

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

MEETING MINUTES – February 6, 2025

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 6, 2025, at 10:00 a.m. Chairperson Norma Hutcheson and Board members Charles Nottingham, Felice Smith, and Melissa Tucker participated in the meeting.

Members of the public were welcome to attend, and a recording of the meeting will be available on open-dc.gov and BEGA’s YouTube channel.

I. Call to Order

The meeting was called to order at 10:00 a.m.

II. Ascertainment of Quorum

Four members, Chairperson Norma Hutcheson and Board members Charles Nottingham, Felice Smith, and Melissa Tucker were present at the start of the meeting.

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously voted to adopt the agenda and approve the January 2025 meeting minutes.

IV. Report by the Director of Open Government

Good morning, 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

- a. OMA Advisory Opinion - Calvin Coolidge Senior High School’s Local School Advisory Team (“Coolidge LSAT”), OOG-2024-0001

On January 31, 2025, I issued an advisory opinion, #OOG-2024-0001, opining that while there was a lack of sufficient evidence of a meeting in violation of the OMA, and that although several of the allegations asserted were not within the scope of my authority under the OMA, as a result of its independent investigation, OOG determined that the Coolidge LSAT was operating in violation of provision of meeting records requirements of the Open Meetings Act ("OMA"), and determined that the entire Coolidge LSAT must take training on the OMA within 60 days. A copy of the advisory opinion has been added to Dropbox.

b. FOIA Advisory Opinion - Mayor's Office of Legal Counsel ("MOLC"), OOG-2024-006_AO

On February 4, 2025, I issued an advisory opinion, #OOG-2024-006_AO, in response to a request concerning the MOLC's backlog of administrative appeals under D.C. FOIA. The statute currently allots the MOLC only ten business days (from initial submission) to decide appeals, and at the end of Fiscal Year 2024, over 1,000 decisions were overdue for publication. The MOLC cleared its backlog in January 2025, on the verge of OOG's preparation to issue this advisory opinion. As a remedy, I strongly recommend amending legislation to enlarge the currently inadequate processing time of administrative appeals. In addition, I recommend that the Office of Open Government should officially serve as the "DC FOIA Ombudsman," like the federal government's Office of Government Information Services (OGIS). I conclude similarly to an Advisory Opinion #OOG-2022-004_AO, I issued on July 29, 2022, that "The MOLC should ensure that, at the same time [] an opinion is signed and release[d] to the requester(s) and custodian(s), it affirmatively posts the opinion for public viewing." A copy of the advisory opinion has been added to Dropbox.

2. Informal Advice

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

- 3 requests for OMA advice;
- 3 requests for FOIA advice; and
- 14 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 sixteen (16) public body meetings. As a result of the monitoring, three (3) corrective measures were communicated. The public bodies failed to do the following: (1) provide correct

meeting location; and (2) cite the OMA regulatory statement.

C. Training/Outreach

1. Open Meetings Act (“OMA”) Monthly Training

On January 23, 2025, I presented an Open Meetings Act (“OMA”) training to DC public bodies. The Basic training provided an overview of the provisions of the OMA as well as best practices for public body’s compliance with the OMA. This training was the first in OOG’s new monthly OMA training series, the schedule for which has been published. OOG’s staff attended the training virtually.

2. District of Columbia Bar’s Pro Bono Small Business Clinic

On January 15, 2025, Attorney Anthony J Scerbo participated in DC Bar Pro Bono Small Business Clinic.

3. District of Columbia Bar’s “Working Alongside AI Responsibly and Ethically” Continuing Legal Education (CLE) Course

On February 4, 2025, I, along with Attorney Scerbo attended DC Bar’s training session “Working Alongside AI Responsibly and Ethically.” This training session was facilitated by OCTO’s General Counsel, Todd Smith, and Ericka Stillabower, D.C. Office of the Attorney General. The CLE course provided an overview of AI technology and the legal framework for its adoption. It also provided an overview of the ethical issues raised by the use and adoption of AI technology in legal practice.

