

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

MEETING MINUTES – February 1, 2024

The District of Columbia Board of Ethics and Government Accountability held a hybrid meeting at the Board of Ethics and Government Accountability, 1030 15th Street, NW, Suite 700 West, and virtually on February 1, 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 12:00 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 adopted the agenda and approved the minutes from the January 2024 meeting.

IV. 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, 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 1 request for OMA advice.

OOG responded to 3 requests for FOIA advice; and
OOG responded to 14 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 January 2024, OOG's legal staff attended (24) remote public body meetings. As a result of the monitoring, (5) instances of corrective measures were communicated. The public bodies failed to do the following: (1) post detailed agenda; (2) provide accurate meeting location; and (3) post meeting minutes timely.

C. Training/Outreach

1. Intro to Legislative Drafting

On January 17, 2024, I along with Attorney Advisor Anthony J. Scerbo and Paralegal Specialist Kimberly Brown attended OAG's Legal Drafting training, which covered the different types of legislation used by the Council and how each type of legislation moves through the Council's legislative process, as well as the correct forms for legislation and provided information on the Council's drafting conventions and style.

2. OMA for LSATs

On January 18, 2024, Attorney Scerbo conducted OMA for LSATs training, which introduces DCPS LSAT members to the fundamentals of the OMA.

3. FOIAXpress Training

On January 23-24, 2024, Chief Counsel Louis Neal, and Attorney Scerbo took the 2-day FOIAXpress training from OPEXUS, a combination of lectures, demonstrations, and hands-on practice to introduce the major features of FOIAXpress, to give participants the skills needed to manage the full lifecycle of a FOIA request—from creation of request to delivery of documents through archival of the case. Attorney Scerbo is the new FOIA Officer for BEGA.

4. FOIA Basics for D.C. Retirement Board

On January 29, 2024, Attorney Scerbo presented FOIA Basics training to the D.C. Retirement Board FOIA officer. The training covered D.C. FOIA basics. I along with Chief Counsel Neal, Attorney Weil, and Paralegal Brown attended the training.

5. PLI Training on E-Discovery

On January 29, 2024, I completed the online training course, “E-Discovery Strategies Under New DOJ Policies for Conducting Business on Personal Devices and Messaging Platforms.” The course covered the Department of Justice’s guidance concerning the obligation to retain business conducted on personal cell phones, including ephemeral text messages.

D. Litigation and Legislative Update

1. Litigation

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

A panel of the D.C. Court of Appeals sat to hear oral argument in this D.C. FOIA case on January 17, 2024, but the requester-plaintiff-appellant did not appear at the courthouse for the hearing. The panel initially indicated that it would decide the case on the briefs, but the District has asked the court to dismiss the appeal.

The briefs are in Dropbox. Among the issues is whether the Metropolitan Police Department’s eventual release of records rendered the appellant’s claims moot and whether the alleged D.C. FOIA violation is capable of repetition yet evading review.

2. Legislation

- a. Secure DC Omnibus Amendment Act of 2024 (Bill 25-0345)

The Committee on Judiciary and Public Safety has voted to adopt the committee print and report out this bill, which assembles proposals from the twelve violent-crime–related measures (including the Addressing Crime Trends (ACT) Now Amendment Act of 2023) that had been introduced in this Council Period. (*See* Comm. Rpt. at 4, 167, 168.) First reading is expected at the February 6, 2024, legislative meeting.

As I reported previously, the ACT Now Amendment Act of 2023, would have amended D.C. FOIA by prohibiting certain categorical withholding of officer-discipline records. The revised language in the Secure DC Omnibus Amendment Act (Bill 25-0345) would remove any presumption of an unwarranted invasion of privacy from certain categories of records, including “sustained allegations that pertain[] to [an] officer’s commission of a crime, the officer’s interactions with members of the public, or the officer’s receipt of a judicial officer’s adverse credibility finding in a criminal proceeding.” Also, the omnibus measure enhances a redaction provision from the ACT Now Amendment Act of 2023 that would protect the identities of “whistleblowers, complainants, victims, and witnesses.” The new language adds undercover agents and informants to that group.

