

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

MEETING MINUTES – August 1, 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 August 1, 2024, at 12:00 p.m. Chairperson Norma Hutcheson and Board Members Felice Smith and Melissa Tucker participated in the meeting in person and Board Member Darrin Sobin attended the meeting remotely. Board Member Charles Nottingham 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 pm.

II. Ascertainment of Quorum

Four members, Chairperson Hutcheson and Board members Felice Smith, Darrin Sobin, and Melissa Tucker were present at the start of the meeting.

III. Adoption of the Agenda/Approval of Minutes

The Board approved the agenda for the meeting and the minutes for the July 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

I have not issued an advisory opinion since the Board’s last meeting.

2. Informal Advice

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

4 requests for OMA advice;
4 requests for FOIA advice; and
10 requests for technical assistance with open-dc.gov.

B. Meeting 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 July 2024, OOG's legal staff attended 23 public body meetings. As a result of the monitoring, OOG communicated 1 corrective measure. The public body failed to do the following: (1) cite the meeting location.

C. Training/Outreach

1. Ask the Experts

On July 9, 2024, Attorney Lewis attended the "Ask the Experts" GovQA Webinar. GovQA is the District's new FOIA management software program. The training addressed frequently asked questions about how to navigate the GovQA platform.

2. FOIA Basic Training for Beginners

On July 16, 2024, I along with Attorney Scerbo and Attorney Lewis attended the OOG FOIA Webinar: "FOIA Basic Training for Beginners" facilitated by Chief Counsel Neal. The course introduced the basics of D.C. Freedom of Information Act and provided instructions on performing FOIA Officer duties.

3. Probate and Wills Training

On July 17 and 24, 2024, Attorney Scerbo attended the Probate and Wills training presented by the DC Bar Pro Bono Center. The training provided pro bono attorneys with essential knowledge on probate law. Participants learned about the probate process, roles and responsibilities of administrators, and strategies for effectively managing probate cases.

4. FOIA training for the Office of the Deputy Mayor of Planning and Economic Development (DMPED)

On July 18, 2024, Attorney Lewis attended the FOIA training for DMPED employees, presented by DMPED's FOIA officer. The training provided an overview of the FOIA process to DMPED employees with an emphasis on the most common exemptions that impact the office's responses to FOIA requests.

5. Effectively Managing the FOIA Process

On July 23, 2024, I facilitated “Effectively Managing the FOIA Process” as part of OOG’s ongoing FOIA Training Webinar Series. The course included an overview of the lifecycle of a FOIA request from receiving the request to processing and responding to the request. Chief Counsel Neal, Attorney Scerbo, Attorney Lewis, and Paralegal Brown attended the session.

6. How to Structure a Winning Argument

On July 24, 2024, I along with Attorney Scerbo and Paralegal Brown attended the “How to Structure a Winning Argument” training presented by the Office of the Attorney General (OAG). This session covered best practices for outlining briefs, motions, and memos as well as the internal structure of factual statements and legal arguments that fall within that framework.

7. Get Organized with M365 Workshop

On July 25, 2024, Paralegal Brown attended "Get Organized with M365 Workshop" sponsored by the Office of the Chief Technology Officer (OCTO). The workshop provided a virtual demonstration of how to operate, navigate, and manage documents using Microsoft Teams.

8. Commonly Used FOIA Exemptions

On July 30, 2024, Attorney Lewis facilitated the “Commonly Used FOIA Exemptions” Webinar as part of OOG’s ongoing FOIA Training Webinar Series. The session covered the most used exemptions and provided instructions on how to properly use FOIA exemptions and make redactions. I, along with Chief Counsel Neal, Attorney Scerbo, and Paralegal Brown, attended the session.

D. Litigation and Legislative Update

1. Litigation

- a. *Gooch v. District (Metropolitan Police Dep’t)* (Case No. 2023-CAB-002404 (D.C. Super. Ct.))

I first reported on this case in December 2023. A requester-plaintiff sued the District for records “related to his... conviction.” He had received partly redacted records.

Cross-motions for summary judgment were filed and are in DropBox. The District argued that the redactions were correct applications of D.C. FOIA’s privacy exemptions and an “other law” exemption, namely the Driver Privacy Protection Amendment Act of 2012’s (D.C. Law L19-0207; D.C. Official Code § 50-1401.01b.) “prohibitions on the release and use of certain personal information from motor vehicle records and accident reports.”

On July 2, 2024, the Superior Court denied the District’s motion for summary judgment. The Court concluded that the record contains a genuine factual dispute regarding surveillance footage. While MPD contends the footage is not responsive to the FOIA request, the Court found that Mr. Gooch’s “...broader request likely encompasses evidentiary materials collected and retained by MPD, including surveillance footage.”

Regarding the redactions, the Court found that it could not conclude that MPD’s stated interests in privacy outweigh the public’s interest in disclosure. Specifically, the Court expressed its skepticism that the broad redaction of witness statements was necessary to fulfill MPD’s stated interest in witness privacy.

