

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

**MEETING MINUTES – March 7, 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 March 7, 2024, at 12:00 p.m. Chairperson Norma Hutcheson and Board Members Charles Nottingham, Felice Smith, Darrin Sobin participated in the meeting in person and Board Member Melissa Tucker participated in the meeting virtually.

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 pm.

**II. Ascertainment of Quorum**

All members were present at the start of the meeting. Chairperson Hutcheson and Board Members Nottingham, Smith, and Sobin attended in person. Board Member Tucker attended the meeting virtually.

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

The Board voted unanimously to adopt the agenda and approve the minutes from the February 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**

On March 7, 2024, I issued an advisory opinion in response to the Science Advisory Board’s (SAB) October 27, 2023, request # OOG-2023-0006, where SAB sought detailed advice regarding four specific Open Meetings Act (OMA) issues. The areas of concern addressed in the advisory opinion included how a public body may modify its agenda at a meeting and the relationship between a

public body and the agency that assists the public body in meeting its obligations under the District of Columbia's transparency laws. I concluded that: (1) SAB may modify the planned agenda if an unanticipated item of new business arises; (2) D.C. FOIA may preclude the agency from releasing certain non-public information to public body members; (3) the laws under OOG's scope do not constrain the public body's use of its own website, but D.C. FOIA and OCTO policies may provide legitimate justification for declining to publish information on its DC.GOV website; and (4) the OMA does not prohibit any particular District entity from meeting with any other District entity.

The document was not provided to the Board prior to its meeting because OOG released the decision just before it convened. OOG provided the Board with a copy after the 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 3 requests for OMA advice.  
OOG responded to 3 requests for FOIA advice; and  
OOG responded to 11 requests for technical assistance with open-dc.gov.

## **B. Remote 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.

During February 2024, OOG's legal staff attended 34 public body meetings. As a result of the monitoring, 3 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) cite the OMA regulatory statement.

## **C. Training/Outreach**

### 1. Preservica Fundamentals

On February 20, 2024, Attorney Advisor Anthony J. Scerbo, BEGA's Records Officer, attended Preservica Fundamentals. This training, offered during the Office of Public Records and Archives Records Managers Spring meeting, shared details of "Preservica," the Digital Preservation System. Attendees learned how to use the system, how agency records managers will be provided access to the system, and how electronic records will be accessed into the new system.

2. Telework Manager Training

On February 27, 2024, Chief Counsel Louis Neal and I attended Telework Manager training hosted by the DC Department of Human Resources. This training covered the new rules that agencies under the Mayor will follow regarding telework. For Mayoral agencies, the maximum number of routine telework days per week was updated from 2 days to 1 day, effective March 10, 2024. Independent agencies are not impacted by the Mayor's changes.

3. OMA for Commission on the Arts and Humanities

On March 2, 2024, Attorney Scerbo presented Open Meeting Act training to members of the Commission on the Arts and Humanities (CAH). The training covered the basics of the OMA for new public body members.

4. 2024 Sunshine Week

Sunshine Week, a nonpartisan collaboration among groups in the journalism, civic, education, government and private sectors that shines a light on the importance of public records and open government, is set for March 10-16, 2024. OOG will be participating in and co-hosting the DC Open Government Coalition's Sunshine Week event on March 13, 2024, at 5:30pm, at the American Bar Association Conference Center. The theme of the event is public safety transparency.

**D. Legislation and Litigation Update**

1. Legislation

a. DC Water Critical Infrastructure Freedom of Information Clarification Amendment Act of 2023 (Bill 25-0424)

On March 4, 2024, the D.C. Council's Transportation & Environment Committee held a hearing on the DC Water Critical Infrastructure Freedom of Information Clarification Amendment Act of 2023, which would make permanent a FOIA exemption for "critical infrastructure information or plans that contain critical infrastructure information for the critical infrastructures of the District of Columbia Water and Sewer Authority" (currently due to expire July 10, 2024). This Bill was necessary because D.C. FOIA exempts telecommunications critical infrastructure, but DC Water's critical infrastructure, which includes the underground plant that shares space with currently exempt telecommunications critical infrastructure.

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

On March 5, 2024, the Council passed the Secure DC Omnibus Amendment Act of 2024 on final reading.

I reported on this bill previously, but the version passed this week by the Council contained one new paragraph of substance since the committee’s version: “The audio and video captured by the emergency communication and video surveillance systems” that the new act would establish “at or near bus stops, train stations, or other public spaces to increase safety along transit routes,” would “not be subject to the Freedom of Information Act of 1976 . . . and shall not be released publicly[] except as needed for use as evidence in criminal proceedings. Upon public release, the Mayor shall ensure the privacy of those identified in the footage through protective measures, including the blurring of faces of individuals who were not involved in incidents related to the criminal proceeding.” Note that, as well as mayoral and congressional review, this language would be subject to appropriation for the underlying transit-safety program.

The engrossed version is in Dropbox. The new language appears on pages 5, //99–101, and 6, //102–05, of the engrossment.

