

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

**MEETING MINUTES  
MAY 2020**

The District of Columbia Board of Ethics and Government Accountability held a meeting on May 7, 2020 at 10:00 a.m. The meeting was held remotely via electronic means. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Darrin Sobin, and Melissa Tucker. Questions about the meeting may be directed to [bega@dc.gov](mailto:bega@dc.gov).

These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting date.

**I. Call to Order**

**II. Ascertainment of Quorum**

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

The Board unanimously approved the agenda and tabled approval of the March 2020 Meeting Minutes.

**IV. Report by the Director of Open Government**

Good morning Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, the 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.

As you know, the District of Columbia government has been fully remote since March 16, 2020, with the exception of essential workers. The OOG has played an important role in ensuring that Boards, Commissions, and other public bodies are able to successfully conduct government business remotely. OOG has been consistently engaged with the Mayor’s Office of Talent and Appointments and the Mayor’s Office of General Counsel to provide consistent advice regarding remote meetings. The OOG’s workload has been dominated with requests for advice regarding the Open Meetings Act and Freedom of Information Act in light of the COVID-19 Emergency Amendment Act of 2019, which I will discuss in my report. My general impression is that public bodies are going above and beyond the call of duty to ensure that the public remains informed of government operations and decision-making during the public health emergency.

**A. Open Meetings Act (OMA) and Freedom of Information Act (FOIA) Advice**

The Office of Open Government has not issued any Advisory Opinions since the last Board meeting. OOG has provided formal advice regarding the operation of the Open Meetings Act and FOIA during the public health emergency.

Formal Open Meetings Act Advice:

The Office of Open Government first issued remote meetings advice on its website and via Twitter on March 10, 2020. The advice was a brief statement of the Open Meetings Act electronic meeting requirements. Subsequent to that advice, on March 17, 2020, the Mayor of the District of Columbia signed into law the COVID-19 Response Emergency Amendment Act of 2020 (Emergency Act), which made changes to the requirements of the Open Meetings Act and Freedom of Information Act. On March 17, 2020, the Office of Open Government issued a Best Practices Memorandum regarding operations during the COVID-19 Public Health Emergency, in conjunction with the Mayor's Office of Talent and Appointments (MOTA). The Mayor's Office of General Counsel also contributed to this Memorandum. The document provides guidance for conducting electronic meetings during the public health emergency. It sets forth the requirements for electronic meetings in plain language and provides technical guidance for conducting meetings. I used this document to train over 500 members of Boards and Commissions and Administrative Points of Contact on conducting electronic meetings.

Formal FOIA Advice:

OOG's Chief Counsel and FOIA Officer, Johnnie Barton, and OGE's General Counsel, Rashee Raj, provided BEGA's pending FOIA requesters with a letter detailing the changes to FOIA requirements and the impact of those changes on FOIA requirements. The Emergency Act allows the DC government to delay processing FOIA requests during the public health emergency.

Informal OMA/FOIA Advice:

OOG has experienced a marked increase in requests for advice and assistance on open government matters since the commencement of the public health emergency on March 16, 2020.

Since the last Board meeting, the OOG responses for informal and technical FOIA and OMA advice and assistance are as follows: (will provide)

- 22 provisions of FOIA substantive advice;
- 37 provisions of OMA substantive advice; and
- 13 responses to requests for technical assistance with open-dc.gov.

OOG Online Assistance Forms: The Office of Open Government updated its online complaint and advice forms, with the assistance of the Office of the Chief Technology Officer (OCTO). The complaint form now resides and is processed through [bega.dc.gov](http://bega.dc.gov). The form has a built-in security feature to prevent bot attacks from targeting the government website. Also, by hosting the form on DC.GOV, the OCTO Security Operations Team is able to monitor and identify nefarious activity on the website. In

addition to the link on open-dc.gov, a link to the forms is also available on the bega.dc.gov open government page. The new forms went live on March 25, 2020.

**B. Training/ Outreach:**

1. Board and Commissions Training: On March 7, 2020, the OOG and the OGE conducted a combined OMA and ethics training for new public body members. Attorney Barton facilitated the Open Meetings Act training. Attorney Stewart-Mitchell presented on behalf of OGE.

