

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

MEETING MINUTES – MARCH 2020

The District of Columbia Board of Ethics and Government Accountability held a meeting on March 5, 2020 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.

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

These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting date.

I. Call to Order

II. Ascertainment of Quorum

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously approved the agenda and the February 2020 Meeting Minutes.

IV. Report by the Director of Open Government

Good morning Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, the 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, 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: The Office of Open Government has not issued any Advisory Opinions since the last Board meeting.
2. Informal OMA/FOIA Advice:

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

- The Office provided FOIA substantive advice to 8 querants;

- The Office provided OMA substantive advice to 5 querants. This included meeting with a complainant to discuss LSAT compliance issues with the OMA; and
- The Office provided 11 responses to requests for technical assistance with open-dc.gov, which included creating new user identifications for public body points of contact and creating public body profiles for LSATs.

B. Training/ Outreach:

1. Boards & Commissions Training: On February 8, 2020, the OOG and the OGE conducted a combined OMA and ethics training members for approximately 100 new members of public bodies. I facilitated the Open Meetings Act portion of the training. Attorney Cooks presented on behalf of OGE.

2. EventsDC Training: On February 13, 2020, the OOG and the OGE conducted a combined OMA and ethics training members of Events DC. Attorneys Barton and Cooks respectively facilitated the Open Meetings Act and Ethics portions of the training session.

3. Boards & Commissions Training: On February 26, 2020, the OOG and the OGE conducted a combined OMA and ethics training members for approximately 90 new members of public bodies. I facilitated the Open Meetings Act portion of the training. Acting Director Ford presented on behalf of OGE.

4. Public Body Meeting Assistance: The Office of Open Government has continued to provide assistance to the Concealed Pistol Licensing Review Board (CPLRB). OOG provides assistance with recording of those meetings, which began under the leadership of former Director Hughes. The Office of Open Government is available to assist any public body with conducting and recording public meetings. CPLRB is a volunteer board with a part-time staff and has recently had an increase in its hearings. OOG assisted with their last meeting on February 27, 2020, at 10:00am.

5. Open Government Advisory Group Meeting: On February 27, 2020, I attended a meeting of the Open Government Advisory Group (OGAG). The group had been inactive for several months due to a lapse in public members' terms. The Mayor should be appointing additional public members in the near future. OGAG is required, by the Mayor's Order that created the public body, to meet four times per year. The Director of Open Government, or his/her designee, is a government member of OGAG. The recent meeting included a presentation from the Chief Data Officer concerning the Open Data report that will be released this month. The Office of the City Administrator serves as the administrative point of contact for this public body.

C. Legislative Update:

1. DC Council Testimony: On February 12, 2020, I provided testimony at the Committee on the Judiciary and Public Safety's public oversight hearing regarding the performance of the Board of Ethics and Government

Accountability. My written testimony is available on open-dc.gov and a video of the hearing is available on the DC Council's website and on entertainment.dc.gov. At the hearing, there was testimony concerning the Local School Advisory Teams (LSATs) public meetings and complaints concerning those meeting. As a point of clarification, the Office of Open Government found that LSATs are public bodies subject to the OMA. Attorney Barton and I are working with the DCPS to educate the LSATs on the OMA requirements and assist the LSATs with providing notice of their meetings via open-dc.gov. The Office is not taking any OMA enforcement action regarding LSATs. We are focused on training. With respect to complaints, there was a concern raised about numerous complaints against an LSAT that were allegedly intended to harass or intimidate LSAT members. If the allegation is true, this is a misuse of the OMA process. However, the District of Columbia transparency laws (OMA and FOIA) do not provide penalties for vexatious or abusive use of those laws. The Office does have discretion regarding which complaints it investigates and may dismiss complaints that it finds are made for an improper purpose or are without merit. I hope this clarifies my position on this issue.

2. Budget Oversight Hearing: BEGA has requested several budget enhancement requests to benefit the Office of Open Government and increase its staff. In FY2021, BEGA has requested an additional attorney FTE and a paralegal FTE. The purpose of this enhancement is to enable OOG to have the ability to bring an OMA matter to DC Superior Court, as the statute requires. These new positions will also enhance the efficiency and effectiveness of the office by increasing the staff available to research and draft advisory opinions, train public bodies, and attend public bodies' public meetings.
3. Body Worn Cameras: At this time there are no plans to introduce a permanent companion bill to the "Access to Body Worn Camera Emergency and Temporary Amendment Acts of 2019. Councilmember Trayon White's office stated that the Judiciary Committee plans to include similar language in an omnibus bill on the body worn camera program. However, if no such effort comes forward, the Councilmember will pursue a permanent measure. March 7, 2020 is the revised projected law date for the temporary bill which will remain in effect for 225 days. The emergency measure expires March 22, 2020.