The committee report is available in Dropbox, and the current draft of the omnibus bill is Attachment Q to that report. The proposed D.C. FOIA amendment is section 5, which appears on pages 16 and 17 of Attachment Q. For the comparison version, see pages 8 and 9 of Attachment P. BEGA’s comments appear on page 149 of the body of the bill.

b. The Committee on Executive Administration and Labor’s (CEAL) Public Oversight Hearing

CEAL held a public oversight hearing on the Board of Ethics and Government Accountability’s performance in FY23 to date. I, along with Chairperson Hutcheson and Director Cooks, provided testimony detailing the agency’s performance and future goals. We also answered questions from the Committee Chairperson, Anita Bonds. A copy of my public testimony regarding the Office of Open Government is in Dropbox.

E. Administrative Matters

1. BEGA’s Relocation: The Administrative team continues to work with DGS’ vendors to ensure the proper operation of the technical facilities and furniture in the new office. IT Specialist Kevin Brown has met with the vendors weekly since the last Board meeting to resolve issues that have arisen.
2. Attorney Advisor Vacancy: OOG is working with the DC Department of Human Resources (DCHR) to fill our Attorney Advisor vacancy. DCHR will list the vacancy this week and will accept applications for the position for 30 days.

This concludes the Office of Open Government’s February 1, 2024, report. I am happy to answer any questions the Board may have at this time.

At the request of Board Member Tucker, OOG provided additional information on the *Zinman* case, specifically the issue of whether the violation was capable of repetition yet evading review.

V. 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	43

Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	43

OPEN "UNDOCKETED MATTERS"	
Grand Total	1

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	38
Stayed - Pending DC Superior Court Case	3
Stayed - OAG False Claims Act Case	1
Stayed - OIG Investigation	4
Stayed - US District Court Case	0
Grand Total	46

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	40
Open	1
Grand Total	41

	Current	Last month	December
Investigations Open	43	31	29
Investigations Stayed	8	8	9

The number of open preliminary and formal investigations includes 16 new matters. The investigative team resolved 4 investigations since the Board last met. This total does not reflect the number of complaints that were dismissed for a lack of jurisdiction. OGE has continued its communications and referrals to the Chief Financial Officer's Central Collection Unit ("CCU") for collection of delinquent debts.

B. Trainings/Outreach

1. Professional Development Trainings Attended by Staff

General Counsel Rashee Raj and I took the Executive Procurement Seminar from the Office of Contracts and Procurement. General Counsel Raj also completed OAG's Introduction to Legislative Drafting. Investigator Ileana Corrales took a webinar titled "Discover 6 Essential Adobe Acrobat Tools."

2. Conducted by staff

Since the January Board meeting, OGE conducted three training courses, which included the January Hatch Act training, a Ruff Fellow Ethics Training for OAG, and the January Ethics Counselor Brown Bag Session.

On Monday, January 29th, General Counsel Raj presented the January Ethics Counselor Brown Bag Session titled Ethics Scary Stories. Thirty-nine ethics counselors were in attendance and engaged in discussions about newsworthy and egregious ethics cases from around the country shared in video clips by colleagues from COGEL. The presentation was originally slated for Halloween but was rescheduled due to Ethics Week. A copy of the presentation was placed in the DropBox.

During January, 36 employees completed our ethics training using PeopleSoft and 22 new users completed courses using the Learning Management System.

3. Outreach

OGE is in the process of updating and implementing new training courses for the Learning Management System. We met with LRN, the vendor that created and hosts the LMS, to discuss new courses that can be added based on the existing contract, as well as updating some of the current courses. Supervisory Attorney Asia Stewart-Mitchell is the point of contact for this project and has begun editing the Financial Disclosure training. The LMS has provided the opportunity to train and reach a broader audience of employees. With these updates, our goal is to fine-tune the ethics information we provide and increase the number of courses that are available on the system.