4. BEGA’s Records Retention Schedule Meeting with DC Office of Public Records (“OPR”) Archivist

On January 30, 2025, BEGA’s Records Officer Attorney Joan Lelma attended a meeting with DC Office of Public Records Archivist William Branch to discuss possible revisions to BEGA’s retention schedule.

5. OOG’s Investigation of Alleged Violation of the Open Meetings Act (“OMA”)

On January 31, 2025, I, along with Chief Counsel Neal and Attorney Scerbo met with the Board of Elections (BOE) regarding allegations that a possible violation of the Open Meetings Act had occurred when the agency conducted post-election audits. After confirming the nature of the proceeding and discovering additional details, OOG is satisfied that the BOE audit was an agency function and not a meeting subject to the Open Meetings Act.

D. Litigation and Legislative Update

1. Litigation

- a. Leslie Richards v. D.C. Finance and Treasury (Case No. 24-CV-0034 (D.C. Court of App.); Case No. 2021-CA-003762-B (Super. Ct.))

I have previously reported on this *pro se* case in which the plaintiff-appellant sought information about a disbursement. The Superior Court dismissed the complaint because the plaintiff failed to properly serve the District nor state a claim upon which relief could be granted. The requester appealed.

On July 8, 2024, the District filed a Motion for Summary Affirmance of the Superior Court's dismissal. The plaintiff-appellant filed a response to the District's motion on July 15, 2024.

On September 30, 2024, the Court denied the District's Motion for Summary Affirmance, filing the motion as a brief instead. A Motion for Oral Arguments was filed on January 10, 2025. A copy of the Motion has been placed in Dropbox. The Court denied the appellant's Motion for Oral Arguments on January 21, 2025. The next hearing is scheduled for February 19, 2025. OOG's staff will continue to monitor.

- b. Phillips v. District of Columbia (Case No. 1:22-cv-00277-JEB (D.D.C.))

I have previously reported on this case in which Amy Phillips alleged in a federal "section 1983" action that the Metropolitan Police Department maintains a "watchlist" targeting certain D.C. FOIA requesters.

The Court referred the case to a magistrate judge for mediation, which is ongoing. The parties filed joint status reports to the Court on January 22, 2025, and January 29, 2025. A further joint status report is due by February 28, 2025. Copies of the joint status reports have been added to Dropbox. OOG's staff will continue to monitor.

- c. Washington Post Company, LLC v. District of Columbia (Case No. 2023-CV-0488 (D.C. Ct. App.); Case No. 2021 CA 002114 B (D.C. Super Ct.))

I have previously reported on this case in which the Washington Post sued the District under D.C. FOIA for certain records relating to the Capitol insurrection. The Superior Court granted the District's motion for summary judgment, and The Post appealed. I last reported on this case in December 2023. The parties briefed the matter until June of 2024 at which point the matter was awaiting calendaring. On November 14, 2024, the Appellee, District of Columbia filed a Consent Motion to Continue Oral Argument. The Court granted the District's motion and directed the Clerk to schedule the matter on the Regular Calendar as a special sitting as soon as the calendar permits. On December 30, 2024, a calendar notice was sent; however, there was no date attached. On January 24, 2025, Ashwin Phatak

entered his appearance on behalf of the District. On that same date, the Court ordered the parties to be prepared to discuss, in oral arguments, what, if any, impact the recent commutations, pardons, and dismissals would have on this appeal. Oral arguments are set for February 6, 2025. OOG's staff will continue to monitor.

2. Legislation

a. Virtual Open Meetings Authority Extension Temporary Amendment Act of 2024

On February 4, 2025, the Council of the District of Columbia voted unanimously during its legislative meeting on the Virtual Open Meetings Authority Extension Emergency Declaration Resolution of 2025 (PR26-0052) and Virtual Open Meetings Authority Extension Temporary Amendment Act of 2025 (B26-0088) that were introduced by Chairman Mendelson to prevent the expiration on March 1, 2025, of the Virtual Open Meetings Authority Extension Temporary Amendment Act of 2024. Copies of the bills have been placed in Dropbox.

