

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

DRAFT MEETING MINUTES – May 4, 2023

The District of Columbia Board of Ethics and Government Accountability held a meeting on May 4, 2023, at 12:00 p.m. The meeting was held remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Darrin Sobin and Melissa Tucker. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting. Questions about the meeting may be directed to bega@dc.gov.

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 12:02 pm.

II. Ascertainment of Quorum

A quorum was established with Chairperson Hutcheson and Board Members Smith, Sobin, and Tucker present at the start of the meeting. Board Member Nottingham joined after the start of the meeting.

III. Adoption of the Agenda/Approval of Minutes

The Board members present (Chairperson Hutcheson and Board Members Smith, Sobin, and Tucker) voted unanimously to adopt the agenda and approve the minutes of the April 6, 2023, 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 and Formal Legal Advice

a. Applicability of D.C. FOIA to Washington Humane Society (d/b/a Humane Rescue Alliance (“HRA”))

On April 19, 2023, I issued # OOG-2023-001_AO. I found that: (1) HRA is not a District government public body or agency subject to D.C. FOIA even when HRA is a private contractor performing a public function; (2) internal records held by HRA are not subject to direct requests under D.C. FOIA; (3) the records HRA “produce[s] or collect[s] pursuant to” its contract with the District (e.g., under its animal-control division) are subject to D.C. FOIA, but “the public body with programmatic responsibility for” HRA’s contract, DC Health is “responsible for making such records available”; and (4) a person may be able to obtain HRA’s records through a subpoena. A copy of the advisory opinion is in the Drobox for your review.

b. Rental Housing Commission (“RHC”) District of Columbia Freedom of Information Act Compliance

On March 27, 2023, I issued a FOIA Advisory Opinion # OOG-2022-011-M. The AO found that RHC is not fully compliant with the mandatory disclosure provisions of D.C. FOIA and must make all Final Orders created on or after November 1, 2001, that are not subject to statutory exemptions publicly available on its website to be compliant with D.C. FOIA. RHC admits that it is not in full compliance with D.C. FOIA's requirement to make Final Orders available on the Internet.

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 5 requests for OMA advice.

OOG responded to 4 requests for FOIA advice; and

OOG responded to 7 requests for technical assistance with open-dc.gov.

B. Remote Meeting Monitoring

OOG attorneys attend remote public meetings to ensure compliance with the OMA and to inspect public body websites and OOG’s Central Meeting Calendar for public meeting notices and records. We provide legal advice on OMA compliance and take corrective action if necessary.

During April 2023, OOG’s legal staff attended 12 remote public body meetings. As a result of the monitoring, several instances of written corrective measures were taken, as follows: (1) to correct the failure to post a meeting agenda; (2) to correct the omission of the OMA regulatory statement on the meeting agenda; and (3) to correct the failure to post notice of a meeting cancellation.

The OMA requires: (1) meeting notices to include the date, time, location, and planned agenda to be covered at the meeting (D.C. Official Code § 2-576(5)); (2) inclusion of the following regulatory statement on all meeting agendas, “*This meeting is governed by the Open Meetings Act. Please address any questions or complaints*

arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.” (3 DCMR § 10409.2); and (3) notice to the public of a meeting cancellation which is a change in schedule. (D.C. Official Code § 2-576(1)).

C. **Training/Outreach**

OOG Training Courses Attended:

1. Virtual CLE Training Sponsored by OAG - “Guns, The District of Columbia, and the Second Amendment”

On April 10, 2023, I, along with Attorneys Scerbo and Weil, attended a virtual CLE course facilitated by Senior Assistant Attorney General Andrew Saindon regarding the District’s regulation of firearms and the evolution of gun laws in the District. The Supreme Court’s decision last summer in Bruen upended the consensus method that most courts had been using to analyze challenges brought under the Second Amendment and required a complete revision of how these cases must be litigated. Andy Saindon provided an overview of the issues facing governments (local and federal) as they try to regulate guns in the face of a rapidly changing legal background.

2. SkillPath Virtual Training

On April 14, 2023, myself, Chief Counsel Barton, and Attorney Scerbo attended the virtual course, “Train the Trainer: How to Create and Facilitate Employee Training” by SkillPath. The subjects covered during the 3- hour interactive training was “Create Training That Works”, “Deliver Dynamic Training” and “Be an Effective Virtual Trainer.”

2. D.C. Bar Training

On April 27, 2023, Attorney Scerbo attended the D.C. Bar’s “Crafting a User-Focused Legal Website: A Comprehensive Guide to 6 Essential User Experience (UX) Elements” virtual training. The training’s focus was using tools for creating a website that looks professional and engaging.

