

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

**DRAFT MEETING MINUTES – May 5, 2022**

The District of Columbia Board of Ethics and Government Accountability held a meeting on May 5, 2022 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, Darren 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](mailto: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](http://open-dc.gov) and BEGA’s YouTube channel.

**I. Call to Order**

The meeting called to order at 12:00 p.m.

**II. Ascertainment of Quorum**

A quorum was established with four Board Members (Chairperson Hutcheson and Board Members Nottingham, Sobin, and Tucker) present at the start of the meeting.

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

Board Member Felice Smith joined the meeting after the quorum was established. The Board voted unanimously to adopt the agenda and approve the minutes for the April 7, 2022 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, 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**

On April 20, 2022, I issued an advisory opinion #OOG-2021-0008-M, dismissing as moot under the OOG’s regulations, an OMA complaint against the DC Education Research Collaborative’s Advisory Committee (“Committee”). The prospective complaint alleged that the Committee planned to meet (1) without notice to the public (i.e., including date, time, place, and agenda) and (2) in closed meetings without following the Open Meetings Act (“OMA”) procedure. The

Committee admitted on the record during its first two meetings that it was subject to the OMA and followed the statute in the conduct of its meetings by providing proper notice to the public. The Committee did not enter a closed session. The Committee's admission and conduct resolved the issue. Therefore, I found it unnecessary to opine on the issue of whether the Committee meets the legal definition of a public body subject to the OMA because the Committee voluntarily complied with the OMA.

A copy of the advisory opinion is in the Dropbox for your review.

2. Informal OMA/FOIA Advice

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

OOG responded to five (5) requests for OMA advice;  
OOG responded to five (5) requests for FOIA advice; and  
OOG responded to thirty-eight (38) requests for technical assistance with open-dc.gov.

**B. Training/ Outreach**

1. Privacy Act webinar.

On April 14, 2022, Chief Counsel Barton attended the "State Privacy Laws: Is the Uniform Personal Data Protection Act the Path Forward" webinar. The webinar discussed the Uniform Personal Data Protection Act ("UPDPA"), as a model law for states considering privacy laws that attempt to balance consumer privacy concerns with the valuable commercial uses of data. The webinar was sponsored by George Mason University Antonin Scalia Law School.

2. District of Columbia Health Benefit Exchange Authority ("HBX") Executive Board Member's Yearly OMA Training.

On April 20, 2022, Attorney DeBerry conducted remote OMA training for the HBX's Executive Board. Board Senior Counsel Tran also presented an Ethics training to HBX for the OGE. The trainings were well-received.

3. Issuance of OOG Newsletter.

On April 20, 2022, the "Opengovist," the OOG's biannual newsletter was distributed to District FOIA officers and public body administrative points of contact. Highlights in this edition include legislative updates on emergency and temporary amendments that impact the processing of FOIA requests and the conduct of opening meetings and summaries of OMA and FOIA advisory opinions issued by the office. A copy of the newsletter is in the Dropbox for your review.

#### 4. Open Government Advisory Group Meeting

On April 27, 2022, I attended the Open Government Advisory Group (OGAG) Meeting with Attorney DeBerry. OGAG's meeting was held remotely due to Covid-19. We discussed FOIA and OMA training. We also discussed OOG working with the MOLC to host more FOIA training webinars and create a FOIA manual.

### C. Litigation and Legislative Update

#### 1. Litigation

- a. DuBose FOIA lawsuit re: Board of Dentistry resumes, experts, complaints, and decisions (Case No. 19-CV-1239).

The Court of Appeals heard an oral argument on November 30, 2021, and disposition is pending.

- b. Tax Analysts & Davis FOIA lawsuit re: "other statute" (Exemption (6)) applicability to D.C. Official Code § 47-4406, private letter tax rulings (Case No. 21-CV-0031).

The case was argued on March 8, 2022, and disposition is pending.

- c. TPM lawsuit re: preliminary budget requests (Case No. 21-CV-0543).

The case remains pending in the D.C. Court of Appeals.

- d. Washington Post FOIA lawsuit re: records arising out of Capitol insurrection, including the Mayor's WhatsApp messages (CA 002114 B).

On April 8, 2022, in the court held a status conference. Discovery is still ongoing. The Court will address the motions for summary judgment after close of discovery. The District moved for leave to file its answer out of time, to which *The Post* did not object.

On April 14, 2022, the District filed its answer and affirmative defenses, but the Court stated orally that it will address dispositive motions after discovery, and the case is currently on the mediation track, set for August 18, 2022.