E. Administrative Matters

1. Performance Oversight Hearing

On February 5, 2025, Chairperson Hutcheson, Director Cooks, and I presented information and testimony regarding the agency's performance before the Committee on Judiciary and Public Safety (the "Committee"). I highlighted OOG's FY24 and FY25 achievements within its existing programs, the establishment of new programs, and OOG's goals for FY25. We also answered questions from the Committee Chairperson Brooke Pinto and Councilmember Wendell Felder. A copy of my public testimony regarding the Office of Open Government is in Dropbox.

2. Performance Oversight Hearing – Written Testimony Concerning D.C. Freedom of Information Act ("D.C. FOIA")

On February 4, 2025, I provided Councilmember Bonds with written testimony to become part of January 29, 2025, hearing record of the Committee on Executive Administration and Labor's ("CEAL") Performance Oversight Hearing of the MOLC. My testimony concerns the FOIA appeal process in the District, and it highlights the need to amend legislation to enlarge the currently inadequate processing time of administrative appeals and for the "the Office of Open Government [to] officially serve as the "DC FOIA Ombudsman," like the federal government's Office of Government Information Services (OGIS)." A copy of my written testimony has been placed in Dropbox.

This concludes the Office of Open Government's February 6, 2025, report. I am happy to answer any questions the Board may have.

Board Member Tucker noted that she supports the proposal for OOG to serve as FOIA Ombudsman for the District. In response to a request from Board Member Tucker, Director Allen confirmed that the investigation of the Board of Elections post-election audits was conducted in response to concerns raised at the January meeting by public witness Dorothy Brizill.

V. Report by the Director of Government Ethics

Good morning, 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	56
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	56

OPEN "UNDOCKETED MATTERS"	
Grand Total	8

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	37
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	45

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	35
Open	58
Grand Total	93

	Current	Last month	December
Investigations Open	56	52	53
Investigations Stayed	8	8	8

The number of open preliminary and formal investigations includes 11 new matters. The investigative team resolved 9 investigations since the Board last met. This total

does not reflect the number of complaints that were dismissed for a lack of jurisdiction.

B. Training/Outreach

1. Professional Development Trainings Attended by Staff

None.

2. Conducted by staff

Since the last Board meeting, OGE conducted 6 training sessions: a New Employee Orientation Ethics Segment, the January Quarterly Board & Commission Training, FDS Ethics Counselor Training, a new FDS Filer Training, a FDS Updates training at the Office of the City Administrator's Agency Operations meeting, and the January Brown Bag Session. On Monday, January 27th, Senior Board Attorney Lynn Tran presented the January Ethics Counselor Brown Bag Session, which was a Negotiated Dispositions Round-up of about the last 6 months of recent dispositions. She presented to approximately 24 ethics counselors. A copy of the presentation was placed in the DropBox.

During the month of January, 30 employees completed ethics training using PeopleSoft and 7 employees were added to the Learning Management System. OGE is the final stage of updating the financial disclosure statement course on the Learning Management System, which will be available in time for the new filing season. We are also working on an outside employment training course that will educate employees on the restrictions that apply when engaging in outside employment.

3. Outreach

Next week, OGE will publish the seventh issue of its bi-monthly newsletter, Ethically Speaking.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 17 ethics inquiries, which is 9 less than the 26 reported at the January 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 issued one advisory opinion in January that is currently in its comment period. The advisory opinion, "Lobbyist Registration and Reporting" provides guidance for lobbyists on the filing requirements and prohibited activities and informs District government employees of their obligations regarding lobbyists.

A copy was placed in the Dropbox for your review. OGE has another advisory opinion in the works on Widely Attended Gatherings.

D. Legislation and Rulemaking Updates

1. Budget Support Act Proposal

OGE is in the process of finalizing 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. This exemption for 501(c)(4) organizations alone is rare compared to other jurisdictions. Most jurisdictions, including the federal lobbying disclosure program, do not differentiate between nonprofit organizations and other organizations that meet the lobbying registration requirements. The legislative history is absent a justification for excluding 501(c)(4) organizations from registering as lobbyists. While public policy and the nature of 501(c)(4) entities can justify a fee reduction in the same manner as it applies to other nonprofit organizations, BEGA has not identified a practical or public policy purpose for completely exempting 501(c)(4) entities from registration.

