

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



Office of Open Government

May 15, 2014

VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE

Mr. Daniel J. McCartin
Conti Fenn & Lawrence LLC
36 South Charles Street
Suite 2501
Baltimore, Maryland 21201

Dear Mr. McCartin:

This letter responds to your Freedom of Information Act (FOIA) request of April 14, 2014, in which you seek certain documents and recordings in possession, custody, and/or control of the Board of Ethics and Government Accountability (BEGA).

It is the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Under D.C. Code §2-532(d)(1), BEGA extended the time in which to respond to your FOIA request to search for, collect and appropriately examine a voluminous amount of records. All records pertaining to your request were searched for and reviewed by the following BEGA staff: Darrin Sobin, Director of the Office of Government Ethics (OGE); Stacie Pittell, General Counsel, OGE; John Grimaldi, Senior Attorney Advisor, OGE; Yancey Burns, Attorney Advisor OGE; Cristina Patzelt, Attorney Advisor, OGE; [REDACTED] and Traci Hughes, Director Office of Open Government/BEGA FOIA Officer.

Accordingly, your FOIA request for records is granted in part, and denied in part. The relevant exemptions are detailed below.

1. All audio recordings concerning the March 6, 2014 BEGA Public Meeting.

D.C. Code §2-578(a)(b)(2) requires all meetings of public bodies, shall be recorded by electronic means, and that a copy of the full public record, including any recording or transcript, shall be made available for public inspection. Accordingly, your request for the audio recording of the public portion of the March 6, 2014 meeting is granted.

The audio recording for the closed portion of the meeting is exempted from disclosure pursuant to D.C. Codes §§2-534(a)(6)(B), 2-575(b)(14), 2-575(b)(13), and 2-575(b)(10) as the Open

Meeting Act specifically provides that a meeting or a portion of a meeting may be closed to discuss ongoing, confidential investigations; to deliberate upon a decision in an adjudication action or proceeding by a public body exercising quasi-judicial functions; and to discuss personnel matters.

2. All notes, letters, e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in BEGA investigation AI-024-13 (#1097-001) Smith, R.

The records are exempt from disclosure under D.C. §2-534(a)(6)(A) as all notes, letters e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in the above referenced investigation are confidential pursuant to 3 DCMR §5302.7; D.C. Code § 2-534(a)(3)(E) as release would disclose investigative techniques not generally known outside government; and D.C. Code § 2-534(a)(4) as the records are pre-decisional/deliberative.

3. All documents concerning the "OAG guidance sought on 3.12.13 re: jurisdictional question," in BEGA Investigation AI-024-13 (#1097-001) Smith, R., as reflected in BEGA's Complaint Report -January 1, 2014 to March 31, 2014.

The records are exempt from disclosure under D.C. §2-534(e) as all e-mails, legal memoranda, and/or legal briefs submitted or issued concerning Office Attorney General (OAG) guidance on the above referenced investigation are protected attorney work-product, and any release of such records would breach attorney-client privilege.

4. All documents concerning any requests for guidance from the Office of Attorney General concerning BEGA's jurisdiction.

The records are exempt from disclosure under D.C. §2-534(e) as all e-mails, legal memoranda, and/or legal briefs submitted or issued concerning Office Attorney General (OAG) guidance on the above referenced investigation are protected attorney work-product, and any release of such records would breach attorney-client privilege.

5. All documents concerning the "OAG legal opinion received 7.1.13," in BEGA Investigation AI-024-13 (#1097-001) Smith, R., as reflected in BEGA's Complaint Report – January 1, 2014 to March 31, 2014.

The records are exempt from disclosure under D.C. §2-534(e) as all e-mails, legal memoranda, and/or legal briefs submitted or issued concerning Office Attorney General (OAG) guidance on the above referenced investigation are protected attorney work-product, and any release of such records would breach attorney-client privilege.

6. All documents concerning the "Negotiated Disposition approved by Ethics Board 12.5.13," in BEGA Investigation AI-024-13 (#1097-001) Smith, R., as reflected in BEGA's Complaint Report –January 1, 2014 to March 31, 2014.

The records are exempt from disclosure under to D.C. §2-534(a)(6)(A) as all legal memoranda, orders, and/or legal briefs submitted or issued in the above referenced investigation are confidential pursuant to 3 DCMR §5302.7; D.C. Code § 2-534(a)(3)(E) as release would disclose investigative techniques not generally known outside government; and D.C. Code § 2-534(a)(4) as the records are pre-decisional/deliberative.