2. Sunshine Week/Open Data Report: Sunshine Week was March 15-21, 2020. The events that were scheduled to occur during Sunshine Week were cancelled due to the pandemic. I was scheduled to speak at the annual event co-sponsored by the DC Open Government Coalition and the American Bar Association. The DC Chief Data Officer released a report on March 15, 2020 and the report details the status of the District of Columbia's effort to proactively release enterprise datasets on opendata.dc.gov.

3. COVID emergency Board and Commissions Trainings: MOTA Director Steve Walker and I facilitated trainings for Board and Commission administrators on the OMA as amended by the COVID 19 Response Emergency Amendment Act of 2020. We held planning meetings for these sessions on March 15, 2020, and March 17, 2020. The training sessions were conducted via WebEx on March 23, 2020, March 25, 2020, March 26, 2020, March 27, 2020, and March 31, 2020. Through these training sessions, we reached all of the Administrative Points of Contact and Boards and Commission members. The trainings were attended by over 500 participants.

4. Business Training: On March 31, 2020, I commenced an online business training program that covers Financial Accounting, Economics for Managers, and Business Analytics. The course has provided me with a greater understanding of economic and financial tools, which have helped me to better understand the DC Budget and financial planning process in particular. I anticipate completing the program in August 2020.

5. Legal Analysis Training: On April 22, 2020, Attorney Barton attended the National Attorney General Training & Research Institute ("NAGTRI") webinar: "Fundamentals of Logic Reason, and Critical Thinking in Legal Analysis." The webinar focused on logic, reasoning, and critical thinking in the context of legal analysis.

6. FOIA Seminar: On April 28, 2020, I with attorney Barton attended the NAGTRI webinar: "What to do once you receive a FOIA request: basics, tracking and compliance." While providing a refresher on the basics of FOIA the webinar also provided valuable insight into the state FOIA laws as a result of the COVID-19 pandemic and in general.

7. Monitoring Public body meetings: The OOG continues to ensure the public's right of access to public meetings by monitoring public body compliance with the OMA as amended by the "COVID-19 Response Emergency Amendment Act of 2020." We are: (1) monitoring public meeting notices to ensure they provide remote meeting access information for the public to observe: and (2) attending meetings remotely. Once the public health emergency ends, the OOG will compile a report on its findings. Attending

and monitoring meetings has allowed the OOG to immediately identify compliance issues and instantly respond with advice to board administrators. Attorney Barton has attended the bulk of these meetings and is monitoring meeting notices on open-dc.gov. He will provide a brief summary of what he has observed.

8. Meeting with the Higher Education Licensure Commission: As a result of the OOG's public body monitoring activities it flagged an OMA compliance of the Higher Education Licensure Commission ("HELIC") meeting. On April 30, 2020, the OOG conducted a WebEx meeting with HELIC staff and resolved the issue which involved an interpretation of the OMA and HELIC's enabling legislation and regulations.

9. Mayor's Cabinet Briefing on COVID-19: The Mayor has regularly hosted cabinet meetings to provide information on the COVID-19 emergency response. Acting Director Ford and I have participated in these briefings. Information is provided on the District's response to COVID-19 and regional information is also provided. These meetings have occurred on March 18, March 21, March 25, March 30, April 3, April 6, April 13, April 17, April 20, April 27, May 1, and May 4. Please note that these meetings are excluded from the OMA.

10. Coronavirus.dc.gov: This website provided up to date, real-time data on the District's response to COVID-19. Since FOIA is tolled during COVID-19, this proactive release of data is a positive step in transparency during the pandemic.

## C. Legislative Update

1. COVID-19 Response Emergency Amendment Act of 2020 (A23-0247): As stated earlier in my report, on March 17, 2020, the Council enacted the COVID-19 Response Emergency Amendment Act of 2020. The Emergency Act was signed by the Mayor on March 31, 2020 and remains effective until June 15, 2020. A23-0247 impacts both the conduct of open meetings and the processing of FOIA requests during the pandemic as follows:

- Requirement for meetings is waived, unless the Mayor deems it is necessary for the public body to meet remotely.
- The OMA physical posting of meeting notices requirement is waived.
- A meeting is considered open to the public during a public health emergency if the public body takes steps reasonably calculated to allow the public to view or hear the meeting in real time, or if it is not technologically feasible, as soon as reasonably practical after the meeting.
- Tolls the schedule for making meeting records available.
- Tolls the clock on processing FOIA requests for the period the public health emergency is in effect.

