

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

MEETING MINUTES – April 4, 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 March 7, 2024, at 12:00 p.m. Chairperson Norma Hutcheson and Board Members Charles Nottingham, Felice Smith, Melissa Tucker participated in the meeting. Board Member Darrin Sobin did not attend 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 12:01 p.m.

II. Ascertainment of Quorum

Chairperson Hutcheson and Board Members Nottingham, Smith, and Tucker were present at the start of the meeting. Together, the four members constitute a quorum for the meeting.

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously adopted the agenda and approved the minutes for the March 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

a. Dismissal of OOG Complaint, OOG-2024-0005

On March 26, 2024, I dismissed a complaint against an Advisory Neighborhood Commission (ANC) because the allegations asserted were not within the scope of my authority under the Open Meetings Act. The merits of the complaint were not evaluated or considered because ANCs are not

public bodies subject to the Open Meetings Act. The dismissal of the complaint is in Dropbox.

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 9 requests for OMA advice.

OOG responded to 4 requests for FOIA advice; and

OOG responded to 10 requests for technical assistance with open-dc.gov.

B. Meeting Monitoring

1. General 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 March 2024, OOG's legal staff attended 23 public body meetings. As a result of the monitoring, OOG communicated one corrective measure because a public body failed to post a detailed agenda.

2. D.C. Council Meeting Regarding the Deal with Monumental for the Washington Wizards and Washington Capitals to Remain in D.C.

The Office of Open Government's meeting monitoring activity included the Council of the District of Columbia's ("D.C. Council") meeting regarding the deal with Monumental for the Washington Wizards and Washington Capitals to Remain in D.C.

On April 1, 2024, D.C. Council Chairman Mendelson assembled a majority of the D.C. Council members in his office to receive a briefing on the terms of the city's deal with Monumental Sports. There was no public notice of that meeting, which Chairman Mendelson described as a "gathering." The Office of Open Government has received several inquiries regarding the legality of this meeting. The "gathering" on April 1, 2024 was a meeting under the Open Meeting Act's definition of a meeting. The majority of the D.C. Council was present to "consider, conduct, or advise on public business." However, the D.C. Council's rules may support Chairman Mendelson's characterization of the event, to a degree. The gathering of a quorum of Councilmembers in Chairman Mendelson's office to receive a briefing about the Monumental deal was a meeting according to the OMA, and arguably under D.C. Council Rules, but it appears to be exempt from public notice requirements. An explanation follows.

D.C. Official Code § 2-575(f) provides that the D.C. Council may promulgate its own rules regarding the conduct of its meetings. But the D.C. Council's rules must align with the Open Meetings Act's definition of a meeting. The definition is set

forth in D.C. Official Code § 2-574(1): “Meeting means any gathering of a quorum of the members of a public body, including hearings and roundtables, whether formal or informal, regular, special, or emergency, at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting”

The D.C. Council has promulgated its own open-meeting rules: Article III.H of the Rules of Organization and Procedure for the Council of the District of Columbia, Resolution 25-1. Those rules provide that certain D.C. Council activities, where a quorum of the members convene, do not require public notice. Rule 373(a)(1) requires notice to the Council Secretary from “one Councilmember attending [a] meeting [of the Council] . . . at least 48 hours before the meeting, unless emergency circumstances require less notice.” However, Rule 373(e) excludes certain meetings from the notice provisions if the D.C. Councilmembers assembled do not take official action. Such meetings include “administrative meetings, breakfast meetings, open discussions, or other gathering of the Council when no official action is expected to take place.” The gathering of the majority of the D.C. Council on April 1, 2024, appears to fall under Rule 373(e), based on the facts reported by the media.

While I have not taken a formal position on the matter, I am providing this summary for the public’s benefit, since the matter is newsworthy. The Office of Open Government will continue to monitor this situation and I will provide additional information if it is necessary.

C. Training/Outreach

1. Sunshine Week 2024

a. Your Right to Know

On March 11, 2024, Trial Attorney Nicholas Weil attended a presentation concerning Pennsylvania open-records and meeting law. OCTO coordinated an intra-District discussion of request-processing technique.

b. American Society of Access Professionals Court Case Update

On March 12, 2024, Attorney Weil and I attended the American Society of Access Professionals webinar, “ASAP - Training for Members: Court Case Update.” Attorneys Allan Blutstein and Ryan Mulvey provided a review of significant federal FOIA decisions.

c. DC Open Government Coalition (DCOGC) Summit

On Wednesday, March 13, 2024, I participated in a panel at the DC Open Government Coalition 2024 Sunshine Week Summit, which OOG cosponsored along with DCOGC and the Society of Professional Journalists. The panel addressed open government and public safety, and included a DCOGC board member who is also an attorney with the Washington Post,

the Director of Peace for DC, and the Deputy Auditor for Public Safety. The course addressed issues relating to how transparency and public safety intersect in the District. The discussion highlighted the role transparency plays in empowering the community and our elected officials, public safety, and understanding crime and its effects. Chief Counsel Neal, and Attorneys Weil and Scerbo attended the event.

d. Shining a Light: Assessing Government Transparency in South Dakota and Beyond

On March 14, 2024, Attorney Weil attended the South Dakota News Media Association presentation on “assessing government transparency in South Dakota.”

e. The Appeals Process: Steps to take when your FOIA requests are denied.