7. All notes, letters, e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in BEGA investigation A-025-13 (#1098-001).

All notes, letters, e-mails, memoranda, legal rulings, legal memoranda, and or legal briefs submitted or issued in the above referenced investigation are exempt from disclosure under D.C. Code § 2-534(a)(3)(C) as release would constitute an unwarranted invasion of personal privacy; and D.C. Codes §§ 2-534(a)(4) and (e) as the records are protected under deliberative process privilege, attorney work-product privilege and attorney-client privilege.

8. All notes, letters, e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in BEGA Investigation 1095-001.

The records are exempt from disclosure under to D.C. §2-534(a)(6)(A) as all notes, letters e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in the above referenced investigation are confidential pursuant to 3 DCMR §5301.5 and D.C. Code §1-1162.12(d); D.C. Code § 2-534(a)(3)(C) as release would constitute an unwarranted invasion of personal privacy; and D.C. Code § 2-534(a)(4) as the records are pre-decisional/deliberative.

9. All notes, letters, e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in BEGA Investigation 1117-001.

The records are exempt from disclosure under to D.C. §2-534(a)(6)(A) as all notes, letters e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in the above referenced investigation are confidential pursuant to 3 DCMR §5301.5 and D.C. Code §1-1162.12(d); D.C. Code § 2-534(a)(3)(C) as release would constitute an unwarranted invasion of personal privacy; and D.C. Code § 2-534(a)(4) and (e) as the records are protected attorney work-product, and any release of such records would breach attorney-client privilege.

10. All notes, letters, e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in BEGA Investigation 1118-001.

The records are exempt from disclosure under to D.C. §2-534(a)(6)(A) as all notes, letters e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in the above referenced investigation are confidential pursuant to 3 DCMR §5301.5 and D.C. Code §1-1162.12(d); D.C. Code § 2-534(a)(3)(C) and (D) as release would constitute an

unwarranted invasion of personal privacy and disclose the identity of a confidential source; and D.C. Code § 2-534(a)(4) as the records are pre-decisional/deliberative.

11. All notes, letters, e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in BEGA Investigation 1101-002.

The records are exempt from disclosure under D.C. §2-534(a)(6)(A) as all notes, letters e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in the above referenced investigation are confidential pursuant to 3 DCMR §5302.7; D.C. Code § 2-534(a)(3)(C) as release would constitute an unwarranted invasion of personal privacy; and D.C. Code § 2-534(a)(4) as the records are pre-decisional/deliberative; and D.C. Codes §§ 2-534(a)(4) and (e) as the records are protected attorney work-product, and any release of such records would breach attorney-client privilege.

12. All notes, letters, e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in BEGA Investigation 1120-001.

The records are exempt from disclosure under to D.C. §2-534(a)(6)(A) as all notes, letters e-mails, memoranda, legal rulings, legal memoranda, orders, and/or legal briefs submitted or issued in the above referenced investigation are confidential pursuant to 3 DCMR §5301.5 and D.C. Code §1-1162.12(d); D.C. Code § 2-534(a)(3)(C) and (D) as release would constitute and unwarranted invasion of personal privacy and disclose the identity of a confidential source; and D.C. Codes §§ 2-534(a)(4) and (e) as the records are protected under deliberative process privilege, attorney work-product privilege and attorney-client privilege.

If you disagree with this finding, you may submit an administrative appeal to the Mayor. The appeal must be in writing and must include a copy of the original request as well as a copy of the denial letter issued to you. The appeal must include a written statement of the arguments, circumstances, or reasons in support of the information sought by your request. The appeal letter must include "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the e-mail or letter as well as marked on the outside of the envelope.

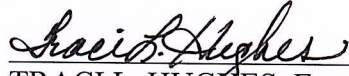
You may submit the appeal via e-mail to: Mayor@dc.gov or by U.S. Postal Service to:

Mayor's Correspondence Unit
FOIA Appeal
1350 Pennsylvania Ave, NW
Suite 316
Washington, DC 20004

A copy of the appeal must be provided to the Board of Ethics and Government Accountability at www.bega.dc.gov or mail via U.S. Postal Service to:

Board of Ethics and Government Accountability
441 4th Street, NW
Suite 830S
Washington, DC 20001

Sincerely,

Handwritten signature of Traci L. Hughes in cursive script.

TRACI L. HUGHES, Esq.

Director, Office of Open Government

Board of Ethics and Government Accountability

Enclosures