2. Access to Body Worn Camera Temporary Amendment Act: The emergency measure expired March 22, 2020. As mentioned during the March Board meeting, no permanent bill has been introduced.

**D. Administrative Matters:**

1. OOG Staff Vacancies: On April 2, 2020, the OOG conducted Webex interviews of candidates for its attorney advisor vacancy. OOG extended an offer of employment, which was accepted by the top-rated candidate. The new attorney advisor will start employment on June 8, 2020. With respect to the vacant IT Specialist position, OOG posted the position and received applications through April 14, 2020. We are in the process of scheduling interviews that we will conduct via WebEx the week of May 18, 2020.

2. Budget: Acting Director Ford and I are working on the FY20 budget and FY21 budget. The District of Columbia government is projecting a significant shortfall in its revenues as a result of the COVID-19 pandemic. It has also experienced a significant amount of unexpected expenses as a result of the pandemic. Acting Director Ford and I have been working with the City Administrator to adjust BEGA's budget. The Mayor issued an Order on April 6, 2020 that included the issuance of a hiring freeze. The Order does not apply to Independent Agencies and will not impact BEGA's vacancies. The Office of the City Administrator hosted a meeting on the Order on April 6 and April 7.

3. ReOpen DC: The Mayor has convened a Committee to advise her on reopening the District of Columbia. Acting Director Ford and I are working on BEGA's reopening plan.

**This concludes the Office of Open Government's May 7, 2020 report.**

Board Member Darrin Sobin asked Director Allen about whether there was support in the open government community for the recent legislative changes. Director Allen stated that there was support overall.

**V. Report by the Director of Government Ethics**

Good morning, Chairperson Hutcheson and Members of the Board. My name is Rochelle Ford and I am the Acting 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 Office of Government Ethics (OGE) Operations:** First I will provide a recap of the previous month's activities. Given the COVID-19 emergency, OGE's staff has continued to investigate pending matters as is feasible given the stay at home orders. These reported statistics do not reflect status changes that we anticipate will occur as a result of actions taken by the Board during today's meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	44

Open - Negotiations	2
Open - Show Cause Hearing	4
Grand Total	50

<b>OPEN "UNDOCKETED MATTERS"</b>	
Grand Total	2

<b>PENDING/STAYED INVESTIGATIONS BY STATUS</b>	
Closed - Pending Collection	25
Closed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	7
Stayed - US District Court Case	2
Grand Total	39

<b>REGULATORY MATTERS BY STATUS</b>	
Closed - Pending Collection	24
Open	1
Grand Total	25

	Current	Mar. 2020	Feb. 2020
Investigations Currently Open:	50	39	39
Investigations Stayed:	13	14	14

The number of open cases reflects 10 new matters that OGE initiated since the public health emergency began.

**B. Trainings/Outreach:**

1. Professional Development Trainings Attended by staff:

Investigator Bradley completed the following webinar trainings: Investigators, Examiners, and Analysts Working Remotely: Police and Prosecutor COVID-19 Challenges and Opportunities; Cyber Threat Intelligence for Investigators; and Ethical Investigation Interviews: 10 Things to Consider. Auditor Tujuba completed a course entitled, Feedback (And Other Dirty Words): Why we Fear it, How to Fix it. Attorney Stewart-Mitchell completed webinar training, Follow the Money: Financial Crime Investigation Case Studies.

On April 10<sup>th</sup>, OGE investigative staff participated in a refresher training on CMTS, our case management system, in an effort to identify ways to more efficiently use the system.

On April 22<sup>nd</sup>, Acting Director Ford, General Counsel Raj, and the OGE Investigators and Attorneys completed the webinar: Conducting Remote Investigations: Practical Guidance and Best Practices.