3. BEGA Learning Management Courses

On April 27, 2023, I completed several of the Office of Government Ethics’ online ethics courses to satisfy the annual training requirement, including “Board of Ethics and Government Accountability Ethics Training”; “Negotiating Employment and Post Employment;” and “What is Ethical Leadership?”

4. Practicing Law Institute Training (“PLI”)

On April 28, 2023, Trial Attorney Weil remotely attended PLI’s “Pre-trial Practice 2023.” The topics covered included: planning the litigation; investigating the facts and the law; pleading their case; conducting pre-trial motions; and master settlement strategies.

Courses Conducted by OOG:

1. D.C. FOIA Training

On May 2, 2023, Chief Counsel Barton presented a training to the Executive Office of the Mayor covering the requirements and best practices for the D.C. FOIA.

Other Outreach Activities:

1. DC Open Government Coalition Meeting

On April 21, 2023, I met with the D.C. Open Government Coalition to discuss their proposed legislation to create a Commission to reform open government laws to better align with technology and deal with longstanding issues related to FOIA and open meetings. We discussed strategy for obtaining community and D.C. Council support for the reforms.

2. OOG Newsletter

On April 27, 2023, we distributed issue #2 of the *OpenGovist*, our quarterly newsletter. Among other things, this issue provides: (1) legislative updates to OMA and D.C. FOIA; (2) summaries to OMA and D.C. FOIA advisory opinions; (3) summaries of MOLC FOIA appeal decisions that have precedential impact; (4) summaries of OMA and D.C. FOIA advice; (5) upcoming OOG trainings; and (6) highlights as our public body in the “Sunshine Moment,” and (7) provides information about the duties and responsibilities of the Board of Architecture, Interior Design, and Landscape Architecture. A copy of the newsletter is in the Dropbox for your review, and it is also viewable on the OOG’s Twitter account @DCOPENGOV.

3. Office of Cable Television, Film, Music, and Entertainment Program Launch

On April 28, 2023, I attended OCTFME’s 2023 Upfront Presentation of its Spring and Summer TV Programming at OCTFME Studios. The launch included a sneak peak of DCN’s programming.

D. Litigation and Legislative Update

1. New Appellate Decisions from Mayor’s Office of Legal Counsel (MOLC)

On April 7, 2023, April 14, 2023, and April 21, 2023, the MOLC published 72 FOIA appeals decisions in the DC Register. OOG is pleased to see the publication of so many decisions.

A summary of all the opinions appears in the printed report in Dropbox. I will not take the time to read them aloud because the majority are either dismissals as moot—because the agency fulfilled the request during the pendency of the appeal—or straightforward directives for the agency to finish processing an unfulfilled request. Here is a summary of seven decisions that have broader

precedential impact:

Appeal # 2019-166: The MOLC affirmed that narrowing the origins of 911 calls to locations “more granular” than the police districts would breach personal privacy sufficiently to trigger Exemption 2 (privacy interest).

Appeal # 2019-168: The MOLC remanded because the agency’s need to reformat a database is not equivalent to asking the agency to create a “new” record.

Appeal # 2019-179: The MOLC remanded for reprocessing, holding that “there is a public interest associated with the resume and application submitted by a successful candidate for a government position that outweighs the applicable privacy interest.”

Appeal # 2019-188: The MOLC remanded, holding that MPD may proceed, and should have proceeded, with processing the request by verifying ID to confirm that the requester was the person seeking his own records (thus negating the privacy interest under which the records were withheld).

Appeal # 2019-206: The MOLC affirmed DC Health’s search as adequate (“To conduct a[n]...adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. The first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. Second, the agency must affirm that the relevant locations were in fact searched. Generalized and conclusory allegations cannot suffice to establish an adequate search.”) (Citing Doe v. MPD, 948 A.2d 1210, 1220, 1221 (D.C. 2008)).

Appeal # 2019-236: The MOLC affirmed the agency’s application of Exemption 2 because the public interest was not adequate to overcome the privacy interest with respect to the victim’s statement in a criminal case.

Appeal # 2019-238: The MOLC affirmed the agency’s application of Exemption 2 because adequate public interest did not warrant disclosure of third-party Uber receipts (from an evidence file).

2. Litigation

There are no litigation updates on the cases that were reported to you in April 2023 Board report.

OOG continues to monitor all relevant legislation and the status of court cases previously reported to the Board.