D. Administrative Matters:

1. The Office of Open Government has posted the Attorney-Advisor position posted on the DC Office of Human Resources website closes tomorrow. We hope to conduct interviews this month and have the vacancy filled on or before May 1, 2020.
2. On February 24, 2020, representatives from the Commission on the Arts and Humanities installed the beautiful artwork you see in Suite 540S. The artwork is on loan to BEGA for two years.

3. The Office of Open Government's IT Specialist position is vacant. I am working with DCHR to post the vacancy announcement as soon as possible. In the interim, we are working with OCTO to hire a temporary IT staff person to assist with the agency's websites and general IT issues. We hope to have the temporary staff person in place by the end of this month.

This concludes the Office of Open Government's March 5, 2020 report.

V. Report by the Director of Government Ethics

Good morning, Chairperson Hutcheson and Members of the Board. My name is Rochelle Ford, the Acting 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 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	38
Open - Negotiations	2
Open - Show Cause Hearing	5
Grand Total	45

OPEN "UNDOCKETED MATTERS"	
Grand Total	6

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	25
Closed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	7
Stayed - US District Court Case	2
Grand Total	38

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24

Open	1
Grand Total	25

	Current	Last month	Jan. 2020
Investigations Currently Open:	45	39	38
Investigations Stayed:	14	14	14

B. Trainings/Outreach:

1. **Outreach**

Since taking over as Acting Director, I have embarked on an outreach campaign to ensure that OGE maintains its relationship with our partner agencies. I have met with the Mayor’s General Counsel, the Attorney General, and the Inspector General to introduce myself and to discuss OGE’s short term goals and ways that we can continue to work together.

In addition, OGE staff and I have also met with representatives from DCHR, the Office of Human Rights (OHR), and the Office of Contracting & Procurement (OCP) to discuss ways that BEGA can better support their needs and to offer trainings. As a result of each of these meetings, OGE has offered specific training tailored to each agency’s needs.

As a result, on February 27, 2020, Ashley Cooks and I provided a training for approximately 80 Human Resources Advisors representing each District agency. This training included a brief ethics refresher and offered best practices for the HR professionals to use to ensure that employees are informed about how and when to seek ethics advice, ways to promote ethics awareness when employees begin and leave District service, and how to seek out OGE’s assistance to address ethics issues that commonly arise out of personnel issues. The training slides for this presentation have been uploaded to the Dropbox.

OGE is working to schedule a requested training for OHR and OCP employees for later this month. Additionally, both OHR and OCP have offered to provide cross-training to OGE employees on their agency’s respective operations and missions. On March 28, 2020, OGE will provide ethics training at OAG’s ANC Legal Training. This seminar is designed to educate ANC Commissioners on a variety of legal issues ranging from legal protections to ethical guidelines.

OGE staff and I also are in the process of scheduling a meeting with the D.C. Auditor and her staff and the with Gottlieb Simon of the Advisory Neighborhood Commission Office.

With respect to the District Council, the Council's Ethics Counselor and OGE have agreed to collaborate on offering Hatch Act training to offices whose Councilmember is up for election this cycle.

2. Professional Development Trainings Attended by staff:

Investigator Bradley completed webinar trainings: Collecting Evidence from Online Social Media: Building a Cyber-OSINT Toolbox and Through the Looking Glass: Protecting Yourself While Conducting Internet-Based Investigations. Auditor Tujuba completed Uncovering and Utilizing your Talent and Skills offered by DCHR.

Next week, OGE attorneys will attend the 2020 National Government Ethics Summit. The Summit will provide attendees with opportunities to deepen their knowledge of the ethics laws and rules, engage in practical program workshops, and to build connections with ethics officials who address common ethics issues.

3. Conducted by staff:

Since the date of the last meeting, OGE conducted 15 trainings, which is 7 more than the 8 conducted last month. The 15 trainings include 2 new employee orientations, 1 monthly ethics training, 5 FDS Ethics Counselor Trainings, 1 ethics training at the DCHR, 2 ethics trainings at DCRB, 3 Boards and Commissions training (MOTA and Events DC), and 1 ethics presentation for the Office of the Directorate of Public Prosecution of Kenya.

In addition, 38 employees completed the online ethics training through PeopleSoft during the month of February.

C. Advisory Opinions/Advice:

Informal Advice: approximately 37 which is 1 less than the 38 reported at the last meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

OGE did not issue any advisory opinions.

D. Legislative Update

On February 12, 2020, I provided testimony and responded to questions at the Committee on the Judiciary and Public Safety's public Performance Oversight hearing regarding the performance of the Office of Government Ethics. A video of the hearing is available on the DC Council's website and on entertainment.dc.gov. During the hearing, Councilmember Allen advised BEGA

that he had received feedback from other Councilmembers that OGE's guidance on compiling and submitting lists of designated financial disclosure filings.

Considering Councilmember Allen's feedback, Attorney Stewart-Mitchell, Attorney Cooks, and I followed up with the Council's Ethics Counselor to discuss ways to better provide information to Council Members. At that time, we also offered to provide training directly to Council Members and staff at their convenience. As of this meeting, the Council's Ethics Counselor has not sought to schedule financial disclosure training.