On March 15, 2024, Attorney Weil attended the National Press Club Journalism Institute’s session on the appeals process when FOIA requests are denied.

2. The OpenGovist Newsletter

On March 14, 2024, OOG released Issue 5 of its newsletter, *The OpenGovist*, which reports on OOG’s activities and newsworthy events in the areas of open government. The newsletter also provides updates including OOG's advisory opinions issued and advice rendered.

3. Handling Substantive & Procedural Motions in the District of Columbia

On March 21, 2024, Attorney Weil attended “Handling Substantive & Procedural Motions in the District of Columbia” presented by the DC Bar. The session focused on motion-practice strategy in the Superior Court. The session also highlighted substantive motions for temporary restraining orders, preliminary injunctions, dismissals, and summary judgments.

4. FOIA Training for Advisory Neighborhood Commission

On March 26, 2024, I facilitated FOIA Training for the Advisory Neighborhood Commission (“ANC”). OOG is required to train advisory neighborhood commissioners on FOIA twice a year. There were approximately 30 ANC Commissioners present at the virtual training and the Office of ANCs provided ANC Commissioners with access to the training recording and materials for those who were unable to attend.

5. GovDelivery Training for Public Records Officers

On March 26, 2024, Attorney Scerbo, BEGA Records Officer, attended *govDelivery* training on their email delivery system and content creation, to train

administrators. The training focused on topic creation; subscriber uploading; advanced template development, creation and sending; and analytics reporting.

6. Open Meeting Act training for the D.C. Commission on Poverty

On March 26, 2024, Attorney Scerbo presented Open Meeting Act training to members of the D.C. Commission on Poverty.

7. Executive Procurement Seminar

On March 26, 2024, Chief Counsel Neal attended an agency executive leadership training presented by the Office of Contracting and Procurement, which is designed to provide an overview of the District of Columbia's contracting and procurement laws, regulations, and procedures.

8. BEGA/OGE Hatch Act Training

On April 2, 2024, Attorney Weil, Attorney Scerbo, and I attended virtual Hatch Act Training, which was facilitated by the Office of Government Ethics.

9. Open Meeting Act training for the Department of Licensing and Consumer Protection

On April 3, 2024, Attorney Scerbo presented Open Meetings Act training to members of public bodies and staff supported by the Department of Licensing and Consumer Protection.

D. Legislative and Update

1. Litigation

a. DuBose v. District (Case No. 2018 CA 000378 B)

I have previously reported on this case involving Board of Dentistry disciplinary records. The parties have begun filing their summary-judgment briefs, concerning the issue of fees, and a motion hearing is set for May 31, 2024.

The parties' briefs are in Dropbox.

2. Legislation

a. Proposed New D.C. FOIA Exemption: Physical and Mental Evaluations and Reports (Bill 25-0545)

I have previously reported on the Health Occupations Revision General Amendment Act of 2023. On March 21, 2024, the Committee on Health reported out a draft that would add a new enumerated D.C. FOIA exemption, Exemption 21. This new exemption would apply to certain records related to

the licensure of health professionals. These records include “[m]edical records, Orders for Fitness to Practice Evaluations, . . . other types of physical and mental evaluations, and the resulting reports.” Certain “Consent Orders, Final Orders, and Notices of Summary Suspensions” may be redacted under the new exemption to protect “private or otherwise confidential information.” On April 2, 2024, the Council voted to engross the measure (*i.e.*, first reading). Final passage is expected on May 7, 2024.

The committee report and the new bill (plus a later amendment by Councilmember Henderson, not germane to FOIA) are in Dropbox.

b. Continued Allowance for Streaming of Virtual Meetings (Bills 25-0764, 25-0765)

I have reported before on the pandemic-era amendment to the OMA that recognizes streaming as a permissible means for public bodies to open their meetings to the public. On April 2, 2024, the D.C. Council passed emergency legislation to continue the applicability of this language, and its companion measure passed on first reading. Councilmember Pinto stated the rationale for the legislation. She said, “[a]lthough the public health emergency has concluded, this authorization has provided public bodies with the flexibility to determine the most efficient format for their meetings without reducing access for residents. In fact, largely, providing a virtual option to attend meetings has increased access for many residents, including seniors, individuals with mobility issues, caregivers, individuals who are immunocompromised, and those who are ill. Although many public bodies have resumed in-person meetings, most continue to stream their meetings online or otherwise make the meeting available in a virtual format to allow residents to participate remotely.”