On July 24, 2024, the District filed a motion for reconsideration of its motion for summary judgment.

The Court order, as well as the District’s motion for reconsideration are in DropBox. OOG Staff will continue to monitor.

b. DC Open Government Coalition v. District (Case No. 2023-CAB-007251 (D.C. Super. Ct.))

As I have previously reported, a hearing was held before Judge Milton Lee on June 21, 2024, and following motions arguments regarding the materials provided by the Office of the Chief Technology Officer (OCTO) to the DC Open Government Coalition (OGC), Judge Lee ordered the parties to “meet-and-confer.” This case, in which OGC seeks an accounting of the backlog of public-records requests submitted through the FOIAXpress Public Access Link, was scheduled to have a hearing on July 31, 2024, at 2 p.m. The scheduled hearing was cancelled due to the unavailability of opposing counsel and is awaiting rescheduling. The Open Government Coalition filed a praecipe on June 29th, a copy of which has been placed in Dropbox. OOG staff will continue to monitor.

2. Legislation

a. Act A25-0496 - DC Water Critical Infrastructure Freedom of Information Clarification Emergency Amendment Act of 2024

Act A25-0496, the “DC Water Critical Infrastructure Freedom of Information Clarification Emergency Amendment Act of 2024,” ‘to amend, on an emergency basis, the Freedom of Information Act of 1976 to exempt from disclosure critical infrastructure information or plans that contain critical infrastructure information for the critical infrastructures of the District of Columbia Water and Sewer Authority.’ Specifically, it amends Sec. 2. Section 204(a)(15) of the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a)(15)), by striking the phrase “critical infrastructures of companies that are regulated by the Public

Service Commission of the District of Columbia” and inserting the phrase “critical infrastructures of the District of Columbia Water and Sewer Authority or companies that are regulated by the Public Service Commission of the District of Columbia” in its place.

The measure was introduced on June 10th, passed by the Council on June 11th, signed by the Mayor on June 26th and published in the DC Register on July 5th. This temporary legislation expires on Sep. 24, 2024. The Mayor has stated her intention to work with the Council in the fall to enact permanent legislation.

E. Administrative Matters

1. FY24 Budget Closeout and FY25 Budget for OOG

OOG is in the final quarter of the current fiscal year, and we have begun the closeout process. FY 2024 closeout will be handled by the Administrative Division. OOG’s current budget is sufficient to meet our spending pressures and adequately cover city-wide needs related to OOG’s services.

The next fiscal year’s budget was submitted by the Council to the Mayor, and she returned it unsigned, which is short of a veto. The D.C. Council gave the budget final approval on July 16, 2024, and Congressional approval is pending. OOG’s FY25 budget has been unchanged, and we will face budget shortfalls in FY25 that may impact our programs. We will continue to work with the Office of the Chief Financial Officer (OCFO) to find solutions.

2. Attorney Advisor Position Update

OOG continued the recruitment process for the new Attorney Advisor in July. We are currently conducting interviews and expect to conclude the hiring process this month.

This concludes the Office of Open Government’s August 1, 2024, report. I am happy to answer any questions the Board may have.

Board Member Sobin asked Director Allen which programs would be affected by a budget shortfall. Director Allen stated that the shortfall could impact the ability of staff to attend trainings and conferences and the operation of the parliamentary procedure portal. Director Allen confirmed that there would be no reduction in staff as there is sufficient funding for all personnel. Board Member Sobin also noted that Judge Milton Lee would begin serving as Chief Judge of the D.C. Superior Court on October 1, 2024.

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	62
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	62

OPEN "UNDOCKETED MATTERS"	
Grand Total	6

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	42
Stayed - Pending DC Superior Court Case	5
Stayed - OAG False Claims Act Case	1
Stayed - OIG Investigation	5
Stayed - US District Court Case	2
Grand Total	55

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	22
Open	2
Grand Total	24

	Current	Last month	May
Investigations Open	62	68	51
Investigations Stayed	13	11	11

The number of open preliminary and formal investigations includes 9 new matters. The investigative team resolved 15 investigations since the Board last met. This total does not reflect the number of complaints that were dismissed for a lack of jurisdiction. OGE will publish its Quarterly Complaint Report for the third quarter of fiscal year 2024 next week and a copy will be presented to the Board at the next meeting.

OGE has continued its communications and referrals to the Chief Financial Officer’s Central Collection Unit (“CCU”) for collection of delinquent debts. We continue holding monthly meetings with the CCU team.

B. Trainings/Outreach

1. Professional Development Trainings Attended by Staff

Program Support Assistant Naquita Titus attended DIFS-Travel and Approval Reimbursement Training. IT Specialist Kevin Brown attended DOJ's Final Rule on ADA Website Accessibility for State and Local Governments. Auditor Courtney Walker took Microsoft 365 Cloud Storage. Attorney Advisor Maurice Echols attended the Office of Attorney General's ("OAG") class on How to Structure a Winning Argument. General Counsel Rashee Raj completed two courses: Ethical Issues for Government Lawyers and What Every Lawyer, Human Resources Professional, and Key Strategic Decisionmaker Should Know about Noncompete and Restrictive Covenants.