In addition to updating the LMS, OGE submitted a project proposal to the District's Certified Public Manager Program for assistance with implementing enhancements to the financial disclosure statement program. As you may remember, the Certified Public Manager Program ("CPM") is a nationally accredited course that is administered by the Department of Human Resources, in partnership with George Washington University, and is designed to enhance the skills of District government managers and provide them with the tools to be more effective leaders. Supervisor Stewart-Mitchell completed the program last fall. I am pleased to announce that our proposal was accepted and members of the FDS team and the CPM program will meet on a weekly basis to discuss the agency's operations and needs. We look forward to working with the CPM program to address issues with the financial disclosure program and to create lasting solutions.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 33 ethics inquiries, which is 17 more than the 16 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

Today, OGE published Cooperation and Retaliation Advisory Opinion, which discusses the obligation of District employees to cooperate with OGE's investigations and the prohibition against retaliating against employees who report unethical conduct and cooperate with investigations. A copy was placed in the drop box. Also in the works is an advisory opinion on the use of official social media accounts opposed to personal accounts.

D. Legislation and Rulemaking Updates

1. Financial Disclosure Rulemaking

OGE has identified 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 create a conflict of interest or the appearance of a conflict of interest. OGE has drafted a proposed rulemaking that would designate those boards or commissions as public financial disclosure statements filers. The proposed rulemaking was placed in the Drop Box for the Board's approval.

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 will submit an updated version of the legislation to the Board before the next meeting. Upon the Board's approval, the legislation will be submitted to the Council.

E. OGE Administrative Matters

1. 2024 Performance Oversight Hearing

On January 30th, Chairperson Hutheson, Director Allen, and I presented information and testimony regarding the agency's performance before the Committee on Executive Administration and Labor. I highlighted OGE's FY 23 and 24 achievements within its various programs. With respect to training, OGE conducted a total of 91 training courses and trained over 9,000 employees. Regarding advice, we've responded to 449 ethics inquiries and issued 4 advisory opinions. Regarding investigations and enforcement, OGE received 246 complaints and initiated 140 investigations, and prosecuted one formal hearing. OGE received 397 lobbyists' registrations and 1,646 activity reports. The 2023 FDS filing season was successfully completed in June 2023 with 4,226 public filers and 3,439 confidential filers submitting their financial disclosure statements using the e-filing system.

I also informed the committee of OGE's priorities for the remainder of this fiscal year. Specifically, our FDS rulemaking, the enactment of the CCC and amendments to the Lobbyists registration fees and penalties, and increasing our outreach efforts. A copy of the answers to oversight questions and my testimony are in the Dropbox.

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.

As we prepare to kick-off the 2024 FDS season, the agency head memorandums will be emailed to Directors, Ethics Counselors, and Chiefs of Staff on this Friday. The memorandum contains information on the designation process, important dates, and the process for submitting filer information to BEGA. Program Coordinator Kosick revised the filer template to reflect the employee identification numbers and with preprogrammed data fields that will ensure Ethics Counselors provide the necessary information and that it is accurate. We are looking forward to beginning this season.

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.

The 2024 registration and fourth quarter activity reports were due on January 16th. According to the LRR team, Lobbyist reporting has remained steady since the e-filing system was opened on December 21. The LRR team will identify entities who filed passed the deadline and send fine notices. Auditor Walker has received the information regarding 501(C)(3) registrants and has begun an audit.

Thank you. This concludes the Office of Government Ethics' February 1, 2024, report.

Board Member Sobin noted that the draft advisory opinion on cooperation and retaliation seemed to suggest that only complaints to BEGA would be covered. Director Cooks stated that OGE has applied the prohibition against retaliation to complaints made to BEGA, the Office of the Inspector General, or to an agency ethics counselor and the draft opinion will be revised to clarify that point.

VI. Public Comment – if received

No public comments received.

VII. 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).

VIII. Resumption of Public Meeting

The Board resumed the public meeting at 1:28 p.m.

The Board voted to adopt a final decision and corresponding order in **23-0006-F In re David Deboer**.

The next meeting will be held at the Board of Ethics and Government Accountability, 1030 15th Street NW, Suite 700 West, at 12:00 p.m. on March 7, 2023.