2. Conducted by staff:

Since the date of the last meeting, OGE conducted 2 ethics webinars that were well attended. The webinars included: an ethics training for the D.C. Public Library managers, which was attended by 80 employees, and our monthly ethics training, which was attended by 338 employees.

In addition, 101 employees completed the online ethics training through PeopleSoft during the month of March and 232 employees completed the online ethics training during the month of April.

On May 8<sup>th</sup>, I will conduct an ethics training for members of Boards and Commissions. On May 11<sup>th</sup>, Attorney Cooks will conduct a Local Hatch Act webinar. On May 18<sup>th</sup>, OGE will kick off an Ethics Brown Bag virtual meeting series for Ethics Counselors, in which we will discuss Financial Disclosure Statements, Local Hatch Act, and other ethics topics that are relevant during this pandemic. The goal of the meeting is to provide ethics counselors with an opportunity to ask questions and discuss common issues.

C. Advisory Opinions/Advice:

Informal Advice: approximately 55 which is 18 more than the 37 reported at the March meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

OGE did not issue any advisory opinions since the last meeting.

Given the upcoming primary in the District and some questions raised by recent advice inquiries, OGE issued updated Hatch Act guidance to assist District employees and Ethics Counselors.

**The updated guidance has been posted on our website, provided to ethics counselors, and uploaded to the Dropbox.**

D. Legislative Update

On April 7, 2020, the D.C. Council passed the COVID-19 Response Supplemental Emergency Amendment Act of 2020. I consulted with staff from the Council's Committee on the Judiciary and Public Safety on drafting the

provisions related to BEGA. Relevant to the agency, the Act authorizes BEGA to change the date that public official and employee financial disclosure statements must be filed in 2020 given. As a result, we formally extended the deadline to file financial disclosure statements to July 15, 2020. The legislation also authorizes BEGA to change the dates that Lobbyist Registration and Activity reports must be filed in 2020, as needed.

**OGE's announcement of the extended financial disclosure statement filing deadline has been uploaded to the DropBox.**

**E. Budget**

The economic impact of the COVID-19 pandemic on the District's budget has caused an anticipated \$700 million-dollar reduction in revenue for the current fiscal year. On April 5th, Mayor Bowser issued an Order 2020-057 implementing expenditure restrictions and restrictions on certain personnel actions, travel, and training. Given that BEGA is an independent agency with oversight authority over employees in the Mayor's office, BEGA did not adopt the Mayor's Order. On April 10, 2020, Director Allen and I sent a letter to the Mayor committing to identify and implement cost-saving measures and to be guided by the principles set forth in the Mayor's spending freeze order when making decisions about future FY2020 expenditures.

To address the budget shortfall caused by the pandemic, the District is revising the FY2020 budget and has provided suggested spending reductions to agencies in order to save costs. Director Allen and I worked with the agency's budget analyst to review our FY2020 remaining spending needs and identified specific spending reductions that the agency can contribute to the District's efforts to cut costs across all agencies at this time.

Board Member Darrin Sobin asked if there is any mention of furloughs or rifts in the government. Director Ford responded that she believes the administration is taking a strong approach on reducing costs now to avoid rifts in the future.

Board Member Darrin Sobin further asked if the office was asked about our O-Type (Special Purpose Funds) and Director Ford responded that OGE was not able to contribute to the District's shortfall out of those funds at this time.

**Mayor's Order 2020-057 and the correspondence relating to FY2020 spending reductions are in the DropBox.**

**F. Staffing**

**Vacancies:**

The Director of Government Ethics position was posted on February 3, 2020 and closed on March 6, 2020. Due to the current public health crisis, interviews have yet to be scheduled.



In order for BEGA to best meet its mission, I plan to work with Chairperson Hutcheson to fill the vacant Senior Attorney Advisor Board attorney position as soon as possible. It is important that BEGA fills this role immediately given that the public health crisis will continue to have an impact on the operations and obligations of public bodies such as BEGA.

**Operating status:**

Usually the Director's staffing updates relate to vacancies or staffing needs, however, I would also like to update the Board on the agency's operating status overall.