2. Conducted by staff

Since the July Board meeting, OGE conducted four trainings, which included two New Employee Orientation Ethics Trainings, a July Quarterly Board and Commission Ethics Training, and the July Ethics Counselor Brown Bag Session.

On Monday, July 29th, Senior Board Attorney Lynn Tran presented the July Ethics Counselor Brown Bag Session. This was an informative and interactive session in which Attorney Tran presented summaries of the last 8 advisory opinions published by OGE. She explained the 30-day comment period and publication process and the fact that advisory opinions can be either sua sponte or issued on request. Eighteen ethics counselors attended and asked questions. A copy of the presentation was placed in the DropBox.

Twenty-one employees completed ethics training using PeopleSoft during the month of July.

3. Outreach

OGE is in the final planning stages of our annual conference, Ethics Week 2024, which will take place October 15-18. This year's theme is "Empowered by Ethics" and the courses are designed to provide attendees with knowledge and ways to apply ethics and open government rules. The first day of the conference will take place at our office but the remaining days will be virtual. We plan to offer new courses such as Common Ethics Violations: Learn Them and Avoid Them, a Recusal Workshop, and a Fireside Chat: Journalism and Ethics, as well as traditional courses such as Parliamentary Procedure and Being Ethical is Harder Than You Think. We plan to post the finalized schedule in the next coming weeks. A copy of the draft schedule was placed in the DropBox for your review.

C. Advisory Opinions/Advice

1. Informal Advice

OGE’s legal staff provided advice for approximately 24 ethics inquiries, which is 30 less than the 54 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

As mentioned last month, three advisory opinions were published on July 12, 2024, for a 30-day comment period. We have received several comments on the advisory opinion concerning Advisory Neighborhood Commissioner Sign-on Letters. This advisory opinion responds to the Office of Advisory Neighborhood Commissions’ request for advice on the parameters around the drafting, circulating, and sending of sign-on letters by Advisory Neighborhood Commissioners.

The other two advisory opinions, which are “Guidance on Social Media use for Official Purposes by District Government Elected Officials and District Government Employees” and “Post-employment – Attorney Appearance Advisory Opinion,” have not received any comments.

OGE is working on an advisory opinion that addresses Lobbying reporting and regulations, as well as an opinion that deals with an employee’s outside activities.

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. After the 30-day comment period, the second proposed rulemaking, which contained minor edits and added four additional boards was published on July 12, 2024. It will remain in proposed status for 30 days for public comment before becoming final with action on or after August 12, 2024.

We are in the process of drafting another rulemaking which addresses technical and substantive changes to the financial disclosure regulations. This rulemaking will provide clarity for regulations that are ambiguous and corrects language that aligns with the Ethics Act and Chapter 18 of the District Personnel Regulations. We will present the proposed rulemaking at the next board meeting.

E. OGE Administrative Matters

1. 2025 Budget Oversight Hearing

On June 25th, the Council passed the FY2025 Budget Support Act of 2024. This legislation includes an amendment to the Ethics Act that will increase lobbying registration fees and fines. Specifically, the Act increases lobbying registration fees from \$250 to \$350 for profit entities and from \$50 to \$100 for non-profit entities. It also increases the late filing fee from a maximum \$300 fine to \$5,000. The Act will become effective after Congressional review.

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 has closed! The 2024 Financial Disclosure Statements (CY2023) were due on May 15, 2024. Through July 2024, 94% of designated filers submitted their statements. The FDS Team has collected Agency Financial Disclosure Review Reports. The FDS team has begun enforcement measures for those filers who did not submit their statement in a timely manner. The compliance enforcement letters will be sent on August 9, 2024.

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.

On June 26th, the LRR Team sent 495 Registrants and clients a notice that the 2024 Quarter 2 Activity Reports were due on July 15. In response, Registrants filed 383 Activity Reports along with 17 New Registrations, 4 Renewal Registrations, and 18 Termination Reports.

Pursuant to D.C. Official Code § 1-1162.29(b)(2), the Office of Government Ethics publishes a summary of registered lobbyists' information submitted to the Office on or before August 15, 2024, by persons registered as lobbyists with the Director. This summary will appear in the DC Register on August 2, 2024.

Lastly, the LRR Team conducted a compliance audit looking for registrants and clients who have not filed activity reports. The results found 13 Registrants and their clients failed to file 2024 Q1 Activity Reports. On July 26, 2024, the LRR Team sent Enforcement Notices to the primary contacts for those who failed to file.

Thank you. This concludes the Office of Government Ethics' August 1, 2024, report.

VI. Public Comment – if received

The Board received one public comment.

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 1:12 pm

The Board approved a negotiated disposition in two matters: **24-0057-P In re N Tourinho** and **24-0056-P In re C Lian**.

The Board dismissed **21-0005-F In re K Harris**.

The Board approved a Notice of Violation in **24-0010-F In re Marcellus Willis**.

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

The meeting adjourned at 1:13 pm.