- e. Phillips "section 1983" lawsuit alleging MPD watchlist ( Case No.22- CV- 277).

The District filed its reply in response to Ms. Philip's Opposition to the District's Motion to Dismiss on April 6, 2022, repeating that Ms. Philips pleadings fails to: (1) state a claim under the free speech clause and (2) allege that any violation of her constitutional "rights was caused by a municipal policy or practice."

On April 19, 2022, the District Court held a hearing on the District's motion to dismiss, and disposition is pending. The District's reply and the docket sheet are uploaded to the Dropbox.

OOG staff will continue to monitor these cases.

## 2. Legislation

### a. Fiscal Year 2023 Budget

On April 20, 2022, the Council's Committee on Human Services met to mark up its Fiscal Year 2023 budget report and recommendations. Concerning BEGA's May 2023 move to 1030 15th St. N.W., Chairperson Nadeau noted that she supports "this expanding agency's move...so they can continue [their] work in a space that fits their needs."

When discussing our request for additional FTEs, Chairperson Nadeau stated, "[d]ue to the limitations in the budget, and *only* due to the limitations in the budget, the Committee is only able to fund [OGE's requested] Supervisory Ethics Investigator at this time. However, had funds been available I would have supported adding positions to the budget." The committee report and recommendations were passed by voice vote.

### b. Retention Requirement for Electronic Records

The Fidelity in Access to Government Communications Clarification Emergency Amendment Act of 2022 (D.C. Act 24-355) is an emergency measure to clarify "that communications created or received electronically in the course of official business are subject to existing record retention obligations." This act will be effective through June 25, 2022. We reported on this Act at the April Board meeting.

On April 5, 2022, the Council passed identical language as a non-germane amendment to the Community Service Graduation Requirement Waiver Regulation Temporary Amendment Act of 2022, B24-0691. The Mayor signed the legislation on May 3, 2022, enacted with Act Number A24-0395. The measure must undergo a thirty-day Congressional review period, before it may become law and will remain in effect for 225 days.

### c. Other Legislation

A committee of the national Uniform Law Commission is drafting a Public Meetings During Emergencies Act. The committee met remotely on April 22, 2022, to continue to mark up the draft in anticipation of presentation to the whole Commission at its annual meeting in July. Attorney Nick Weil attended the meeting.

OOG staff will continue to monitor legislative activity.

**D. Administrative Matters**

1. Paralegal Specialist Position: The OOG Paralegal Specialist that was advertised on dchr.dc.gov closed at midnight on April 7, 2022. Forty-seven (47) candidates applied for the position. OOG received and is reviewing the resumes of the top candidates that qualified for the position. We look to schedule interviews in the next two weeks.
2. Office Relocation: Director Cooks and I met with the Department of General Services and their architects on April 13, 2022, and finalized the floorplan and design for BEGA’s May 2023 move to 1030 15th St., N.W., Washington, D.C. The floorplan is in Dropbox for your review.
3. Parliamentary Procedure Portal: I met with Susan Leahy of *Robert’s Rules Made Simple* on April 21, 2022, regarding the training portal. We discussed strategy for our next set of users – the Education Boards and Commissions. OOG is looking to hold a series of OMA webinars for the Public Charter School Boards of Trustees members before the end of the fiscal year. We are going to have Ms. Leahy tailor a webinar for them specifically.

**This concludes the Office of Open Government’s May 5, 2022, report.**

Board Member Sobin commended OOG on the publication of its newsletter and raised the question of in-person Board meetings.

**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 as a result of actions taken by the Board during today’s meeting.

<b>OPEN INVESTIGATIONS BY STATUS</b>	
Open	49
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	49

<b>OPEN "UNDOCKETED MATTERS"</b>	
Grand Total	3

<b>PENDING/STAYED INVESTIGATIONS BY STATUS</b>	
Closed - Pending Collection	28
Stayed - Pending DC Superior Court Case	4
Stayed - OAG False Claims Act Case	5
Stayed - OIG Investigation	7
Stayed - US District Court Case	1
Grand Total	45

<b>REGULATORY MATTERS BY STATUS</b>	
Closed - Pending Collection	33
Open	26
Grand Total	59

	<b>Current</b>	<b>Last month</b>	<b>March</b>
Investigations Currently	49	57	50
Investigations Stayed	17	17	18

The number of open preliminary and formal investigations includes 9 new matters opened since the Board last met. The investigative team resolved 17 investigations since the Board last met.