E. OGE Administrative Matters

1. Vacancies

OGE interviewed and has made an offer on the Human Resources Specialist vacancy. The Attorney Advisor vacancy closed and OGE is now reviewing resumes. We have made an offer for the Administrative Officer vacancy, and it is in the final stages of processing by the Department of Human Resource. Also, the office has posted the vacancy announcement for its Legal Fellow position.

2. Performance Oversight Hearing

On yesterday, Chairperson Hutcheson, Director Allen and I testified in our agency's Performance Oversight Hearing before the Committee on the Judiciary and Public Safety. I provided testimony about OGE's performance and achievements in fiscal years 2024 and 2025. Specifically, I highlighted OGE's advice and education activities, successful completion of the 2024 financial disclosure statement season, continued efforts in investigation and enforcement, and effective administration of the lobbyists program. I also provided information on OGE's initiatives for FY 25, which includes an outside employment training initiative, amending the lobbyist section of the Ethics Act, and the passage of the Comprehensive Code of Conduct.

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.

We are gearing up for the 2025 Financial Disclosure season! On January 24, I presented information about the FDS process and new developments at the Office of the City Administrator's Agency Operations meeting. On January 30, 2025, Supervisory Attorney Advisor Stewart-Mitchell sent out the Agency Head memo officially announcing the beginning of Financial Disclosure season 2025. A mandatory Ethics Counselor FDS Trainings was held on February 4, and the remaining session will take place on February 12, and February 19, 2025. On February 5, OGE held an FDS training for new filers and the remaining session will take place on February 14 and March 14, 2025.

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 December 20th, the LRR team sent notices to all active Lobbyists and their clients that their 4th quarter 2024 activity reports and calendar year 2025 registration renewals were due on or before January 15, 2025. In response to the notice, 410 lobbyists renewed or filed new registrations for 2025 and filed 409 activity reports.

Pursuant to D.C. Code § 1-1162.29(b)(2), the Director of Government Ethics shall publish in the District of Columbia Register on or before February 15th a summary of all Lobbyist registrations. This summary is scheduled to be published in the D.C. Register's February 14, 2025, issue.

On January 13, 2025, a handful of reporting entities called or filed support tickets seeking assistance, as the e-file system was sending codes saying "Page Not Found" or redirecting filers to pay fees that had already been paid. This continued through January 15. The situation was escalated to OCTO's development team. As of January 31, the OCTO team have been examining the issues to pinpoint what needs to be corrected.

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.

2. 24-0016-F In re Trayon White – This is a formal investigation based on a criminal indictment in which Respondent, Council member for Ward 8, alleged agreed to receive \$156,000 in bribes and accepted \$35,000 in cash from a business owner in exchange for assisting with renewing the company’s violence-interruption contracts with the D.C. government. Respondent was indicted on one count of bribery. This matter is stayed pending the outcome of the criminal court case, which is scheduled for trial on January 12, 2026.

3. 25-0002-F In re Trayon White – This is a formal investigation based on allegations that the Respondent, Council member for Ward 8 violated the Code of Conduct. Specifically, this office is investigating whether the Respondent filed full and complete public financial disclosure statements pursuant to D.C. Official Code § 1–1162.24 and whether he violated any other rules with the Council’s Code of Conduct that are separate from the ongoing criminal case.

Thank you. This concludes the Office of Government Ethics’ February 6, 2025, report.

Board Member Nottingham noted that he had not focused on the exemption from registration and reporting for 501(c)(4) organizations, noting that he thought that this was a loophole. He stated that these types of organizations are lobbying and should be reporting their lobbying activities.

VI. Public Comment – if received

There were no public comments.

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 meeting resumed at 11:04 a.m.

The Board approved an Amended Notice of Violation and Amended Notice of Hearing in **24-0010-F In re Marcellus Willis**.

The Board will meet next on March 6, 2025, at 10:00 a.m.

The meeting adjourned at 11:04 a.m.

DRAFT