D. Administrative Matters

1. BEGA 1030 15th Street, NW Relocation

The weekly meetings continued this month regarding BEGA’s relocation to its new office. I, along with Director Cooks, Chief of Staff Mitchell, and Administrative staff members met weekly with the Department of General Services and the Office of the Chief Technology Officer to discuss the progress of the agency’s relocation to its new facility at 1030 15th Street, NW. During the April monthly meeting we discussed the A/V needs of the new location and we also discussed our needs for data and telephones at the new facility.

2. Information Technology Specialist

On March 17, 2023, BEGA posted an open, full-time position (CS-12) for Information Technology Specialist. The vacancy announcement closed on April 16, 2023, and we are projected to have the position filled by the end of June 2023.

3. Website Redesign

As previously reported, BEGA is redesigning its website, bega.dc.gov. I along with Director Cooks, Senior Attorney Tran, and Chief of Staff Mitchell have been working on the project. Senior Attorney Tran is leading the implementation of the project since the departure of our IT Specialist. We are nearing the end of the redesign project and the launch should be occurring soon. The new website looks very good.

This concludes the Office of Open Government’s May 4, 2023, 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.

OPEN INVESTIGATIONS BY STATUS	
Open	52
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	52

OPEN "UNDOCKETED MATTERS"	
Grand Total	1

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	26
Stayed - Pending DC Superior Court Case	3
Stayed - OAG False Claims Act Case	3
Stayed - OIG Investigation	4
Stayed - US District Court Case	0
Grand Total	36

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	26
Open	9
Grand Total	35

	Current	Last month	February
Investigations Open	52	53	53
Investigations Stayed	10	10	10

The number of open preliminary and formal investigations includes 10 new matters. The investigative team has 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.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

During the month of April, OGE staff members, except for administrative staff, attended “Guns, The District of Columbia, and the Second Amendment” presented by the Office of the Attorney General. Senior Assistant Attorney General Andrew Saindon gave an overview of the issues facing local and federal governments as they try to regulate guns in the face of a rapidly changing legal background.

Investigator Corrales and Attorney Advisor Echols both completed “Get Started with Microsoft Excel” and “Get Started with Microsoft Excel-Advanced.” Investigator Corrales took “Learning the Benefits of Rapport Building in Investigations.”

Attorney Advisors Echols and Vann both completed “How to Structure a Winning Argument.” Attorney Advisor Vann also took “Presentation Skills for a Virtual Audience.”

Investigator Ralph Bradley attended a Lexis Nexis Terms and Connectors Lunch and Learn course. Senior Attorney Tran took “Stock Trading Everywhere All at

Once: Public Servants & Financial Conflicts.”

Last week, Attorney Advisor Vann, Supervisory Attorney Asia Stewart-Mitchell, General Counsel Raj, and Senior Attorney Tran attended an online Skill Path course titled “Train the Trainer: How to Create and Facilitate Employee Training.”

2. Conducted by staff

Since the April Board meeting, OGE conducted 5 training courses: the April Monthly Ethics Training (303 attendees), Ethics Training for the Managers of the Office of Unified Communications (23 attendees), the Quarterly Boards and Commissions Training (59 attendees), Ethics Training for the Department of Licensing and Consumer Protection (34 attendees), and the April Brown Bag session.

Last Monday, Attorney Advisor Echols presented the April Ethics Counselor Brown Bag Session on Seeking and Negotiating employment. Several Ethics Counselors attended and appreciated the discussion, as they find this to be a complex area of ethics. A copy of the presentation was placed in the drop box for your review.

During the month of April, 254 employees completed our online ethics training via PeopleSoft. Since the launch of the Learning Management System in April 2022, 5,125 employees have registered within the system, which is an increase of 747 employees since the last board meeting until April 30th. Course BGA923 “Board of Ethics and Government Accountability Ethics Training” leads all courses with 725 course completions. This is due in large part to the outreach done by the training team encouraging agencies to use the LMS, especially to satisfy the annual training requirement for financial disclosure statement filers. We continue to meet with our LRN program manager to discuss ways to optimize the system and increase employee registration.

3. Outreach

OGE and OOG are finalizing the changes to the new BEGA website. The website team, which consists of myself, Director Allen, Chief of Staff Mitchell, and Senior Attorney Tran, are reviewing final changes. The website launch could occur this week and a preview is available to the Board Members at a link I provided in the drop box.

