

**DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
MINUTES OF MEETING
AUGUST 10, 2018**

The District of Columbia Board of Ethics and Government Accountability held a meeting on Friday, August 10, 2018, at 10:00 a.m. at One Judiciary Square, 441 Fourth Street, N.W., Room 540 South, Washington, D.C. 20001. The Board's Chairperson Tameka Collier was present, as well as Board Members Norma Hutcheson, Shomari Wade, and Darrin Sobin.

The full discussion and the meeting is on audio file, and may be found at: <https://bit.ly/2wubhQp>

I. Call to Order 10:01 am.

Chairperson Collier called the meeting to order.

II. Ascertainment of Quorum

Chairperson Collier established that a quorum was present.

III. Adoption of the Agenda/Approval of Minutes

1. July 9, 2018 Meeting – Approval of the written minutes was deferred until the September meeting.

IV. Report by the Director of Open Government -

Good morning Chairperson Collier and Members of the Board. I am Niquelle Allen, Director of the Office of Open Government (OOG), and I am pleased to present this monthly report on the activities of the OOG. The OOG has continued to fulfill its mission of ensuring that all persons are entitled to full and complete information regarding the affairs of the District government and the actions of those who represent them.

A. OMA/FOIA Advice:

1. Formal Advice:

a. MPD's response to OOG's FOIA Opinion: On June 28, 2018, the OOG issued a legal opinion (OOG-001_1.04.18_) to resolve the following issues: (1) whether it is consistent with the Freedom of Information Act (FOIA) for the Metropolitan Police Department (MPD) to require requesters of certain records about themselves (first-party request) to attach to the request proof of their identity at the time of the submission; and (2) whether attorneys making FOIA requests on behalf of their clients must supply proof of identification for the client or the attorney, such as a copy of the client's or attorney's government-issued identification; and (3) whether attorneys making FOIA requests on behalf of their clients must provide proof of representation, such as a signed authorization or a retainer agreement. The OOG found that these MPD imposed requirements inconsistent with FOIA. The OOG made the following recommendations to the MPD, the implementation of which would bring the agency into

compliance with FOIA: (1) immediately include language on its webpage and the District's FOIA portal stating that a FOIA request may be submitted without the identity-verification requirements by first party-requesters or their attorneys when seeking incident reports, accident reports, and 911 transcripts; and (2) immediately remove the requirement that attorneys making FOIA requests on behalf of clients supply a copy of their retainer agreement as proof of representation.

Ronald Harris, Deputy General Counsel for MPD, in an e-mail message to OOG Attorney Johnnie Barton, dated August 8, 2018, confirmed that MPD would implement the OOG's advice. Mr. Harris stated: "We are following the guidance of the Office of Open Government (OOG) in modifying the language set forth in the department's FOIA Portal. I believe the language has been modified this morning. The other recommendation provided by OOG regarding requesting records is presently being reviewed."

2. Informal OMA/FOIA Advice

Since the July 9, 2018 Board meeting, the OOG responded to eight (8) FOIA and five (5) Open Meetings Act (OMA) requests for substantive, informal legal advice and assistance. In addition, there were fourteen (14) requests for technical assistance. Many of the requests for informal legal advice the OOG receives requires detailed responses, even though the responses do not rise to the level of a formal advisory opinion. A summary of notable issuances of informal advice follows.

a. Informal Advice Concerning Emergency Meetings: The OOG provided informal advice to a public body concerning emergency meetings by responding to this question: "What are the notice requirements under the OMA to conduct an emergency meeting and may a public body exclude staff from a closed/executive session? The OOG's response was that the OMA allows for a Board to conduct an emergency meeting when it is necessary to discuss an urgent matter. The OMA requires that the public body provide public notice of the emergency meeting to members of the public at the same time the public body provides notice of the emergency meeting to its members. Such public notice may be achieved by posting publically on the public body's website or on the website of the District of Columbia (D.C. Official Code § 2-576(4)).

b. Informal Advice Concerning Closed Meetings: The OOG provided informal advice to a public body concerning the presence of agency staff and counsel during closed meetings. The OOG advised that the OMA does not specifically address whether or not a public body may exclude staff and legal counsel during a closed meeting. The OMA does, in the context of meeting closures, imply the presence of staff and counsel in certain stated instances. The OOG's analysis of the issue follows.