## 2. Litigation

### D.C. Court of Appeals: Comments on Privacy Protections (Notice M283-24)

The District of Columbia Court of Appeals is eliciting general comments on issues of “protect[ing] confidential and other sensitive information and . . . comply[ing] with laws limiting or prohibiting the electronic dissemination of such information. . . . The court is now considering revising its rules and internal operating procedures [(IOPs)] to address these issues, which arise not only as to documents filed with the court but also as to orders and opinions filed by the court. At present, the court’s rules and [IOPs] address these issues only in certain specific areas,” such as a rule governing the sealing of records, and an IOP providing for using “initials to refer to victims of sexual assault and” in cases involving “delinquency, neglect, termination of parental rights, and contested adoption.” The court is asking for comments from the public, especially parties-in-interest, on how “to consider in a more global and systematic way . . . when the court’s opinions and orders should use initials, or other approaches, to protect privacy and confidentiality.” Any comments are due April 15, 2024.

The court’s notice is in Dropbox.

## 3. Administrative Law

### D.C. Board of Elections (DCBOE) Rulemaking on Meeting Procedures

On February 23, 2024, DCBOE amended its rule concerning the conduct of meetings, 3 DCMR § 102. As I reported previously, OOG commented on the proposed version of this rule—the proposed rule would have (1) permitted less advance notice of meetings, and their agendas, than is required by the OMA; (2) potentially permitted closure of meetings based on internally adopted policies rather than tracking the OMA’s acceptable reasons for closure;

(3) permitted a longer delay for the availability of minutes than is permitted by the OMA.

DCBOE decided to incorporate OOG's comments into the final rulemaking. It mentioned in the regulatory preamble that a purpose of the rulemaking was "to conform certain of [DCBOE]'s regulations regarding its notice/agenda, closed-session, and minutes procedures to the [OMA]."

Also note that, on February 7, 2024, the D.C. Council's Committee on Executive Administration and Labor held DCBOE's performance oversight hearing, and posed a few questions to DCBOE Chairman Thompson about the purpose behind the proposed amendment to the meeting-conduct rule. Chairman Thompson responded that, while nearly all DCBOE proceedings are orderly, occasional behavioral incidents over the years had ultimately led the agency to publish a written conduct policy.

The notice of final rulemaking, and OOG's comments on the proposed version from October, are in Dropbox.

#### **E. New Public Body Subject to the OMA**

1. Articulating DC's Artificial Intelligence Values and Establishing Artificial Intelligence Strategic Benchmarks (Mayor's Order 2024-08)

On February 8, 2024, Mayor Bowser issued Mayor's Order 2024-08, "Articulating DC's Artificial Intelligence Values and Establishing Artificial Intelligence Strategic Benchmarks." This order articulates and identifies artificial intelligence (AI) values and strategic benchmarks for deployment of AI resources, and establishes an AI Advisory Group as well as an AI Task Force. As Director of Open Government, I, or my designee, will serve on the AI Advisory Group until December 31, 2026. The Mayor's Order is available in Dropbox.

#### **F. Administrative Matters**

1. Attorney-Advisor Position: The Office of Open Government's vacancy closed on February 29, 2024. OOG is interviewing candidates and expect to fill the position soon.
2. FY25 Budget Hearing: The DC Council's budget oversight hearing concerning BEGA's FY25 Budget will be held on March 25, 2024.

**This concludes the Office of Open Government's March 7, 2024, report. I am happy to answer any questions the Board may have at this time.**

**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.

<b>OPEN INVESTIGATIONS BY STATUS</b>	
Open	44
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	44

<b>OPEN "UNDOCKETED MATTERS"</b>	
Grand Total	1

<b>PENDING/STAYED INVESTIGATIONS BY STATUS</b>	
Closed - Pending Collection	39
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	47

<b>REGULATORY MATTERS BY STATUS</b>	
Closed - Pending Collection	42
Open	2
Grand Total	44

	<b>Current</b>	<b>Last month</b>	<b>January</b>
Investigations Open	44	43	31
Investigations Stayed	8	8	8

The number of open preliminary and formal investigations includes 12 new matters. The investigative team resolved 11 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 attended DCHR's 2024 Supervisory Attorneys Retreat: Maintaining Mental and Physical Longevity, Becoming Your Own Best Coach, and a retraining on Using/Managing the DC P-Card. Administrative Officer, Tyrell Dow, and Program Support Assistant, Naquita Titus also attended Using/Managing the DC P-Card.

Supervisory Attorney Stewart-Mitchell, General Counsel Raj, Supervisory Investigator Cook, and I completed Manager's Telework training hosted by the Department of Human Resources. The training provided information regarding the Mayor's new telework policy, as well as examples for implementing telework schedules while maintaining the efficient operations of the government.

Attorney Advisor Marissa Jones attended "Ethics Update - Practicing Law in a Virtual World" given by the National White Collar Crime Center.