The bills, the emergency-declaration resolution, and the request-to-agendize from Councilmember Pinto are in Dropbox.

3. Executive Action

FY2023 Freedom of Information Act Report

The Attorney General and the Mayor of the District of Columbia transmitted the District’s annual D.C. FOIA Litigation Report and the Freedom of Information Act Report to the D.C. Council, respectively.

The reports are in Dropbox. Respecting the FOIA Report, BEGA’s own individual data is reported beginning on page 34 of the PDF file.

E. Administrative Matters

FY25 Budget Hearing: The DC Council’s budget oversight hearing concerning BEGA’s FY25 Budget will be held on April 8, 2024, before the Committee on Executive Administration and Labor. BEGA Chairperson Hutcheson, Director Cooks, and I will provide information and testimony on BEGA’s FY25 budget needs. BEGA

has requested an FY25 budget enhancement request to fund an additional OOG Attorney Advisor position. We are also advocating for a change to the enforcement provision of the OMA that will provide a \$1,000 fine for each violation of the OMA.

This concludes the Office of Open Government’s April 4, 2024, report. I am happy to answer any questions the Board may have at this time.

Board Member Nottingham asked Director Allen how the Council meeting regarding the Monumental Sports deal came to BEGA’s attention and they discussed how the Council should proceed when considering fast-moving matters. Director Allen stated that OOG received a complaint and several inquiries regarding the meeting. She advised that OOG was looking into the validity of the meeting, noting that Council rules differed from the OMA regarding the notice requirements since Council rules allowed providing notice to the secretary instead of notice to the public as required under the OMA.

Both Board Member Nottingham and Board Member Tucker asked about how to deal with the potential conflict between the Council rules and the OMA. Director Allen stated that she could issue an advisory opinion addressing these issues and that she planned to reach out to the Council. Board Member Nottingham asked that she keep the Board up to date on this issue.

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	35
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	35

OPEN "UNDOCKETED MATTERS"	
Grand Total	3

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	40
Stayed - Pending DC Superior Court Case	6
Stayed - OAG False Claims Act Case	1
Stayed - OIG Investigation	5

Stayed - US District Court Case	0
Grand Total	52

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	41
Open	0
Grand Total	41

	Current	Last month	February
Investigations Open	35	44	43
Investigations Stayed	11	8	8

The number of open preliminary and formal investigations includes 8 new matters. The investigative team resolved 17 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. We have commenced monthly meetings with the CCU team and learned that approximately \$3,000 has been collected to date. We are transferring over new debts and will continue to update monthly. OGE intends to publish its Quarterly Complaint Report for the second quarter of fiscal year 2024 (which ended last week) prior to the next Board Meeting.

B. Trainings/Outreach

1. Professional Development Trainings Attended by Staff

Program Support Assistant Naquita Titus completed the Pass Buyer course. Auditor Courtney Walker attended Emotional Agility. Investigator Ileana Corrales took three courses from Wicklander Zuluwski: Respect inside the interview room, Maintaining Positive Relationships, and Mentors & Mentees in the Investigative Field.

Attorney Advisor Marissa Jones took “Ethics Update – Practicing Law in a Virtual World” given by the National White Collar Crime Center. She also took Financial Fraud: Trends, Targets & Technology given by the State of Alabama Bar and Navigating AI Ethical Challenges and Risks from Skillsoft. Attorney Advisor Fran Vann attended Strategic Listening for Lawyers. Attorney Advisor Maurice Echols took Deposition of Experts given by the Office of the Attorney General for the District of Columbia.

Supervisory Attorney Asia Stewart-Mitchell, Program Coordinator Stanley Kosick, and Program Support Assistant Titus completed Catalyst Design offered by LRN, the company that created and hosts our learning management system. General Counsel Rashee Raj took GovQA Power User Overview Training; a COGEL Connect session titled Journalism & Ethics; the 2024 Annual Sexual Harassment Officer Training; and Myers–Briggs Type Indicator training via the

Department of Human Resources. Senior Board Attorney Lynn Tran attended Lobbying and Political Activities: Focus on Limitations and Prohibitions in the Nonprofit Sector; and two Gov Delivery courses: Feature Focus and Administrator Training.

2. Conducted by staff

Since the March Board meeting, OGE conducted nine training courses, which included a March Local Hatch Act Training, Monthly Ethics Training, two trainings for the D.C. National Guard, two trainings for the D.C. Office of Risk Management, a Lobbyist Training, the April Hatch Act Training, and an ethics training for the D.C. Office of Administrative Hearings.