OGE has published the Quarterly Complaint Report for Fiscal Year 2022 (FY22) quarter one. Auditor Tujuba completed the Quarterly Complaint Report for the second quarter, ending March 31, 2022, which will be published next week. Auditor Tujuba also completed the quarter one of Calendar Year 2021 (CY21) Complaint Intake and Processing Audit. Minor findings were noted, and explanations have been provided.

**B. Trainings/Outreach**

1. Professional Development Trainings Attended by staff

Several members of the OGE staff attended an introduction and refresher training for OGE’s case management system, CMTS. The course covered many updates to the system, as well as searches and reports to understand how to best use our data.

General Counsel Raj attended Becoming a Mindful Leader offered by SkillPath.

Auditor Tujuba completed the following training (1) Leading by Motivating, which provided an understanding of why motivating leadership strategies are important and offers practical techniques for encouraging team motivation; (2) Being an Effective Manager When Times Are Tough, which explored specific strategies for weathering difficult times, how to hold difficult conversations with employees and secure their support, and how to identify opportunities to strengthen your organization during difficult times; (3) Providing Effective

Internal Customer Service, which explored the importance of getting to know one's internal customers, identify their expectations, take action on those expectations, and guidelines for providing internal customer service excellence; and (4) Personal Power and Credibility which covered how to increase your influence at work and reach your goals by developing your personal power and credibility and using them for building trust with your coworkers and organization.

2. Conducted by staff

Since the last Board meeting, OGE attorneys conducted 5 ethics trainings, which included the monthly ethics training. The other trainings included a monthly Hatch Act training, quarterly Boards and Commissions training, that OGE will offer quarterly for those who are unable to attend their agency-specific trainings, Board and Commissions training for the Health Benefits Exchange, and general ethics training for the Health Benefits Exchange's all-hands meeting.

Last week on Monday, April 25th, we hosted our monthly Ethics Counselor virtual brown bag session. The topic was unveiling the new OGE Learning Management System. Supervisory Attorney Stewart-Mitchell, Program Analyst Kosick and I provided a walkthrough of the platform before taking questions. The event was well attended. The next discussion on May 23<sup>rd</sup> will be on nepotism and will be led by Attorney Advisor Echols.

During the month of April, 625 employees completed our online ethics training via PeopleSoft.

3. Learning Management System

I am pleased to announce that on April 25th, OGE's new online Learning Management System (LMS) went live. The LMS will serve as the central online location for on-demand ethics trainings and training materials. District employees and public officials now have access to 23 training courses that address ethics subjects including: Becoming an Ethical Leader, Receiving Gifts, Developing an Ethical Culture, Ethical Decision Making, Culture Carriers, The Role of an Ethics and Compliance Program, as well as ethics rule-based courses such as outside and post employment, conflicts of interest, financial interests and disclosures and nepotism.

The LMS can be accessed via the BEGA website by clicking on the carousel menu for BEGA's Learning Management System. The actual weblink for the system is <https://bega-console.lrn.com/>. Upon accessing the website, users are prompted to register using their official government email address, then they are granted access to the course catalog and their training history. We have already received positive feedback about the system and look forward to continuing our efforts to notify the District government about the LMS. As of yesterday, 146 users had registered for the LMS.

#### 4. Outreach

Director Allen, IT Specialist Kevon Bridges and I met with the Office of the Chief Technology Officer's ("OCTO") website development staff to discuss a "refresh" of the BEGA website. The website refresh will improve organization, searchability, and user friendliness, as well as the overall appearance of the website. We received a cost estimate from OCTO which has been approved internally. The next steps include executing a memorandum of understanding and attending a kick-off meeting.

On April 14th, OGE issued its bi-monthly newsletter, Ethically Speaking, which is posted on the BEGA website.

#### C. Advisory Opinions/Advice

##### 1. Informal Advice

OGE's legal staff provided advice for approximately 43 ethics inquires, which is 1 more than the 42 reported at the April meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems. OGE has not drafted any Advisory Opinions since the last Board meeting.

#### D. Legislation Updates

##### 1. Pro Bono Legal Representation Expansion Amendment Act of 2021

On March 31, 2022, the Committee on the Judiciary and Public Safety held a virtual hearing on the Pro Bono Legal Representation Expansion Amendment Act of 2021, Bill 24-0298. The Bill is an amendment to Section 223 of the Ethics Act, which will allow employees to provide pro bono legal representation before District courts and federal courts, and District and federal agencies. On Tuesday, May 3<sup>rd</sup>, the Bill received its first vote from the Council and may receive its second vote at the end of this month. A copy of the draft amendment and the committee report were placed in the Dropbox for your review.