4. BEGA Newsletter

On Friday April 14th, OGE published volume eight, issue two of its newsletter, “Ethically Speaking.” The newsletter provides reminders of the financial disclosure statement filing deadline; informs readers of the ethical issues within the three branches of the federal government; notifies regarding enforcement actions taken by other state ethics boards; and provides advice on attending a

widely attended gathering. This issue is available on the BEGA website and the next issue will be published by June 15th. A copy was placed in the drop box for your reading pleasure.

C. Advisory Opinions/Advice

1. Informal Advice

OGE’s legal staff provided advice for approximately 30 ethics inquiries, which is 15 less than the 45 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

OGE’s advisory opinion, “Guidance on the Financial Disclosure Statement Filing Process” is in the final days of its comment period, ending on March 15th. The opinion addresses the history and purpose of financial disclosure filings, who’s required to file (including the designation process), how to file a financial disclosure statement, and the importance of reviewing financial disclosure statements to determine any apparent or potential conflicts of interest. Given that the 2023 filing season has begun, this opinion will answer some frequently asked questions and concerns. A copy was placed in the drop box for your review.

Yesterday, OGE published advisory opinion, “Guidance on Recusal”. The opinion provides advice on when a recusal is warranted and how employees should properly recuse themselves to avoid violating the ethics rules. The opinion details the definition of a recusal and provides information on when a written statement of recusal is expressly required by the Code of Conduct and when a recusal is necessary to avoid even the appearance of an ethics violation. The opinion also addresses what should be included in a written statement and the process after an employee discloses a conflict. The opinion has been published on the BEGA website and will be submitted to the D.C. Register for a 30-day comment period. A copy was placed in the drop box for your review.

D. Legislation Updates

1. 2022-2023 Budget Oversight

On March 30, 2023, Chairperson Hutcheson, Director Allen, and I provided testimony and information on the agency’s budgetary needs before the Committee on Executive Administration and Labor. We are still awaiting updates regarding the fiscal year 2024 enhancement requests that were submitted to the Committee.

E. OGE Administrative Matters

1. OGE Staffing

OGE has posted vacancy announcements for its Attorney Advisor, Investigator, and Auditor positions. We are advertising widely via Careers.DC and our networks in hopes of obtaining great candidates to interview soon. The IT Specialist recently closed, and we expect to start interviewing candidates soon.

2. Office Relocation

Our office relocation is still underway! OGE and OOG continue our weekly meetings with the Department of General Services, and the project management team to discuss the build-out of the space, furniture, and finishes. An update on the IT production provided by OCTO will not delay our move date. The proposed move-in date remains July 2023.

F. Financial Disclosure Statement (FDS)

Pursuant to D.C. Official Code §§ 1-1161.24 and 1-1161.25, 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 requirements, file their annual financial disclosure statement.

FDS season is in full swing! The FDS team has collected filer lists from agencies. The lists equal 8,449 total filers, which is 13% more than the 2022 filing season. On April 14th, the FDS Team sent emails to 4,186 Public Filers and 4,263 Confidential Filers announcing the financial disclosures filing deadline of May 15, 2023. A second notice was sent on April 28th. As of April 30th, the FDS Team has recorded 2,799 filers. Both public and confidential filers continue to submit disclosure statements using our online filing system.

G. Lobbying Registration and Reporting (LRR)

Pursuant to D.C. Official Code § 1-1162.27(a), a person who receives compensation or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying shall register with the Director of Government Ethics and pay the required registration fee. According to D.C. Official Code § 1-1162.30, each registrant shall file a quarterly report concerning the registrant's lobbying activities during the previous quarter.

The 2023 Quarter 1 Activity Reports were due April 18, 2023. On March 29th, the LRR team contacted 538 Registrants and Clients to inform them of the deadline. In response to the reminder notice, the LRR Team recorded 15 New Registrations, 12 Renewals, 8 Terminations, and 421 Activity Reports. The LRR Team sent 9 letters to registrants who failed to timely file their activity report.

Thank you. This concludes the Office of Government Ethics' May 4, 2023, report.

VI. Public Comment – if received

No public comments were received.

VII. Executive Session (nonpublic)

The Board voted unanimously to enter into Executive Session to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), to consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body pursuant to D.C. Official Code § 2-575(b)(4)(A), to discuss personnel matters including the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials pursuant to D.C. Official Code § 2-575(b)(10), and to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13).

VIII. Resumption of Public Meeting

The Board resumed the public meeting at 12:53 pm.

The Board approved a negotiated disposition in **23-0007-P In re K Barnes**.

IX. Adjournment

The Board will next meet on June 8, 2023, at 12:00 p.m.