 OAG Hatch Act trainings, one Department of Insurance, Securities and Banking Hatch Act training, and an ethics training program conducted for L.E.A.P. (Learn, Earn, Advance, Prosper) program participants at DOES.

d. Advisory Opinions/Advice –

Informal Advice: approximately 100, including approximately 28 related to the lobbyist filing deadline two weeks ago, well up from the 20 reported at the last meeting.

Formal Advice requests:

We have one pending request for a formal advisory opinion. The subject matter of that opinion is permissible activities involving hosting “meet and greets” [not fundraisers] for partisan political candidates under the District of Columbia Hatch Act, ethics laws or election expenditures laws. The request was also sent to the Office of Campaign Finance.

e. Ethics Legislation/Comprehensive Code of Conduct

We are not aware of any recent developments with respect to ethics legislation or the CCC. OGE staff met with staff from Councilmember Todd’s office concerning proposed lobbying legislation that might be included in the CCC.

f. Rulemaking

We have nothing new to report on rulemaking.

g. Budget:

BEGA’s Performance Oversight Hearing is scheduled for Thursday, February 8. We have continued to hold monthly budget meetings.

h. Staffing –

We have 3 administrative positions to fill.

i. Lobbyist/Financial Disclosure Matters

a. Public Financial Disclosure Statements

We are still working to ensure that all non-compliant public financial disclosure statement filers file their forms via our e-filing system. We will

soon begin the early stages of preparation for the 2018 Financial Disclosure season.

b. Confidential Financial Disclosure Statements for Calendar year 2017

The employee who previously maintained our CFDS non-filer lists is no longer with the agency. We are in the process of reviewing CFDS reports and following up with ethics officers. We will soon compile a list of CFDS non-filers and begin the enforcement process..

c. Lobbyists

We just finished a very busy January lobbyist filing season which included this Office's staff responding to numerous inquiries. As you are aware, Lobbyist re-registrations for the 2018 calendar year were due January 16th and Lobbyist Activity Reports covering the second half of 2017 were due January 10th.

To date, 287 registration forms have been filed for 2018, which is up slightly from the 275 registrations that were filed at this time last year.

In addition, approximately 378 January 2018 Lobbyist Activity Reports were filed (up from 371 last year) and 72 termination reports were filed (up from 71 last year).

j. Non-Confidential Investigations

1. #1641-001, *In re:* R. French

At the last meeting, it was decided that we would proceed to sanction Mr. French using the Director's authority to impose ministerial fines. Mr. French will be provided an opportunity to appeal the proposed \$600 fine to the Board at its March meeting.

2. #1634-001, *In re:* R. Wilson -This is a formal investigation that we discussed at the last meeting, involving a former OSSE employee who, before her separation from the District government, failed to submit full, accurate, and complete financial disclosure forms for three consecutive years. Our negotiations with Ms. Wilson were not successful. We believe this is an appropriate case for the Director to impose a ministerial fine on the Respondent. We have given some thought as to the process that should be used. Looking to the Office of Campaign Finance as a model, we will issue a Notice to Ms. Wilson to show cause why a fine of XXXX amount should not be imposed for her willful failure to file for 3 consecutive years. Following her response, we will make written findings and issue a decision that may be appealed to the Board, consistent with the Ethics Act.

3. #1398-001 *In re:* C. Snowden -- This is an investigation referred by the Office of the Inspector General involving the Deputy Mayor for Greater Economic

Opportunity. According to the OIG's Report of Investigation, on three occasions in late-summer 2015, Ms. Snowden used government resources for other than official business and ordered, directed, or requested subordinate employees to perform personal services, in violation of DPM §§1807.1 (b) and (c). We have been in communications with Ms. Snowden's attorney.

VI. Opportunity for Public Comment

VII. **The Board unanimously approved a motion to deliberate in Executive Session** (non-public) to Discuss Ongoing, Confidential Investigations pursuant to D.C. Official Code § 2-575(b), 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 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).

VIII. Resumption of Public Meeting

a. Discussion of any remaining public items

IX. Adjournment