Beginning March 16<sup>th</sup>, by Mayor Bowser's designation, BEGA's staff was put on full telework status for the duration of the public health crises given that we are able to continue to meet our mission and administer agency programs remotely. The office remains closed to walk-in visitors, but given current social distancing restrictions, the office closure has not had a significant impact on the staff's ability to perform their job duties. I want to commend the staff for their hard work and for swiftly and smoothly adjusting operations to remote status.

As Director Allen mentioned, I have regularly participated in the Mayor's cabinet meetings on the COVID-19 emergency response. I also provide daily updates to the Mayor's office on OGE's operating status and report on any issues that we might face due to the pandemic.

**Reopening DC:**

On May 1<sup>st</sup>, Director Allen and I provided the Mayor's office with our plan for a gradual return to in office operations as public health restrictions are further relaxed. The Mayor's current order modifying District government operations is currently extended to May 15, 2020. The Mayor has not announced whether the District's stay-at-home orders will be extended.

**The alert regarding our operating status is posted on the website and has been uploaded to the DropBox. I have also uploaded our proposed reopening plan that we provided in anticipation of resuming normal operations.**

**G. Litigation:**

Status of pending cases.

- **Gerren Price –2019 CA 005346.** This matter involves an appeal of a Board decision. The Petitioner's brief in support of his request to reverse BEGA's decision was due on March 19, 2020, but the deadline was extended due to the public health emergency.

**H. Financial Disclosure and Lobbyist Registration Programs:**

Financial Disclosure — Although the financial disclosure statement filing deadline is extended to July 15, 2020, both public and confidential filers were notified of

their obligation to file a financial disclosure statement in April. The public filing system began accepting filings on April 14, 2020. To date, approximately 1085 public filers have filed their statements using OGE's online FDS system.

Because the FDS system's log-in issues have not been fully resolved, the number of support requests seeking technical assistance is only slightly lower, however, the issues are being resolved more quickly since we are aware of the problem and OCTO has been very responsive to OGE's needs and requests.

Abstract Evolutions, the vendor that we retained to address the system log-in issues, has begun beta testing a solution to the systems' login issues.

Lobbying Registration and Reporting (LRR) System – 2020 First Quarter Lobbyist Activity Reports were due on April 15, 2020. Although we did not extend the deadline, we notified filers that we would not penalize reports that were filed late due to the public health emergency. Only a small number of filers indicated that they were unable to timely file. Overall, lobbyist activity appears to have decreased compared to last year's Q1 Activity report filings. Some of the decrease is likely attributed to the COVID-19 slow down. We do anticipate that the number of Lobbyist filings will be down for next quarter as well.

OGE's auditor completed an interim audit of the 2020 Quarter 1 Lobbyist Activity reports filed in April. Using a randomly selected sample set, the testing was conducted based on criteria that assure that both the lobbyist's and client's activity reports filed are in compliance with District law. The auditor only identified a few issues and has referred the matters to the Lobbyist Registration Attorney and Program specialist for follow up.

**The Program Specialist's report summarizing 2020 Quarter 1 Lobbying reporting has been uploaded to the Dropbox.**

**I. Non-Confidential Investigations:**

- 1. 18-0006-P, *In re: Jack Evans*** – This formal investigation involves allegations that the Councilmember violated the Council Code of Conduct. OGE's case was placed in a "stayed" status at the request of other law enforcement agencies, but has since returned to an active investigation. As reported last month, engaged the Former Councilmember, through his attorney, regarding possible dispositions of the matter. We are still working to resolve this matter, but unfortunately, the pandemic has led to some delay, but we still expect it to come to a resolution soon.
- 2. 20-0004-F, *In re: Jack Evans*** – This formal investigation arose from a complaint alleging that CM Evans violated the Code of Conduct by deliberating and voting on Resolutions that were related to ethics investigations of his conduct. The complainant, Alan Roth, argues that by not recusing himself from those votes, CM Evans failed to maintain a high level of ethical conduct in the performance of his official duties and took official action that would adversely

affect the confidence of the public in the District government's integrity. OGE's staff has reviewed the submissions in this matter and prepared a memorandum for your consideration. It has been uploaded to the Dropbox.

**Thank you. This concludes the Office of Government Ethics' May 7, 2020 report.**

**IX. Adjournment**

The Board's next meeting is scheduled for June 4, 2020.