OGE staff will follow up with directly with each Council Member's office directly to answer questions and ensure that each office receives OGE's support and training by OGE as needed.

E. Budget:

Our FY2020 budget remains in good shape and we are working to improve our efforts to collect unpaid fines owed to the agency. OGE utilizes fines and lobbying registration fees to supplement its budget as needed.

Auditor Tujuba has taken the lead on improving and expanding OGE's debt collection efforts to recover payments on outstanding fines. This process includes partnering with the DC Office of Pay & Retirement Services (OPRS) to develop an active employees' wage garnishment report, locating and contacting former employees, and coordinating with the OAG. Mr. Tujuba has also begun working with OCFO Central Collection Unit (CCU). The CCU is responsible for collecting debts that are past due over 90 days for agencies in the District. We are currently reviewing a proposed MOA and hope to enter into an agreement with the CCU soon to pursue outstanding fines that are owed to BEGA. An email and draft MOA have been uploaded to the Dropbox.

In FY2021, OGE has requested two customer service representatives to support our financial disclosure and lobbying reporting and registration programs. In addition, OGE is seeking step increases/COLAs for our staff and have again requested funds to secure new space and cover the associated moving costs.

F. Staffing:

On March 2, we welcomed Rashee Raj as the agency's General Counsel. Ms. Raj formerly served as the General Counsel for the Department of Forensic Science.

Our FDS team is in the process of preparing to bring someone on to serve as a temporary Technical Support Specialist. We hope to have someone start by the end of the month.

The Director of Government Ethics position was posted on February 3, 2020 and will close this Friday, March 6, 2020.

G. Litigation:

Status of pending cases.

- **Gerren Price –2019 CA 005346.** A status hearing was held in this matter on January 10, 2020 before Judge Shana Frost Matini. OAG represents BEGA in this matter. Judge Matini denied our motion to dismiss, because she found that the petitioner did make timely efforts to file his petition, despite being hindered by technical errors. The Petitioner's brief in support of his request to reverse BEGA's decision was due on February 18, 2020, but he was granted a continuance and his brief is now due on March 19, 2020. Our response is due on April 20, 2020.

H. Lobbyist/Financial Disclosure Matters:

Financial Disclosure –All public and confidential filer lists were due to BEGA on Monday, March 2, 2020. Of approximately 85 required submissions, we have received 60 list submissions. We are currently working to bring the remaining agencies into compliance. We have also began coordinating issuing the public filer notice that we send to filers 2020 to each filer reminding them of their obligation to file a financial disclosure statement. It will be sent out via email and hard copy on or before Wednesday, April 15, 2020.

With respect to technical improvement, Abstract Evolutions has begun the process of analyzing OCTO's coding for the FDS system and is deep into the analysis of the FDS system issues. They have already identified one failure in the code. As a result, OGE, Abstract Evolutions, and OCTO are analyzing the processes to figure out what can be improved. For your reference I have uploaded a copy of Abstract Evolutions Dashboard analysis of our system and proposed timeline for its analysis of the FDS system to the Drop Box.

Lobbying Registration and Reporting (LRR) System – Since there are no Lobbyist Registration Reports and Lobbyist Activity Reports due this month, our LRR team has focused on addressing outstanding customer service issues that have developed due to technical issues with the LRR system. For example, the LRR system erroneously assessed a late fee on a very small number of registration reports a month or more after those reports were timely filed. OCTO cannot identify the cause for this system error, but our program specialist Stan Kosick has directed OCTO to find a work around for this error by reducing any assessed penalty to \$0.00. OGE staff still has the ability to manually assess a late fee when warranted.

OGE's auditor did an analysis of the number of Registered Lobbyists for 2020 and 2019 and noted a decline by 34%. He has provided this information to the Program Specialist for further investigation.

I. Non-Confidential Investigations:

1. **18-0006-P, *In re: Jack Evans*** – This formal investigation involves allegations that the Councilmember violated the Council Code of Conduct. OGE’s case was placed in a “stayed” status at the request of other law enforcement agencies, but has since returned to an active investigation. Our staff spent the last several weeks winding up the investigative phase in this matter, and recently engaged the Councilmember, through his attorney, regarding possible dispositions. We expect this matter to move towards a resolution very shortly.
2. **20-0004-F, *In re: Jack Evans*** – This formal investigation alleges 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 which were related to the larger ethics investigations of his actions. The complainant, Alan Roth, argues that by not recusing himself from those votes, 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’s staff has reviewed the submissions in this matter and prepared a memorandum detailing our recommendation for the Board.

Thank you. This concludes the Office of Government Ethics’ March 5, 2020 report.

VI. Opportunity for Public Comment

VII. Executive Session (non public)

VIII. Resumption of Public Meeting

IX. Adjournment