2. Conducted by staff

Since the February Board meeting, OGE conducted eight training courses, which included the February Monthly Ethics Training, the February Hatch Act training, four Ethics Counselor FDS Trainings, an Ethics Training for the DC Green Bank, and the February Ethics Counselor Brown Bag Session.

On Monday, February 26th, Attorney Advisor Fran Vann presented the February Ethics Counselor Brown Bag Session on the topic of Widely Attended Gatherings. Twenty-nine ethics counselors attended and engaged in discussions of hypotheticals about what makes Widely Attended Gatherings acceptable or not. A copy of the presentation was placed in the DropBox.

During February, 37 employees completed 39 courses using the Learning Management System and 22 employees completed our ethics training using PeopleSoft.

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 updating the Financial Disclosure Statement 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.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 35 ethics inquiries, which is 2 more than the 33 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

Last month, OGE published advisory opinion, Cooperation and Retaliation, 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. The opinion is still within the 30-day comment period and will be finalized on March 23<sup>rd</sup>. 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 board and commission members that do not meet the definition of public official under D.C. Official Code § 1-1161.01(47) and don't file financial disclosure forms despite the fact that they engage in conduct that creates a financial conflict of interest or the appearance of a conflict of interest. OGE has drafted a proposed rulemaking that would designate those board and commission members as public financial disclosure statements filers. The proposed rulemaking was placed in the Drop Box for the Board's approval.

**E. OGE Administrative Matters**

1. 2025 Budget Oversight Hearing

BEGA has received a tentative date to appear before the Committee on Executive Administration and Labor for its FY25 budget oversight hearing. Both OOG and OGE will provide information and testimony on the agency's current budget and FY 25 budget enhancement requests.

**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 2024 FDS season is underway! The 2024 Financial Disclosure Statements (CY2023) are due on May 15, 2024. On February 2nd, OGE sent letters detailing the financial disclosure process to 140 agency heads and ethics counselors at the various agencies, and boards and commissions. Last month, Attorney Advisor Vann and Program Coordinator Kosick provided training to agency ethics counselors regarding the financial disclosure rules. Additionally, ethics counselors were informed that departing employees can file their annual Financial Disclosure prior to their last day of service. The FDS team is also in the process of preparing to send notice via mail to public filers.

Agencies were required to provide BEGA with lists of employees who have been designated as filers by March 1st and most agencies have provided their lists to OGE. The Office of the Chief Technology Officer completed a few more database updates for the electronic filing system, including using employee identification numbers to confirm employees for filing and enforcement.

Regarding auditing, Auditor Courtney Walker completed and submitted for review the results of the CY2022 PFDS Audit. Auditor Walker continues to work with the Office of Pay and Retirement Services for garnishment and fee collection revenue activities.

#### **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.

Lobbyist reporting has remained steady since the start of the 2024 calendar year. The LRR team sent notice of one late registration and one late activity report since the January 17<sup>th</sup> filing deadline. On February 23<sup>rd</sup>, the Office of the Chief Technology Officer completed two updates for the Lobbyist Registration and Reporting E-file system – (1) removal of the Active/Inactive Checkbox in Registrants and Clients Profiles and (2) removing the amendment language from reports that are created after a previous amendment. Lastly, Auditor Walker completed and submitted for review the results of the CY2023 Reduced Filer Fee 501(c)(3) Audit. The LRR team will provide training to lobbyists on March 20<sup>th</sup>. Lastly, OGE sent notice to all registered lobbyists and their clients informing them that the 15-day grace period that was allotted during the COVID-19 pandemic will end on April 1, 2024, and fines will be imposed on the day after the filing deadline. A press release was issued as well.

**Thank you. This concludes the Office of Government Ethics' March 7, 2024, report.**

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

The Board received one public comment from Dorothy Brizill, Executive Director of DC Watch, who attended the meeting in person. Ms. Brizill raised concerns regarding a pending DC Board of Elections (DCBOE) rulemaking that she claimed would hamper citizens from attending monthly public DCBOE board meetings and silence individuals who want to make comments during the public comment period. Ms. Brizill was also concerned that the DCBOE rulemaking included a barring notice provision that would bar individuals from attending and participating in DCBOE meetings and from appearing in the DCBOE offices for a period of three years. Ms. Brizill cites comments from the DCBOE Chairperson, which she believes misrepresents her appearances at DCBOE public meetings, and she suggests that DCBOE is adopting the rulemaking to limit her ability to attend and participate in their meetings. Ms. Brizill advised that she would provide additional comments to the Board regarding Freedom of Information Act and Open Meetings Act concerns.

Chairperson Hutcheson encouraged Ms. Brizill contact BEGA staff regarding her concerns and advise Ms. Brizill that staff would follow up to address the issues she raised.

## **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 2:48 p.m.

The Board dismissed **24-0003-F Anita Bonds** and **24-0005-F Anthony Merritt**.

The Board approved negotiated dispositions in **23-0092-P L. Palmer** and **24-0019-P M. Briggs**.

The Board's next meeting will be held on April 4, 2024.