During March, 54 employees completed courses using the Learning Management System. The courses with the highest completion rates were Conflicts of Interest, Negotiating Employment and Post Employment, and the general Ethics Training. 60 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. As I previously stated, OGE staff members attended a Catalyst Design course as the first step to updating our training 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 31 ethics inquiries, which is 4 less than the 35 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 completed its 30-day comment period without any feedback and was finalized on March 23rd. On March 29, OGE published an advisory opinion titled "Guidance on Social Media use for Official Purposes by District Government Elected Officials and District

Government Employees.” The 30-day comment period extends through April 29th and a few comments have already been received. The opinion is complicated by a recent Supreme Court opinion from March 15, so revisions and a second comment period may be necessary. A copy of the advisory opinion and the recent Supreme Court opinion were placed in the drop box.

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 even though they engage in conduct that creates a financial conflict of interest or the appearance of a conflict of interest. OGE drafted a proposed rulemaking that would designate those board and commission members as public financial disclosure statements filers and it was posted in the D.C Register on March 29, 2024, for a 30-day comment period and was emailed to all ethics counselors. Also, a press release was posted on the BEGA website. To date, we have not received any comments.

E. OGE Administrative Matters

1. 2025 Budget Oversight Hearing

BEGA has received a date to appear before the Committee on Executive Administration and Labor for its FY25 budget oversight hearing on Monday, April 8, 2024. Both OOG and OGE will provide information and testimony on the agency's current budget and FY25 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. Most agencies have provided their lists of designated filers. Of the lists received, agencies have reported 8,444 filers, which is a 5% increase over 2023. To date, 270 filers have already completed their filing and 22 Support Tickets have been received.

OGE will send the mail notices to public filers sometime next week and will email notices on April 15th.

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 2024 first quarter activity reports are due April 15, 2024. A filing reminder was sent to 373 recipients on March 27, 2024. As of this report, a handful have filed their quarter activity reports. On March 20, 2024, Attorney Advisor Echols and Program Coordinator Kosick hosted 31 attendees at the LRR Quarterly Training. This session focused on the DC Code and how to file. 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.

H. Public Investigations

1. 24-0006-F In re Vincent Slater - This is a formal investigation based on a criminal complaint that Vincent Slater accepted bribes to erase or change the tax obligations of several DC businesses. Mr. Slater was a senior revenue officer at the D.C. Office of Tax and Revenue. Mr. Slater's sentencing is set for April 18, 2024. OGE will update the Board at the next meeting.

2. 24-0007-F In re Marc Davis - This is a formal investigation based on a criminal complaint that Marc Davis, Metropolitan Police Department (“MPD”) officer, worked a second job at Giant while on-duty with MPD between August 27, 2021, and June 7, 2023. According to the complaint, Mr. Davis engaged in a scheme and systematic course of conduct with intent to defraud the District government by means of false or fraudulent pretense and thereby obtained property of a value of \$100 or more consisting of money. Mr. Davis fraudulently earned \$46,356.14 from MPD while simultaneously working at Giant. The next court hearing will take place on April 22nd.

3. 24-0008-F In re Terrica Clark - This is a formal investigation based on a criminal complaint that Terrica Clark, MPD civilian employee in the Internal Affairs Bureau, worked a full-time job at MES Energy Services. Ms. Clark worked for MPD from 7:00am to 3:30pm, which included her teleworking on Mondays and Fridays and reporting to the office Tuesday - Thursday. She worked at MES Energy from 7:00am to 3:00pm, which included her teleworking Tuesday – Thursday and reporting to the office on Mondays and Fridays. During the time of her alleged offense, Ms. Clark earned \$17,230 from MPD and \$17,508 from MES Energy Services. Ms. Clark was charged with scheme and systematic course of conduct with intent to defraud the government. The next court hearing will take place on April 25th.

Thank you. This concludes the Office of Government Ethics’ April 4, 2024, report.

VI. Public Comment – if received

The Board received one public comment for today's meeting:

In keeping with BEGA rules and procedures, I raise this matter of public inquiry. Does BEGA, both the Office of Open Government and the Office of Government Ethics, intend to investigate recent actions by the DC Board of Elections to adopt new rules, regulations, and procedures to severely restrict information and the public's access to the agency? Moreover, given pending local elections are scheduled to take place this year (in June and November), what are the specific steps and the timetable that BEGA will be following?

Thank you for your consideration.

Dorothy Brizill
Executive Director, DCWatch
dcwatch@gmail.com

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 1:19 p.m.

The Board approved negotiated dispositions in **24-0039-P In re M. Scott**, **24-0045-P In re J. Scott** and **23-0100-P & 23-010-P In re L. Graves**. The Board approved a notice of violation in **24-0009-F In re Aretha Chapman**.

The Board will next meet on May 2, 2024, at 12:00 p.m.

The meeting adjourned at 1:20 p.m.