##### 2. Delinquent Debt Recovery Amendment Act of 2012

On April 6, 2022, Director Allen and I testified in support of Bill 24-706, The Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022, which amends the Delinquent Debt Recovery Act of 2012. The amendment will allow BEGA, at its discretion, to transfer and refer delinquent debts associated with settlements and judgements for ethics violations to the CCU for collection, and the funds collected on BEGA's behalf will be deposited into the Ethics Fund as well as the OMA Fund instead of the General Fund. There are no updates on this Bill at this time.



### 3. Comprehensive Code of Conduct

As defined in the Ethics Act, the Code of Conduct consists of seven different statutes and regulations with varying applicability. The Comprehensive Code of Conduct (“CCC”) is legislation that consolidates the District’s ethics laws in one place and standardizes the ethical practices between the legislative and executive branches. The CCC was first introduced on June 12, 2015, as the Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015 but lapsed at the end of that Council period. It was later introduced in February 2017 and January 2019, but again lapsed at the end of both Council periods. After meeting with Councilmember Nadeau’s staff, OGE’s legal team has begun reviewing and updating the CCC with the goal of submitting an updated version of the legislation to the Council by this summer. The ultimate goal is to have the CCC introduced before the Council in the Fall of this year.

## **E. OGE Administrative Matters**

### 1. OGE Staffing

BEGA’s Human Resources Specialist vacancy closed, and the top applications are under review by our office. We are actively working to fill other vacancies. The Chief of Staff position was posted before the April Board meeting and will remain open until the end of this month.

### 2. Budget Hearing

On April 6, 2022, Chairperson Norma Hutcheson, Director Allen, and I testified in BEGA’s Budget Oversight Hearing before the Council. OGE requested budget enhancement increases to hire a Supervisory Investigator, Public Information Officer, and a Legal Fellow. The Mayor proposed to increase BEGA’s operating budget by \$67,016 in local funds, and \$9,573 in special purpose revenue funds for fiscal year 23. Following the budget hearing, Director Allen and I provided Council member Nadeau’s office with additional information on the requested FTEs and the Supervisory Investigator position has been funded

## **F. Financial Disclosure Statement (FDS)**

The 2022 FDS Filing Season is now underway, and all agencies provided their filer lists to the FDS Team. The FDS Team forwarded the list of filers to OCTO for upload into the FDS E-file system. Filers began filing on April 8 as they received the mail notices. On April 14, the FDS Team sent email notices to all public filers. On April 29, the FDS Team sent reminder notices to those who have yet to file.

Results to date: 1,542 filers (40%) have filed their 2022 (CY2021) Financial Disclosures Statements. We have received 124 support tickets the majority of which stem from faulty emails which were provided to BEGA.

Abstract Evolutions completed the FDS e-filing system upgrades, and the upgrades were moved to production on April 28. A cursory field test was conducted and found the upgrades did function as originally tested except the Filer/Non-Filer query failed to provide accurate information. As designed, the Filer/Non-Filer query is to provide up-to-date information as to who has filed and who has not. Unfortunately, the query was set up based on an understanding of how information is uploaded into the system which is different from the way OCTO does it. Program Specialist Kosick met with Abstract Evolutions on May 2, to troubleshoot and perform repairs to ensure accurate results from the query.

As part of the 2021 Enforcement, OPRS recently garnished filers who were late or did not file at all. The FDS Team has been responding to waiver requests and other issues arising from the recent garnishments. Lastly, the FDS Team completed the Financial Disclosure Standard Operating Procedures, and it is in the last phase of the approval process.

**G. Lobbying Registration and Reporting (LRR)**

Lobbyists' first quarter 2022 activity reports were due on April 18, 2022. On March 30, the LRR Team sent notices to 450 lobbyists reminding them of that deadline. As of May 2, lobbyist have filed 445 Activity Reports, 57 Registrations (New, Renew, Terminations), and 20 Support tickets.

**Thank you. This concludes the Office of Government Ethics' May 5, 2022 report.**

Board Member Sobin congratulated OGE on the LMS system, noting the importance of the education mission of BEGA. He also asked Director Cooks about the Board's opportunity to review the draft CCC. Director Cooks noted that OGE planned to submit the draft to the Board for its review prior to submission to the Council.

**VI. Public Comment – if received**

The Board did not receive any public comments.

**VII. Executive Session (nonpublic)**

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

**VIII. Resumption of Public Meeting**

The Board resumed the public meeting at 1:37 p.m. There were no matters to report.

**IX. Adjournment**

The Board will meet next on June 2, 2022 at 12:00 p.m.

UNAPPROVED