The definition of meeting is a gathering of a quorum of the members of a public body (D.C. Official Code § 2-574(1)). In the context of a closed meeting, this definition appears to exclude the presence of staff and legal counsel because they are not members of a public body. On the contrary, meetings closed to the "public" are authorized by D.C. Official Code § 2-575(b). The statutory definition of "public" does not include the public body's staff or the public body's legal counsel; and, therefore does not support staff and legal counsel being present during closed sessions. However, D.C. Official Code § 2-575(b)(2), (b)(3), b(4)(A) and b(4)(12) expressly provide for the presence of staff and legal counsel during the closed meetings for the specific purposes stated. These provisions may be interpreted as limiting the staff and legal counsel to being present only during such closures.

The remaining provisions of D.C. Official § 2-575(b) do not specifically mention the presence of staff and legal counsel during closure. Therefore, the remaining provisions support excluding staff and legal counsel from the closed session, if the closure was not initiated

pursuant to subsections (b)(2), (b)(3), b(4)(A) and b(4)(12). This would clearly be the case where the staff member or legal counsel was the subject of the discussion in closure for disciplinary reasons (D.C. Official Code § 2-575(b)(4)(9)) or personnel matters (D.C. Official Code § 2-575(b)(4)(10)). However, the bylaws and internal policies of public bodies may differ and must be taken into account as both may have an impact or govern this matter.

b. Informal advice rendered during public body meeting: On July 25, 2018, the OOG attended, for the purpose of monitoring and providing assistance with complying with the OMA, a public hearing of the Major Crash Review Task Force. This task force is one of the newer public bodies. The OOG was present during the open session of the meeting and provided assistance to the Task Force in transitioning from an open to closed session.

B. Trainings: The OOG conducted OMA training for the Child and Family Services Agency (CFSA) and FOIA training for the Office of Unified Communications (OUC). The OOG also attended a Record Retention training conducted by the D.C. Archivist, Bill Branch, and an Agency Performance Plan Management presentation by the EOM. The OOG is working with the Office of Government Ethics on a records retentions schedule for BEGA. The OOG participated in the training with Mr. Branch to help it determine which records are unique to OOG and should be included in the BEGA records retention schedule. The OOG is also voluntarily participating in the Agency Performance Management Plan. The EOM training was to assist OOG in developing its plan for FY2019.

C. Litigation Update: The OOG has not received from the MACCCA the one week advance notice of its meetings pursuant to the Court’s March 5, 2018, order. However, there is no indication that MACCCA is in violation of the order at this time, as no meetings of the Commission have been publically noticed since April 17, 2018.

D. Outreach Activity:

i. OPEN-DC.GOV: On August 1, 2018, the OOG distributed electronically, the “OpenGovist”, our quarterly newsletter. The Newsletter is available for review on the Open-dc.gov website. The OOG also updated its website to include online submission forms for the public, government agencies, and public bodies to request OMA and FOIA advice.

ii. Meetings with Open Government Stakeholders: The OOG Director has been meeting with members of the open government community, including advocacy groups and the District government, to introduce herself as the new OOG Director and to get a better understanding of the issues and concerns around the OMA and FOIA. The OOG will continue these outreach activities in an effort to increase the OOG’s effectiveness in fulfilling its mission and in facilitating constructive communication between the District government and the public when information is sought.

V. Report by the Director of Government Ethics

a. Update on Status of Office of Government Ethics (OGE) Operations – Recap of previous month’s activities (statistics). These are reported statistics that have been adjusted to reflect some cases that were not included on previous reports.

	Current	Last month	May 2018
Investigations Opened:	3	7	5

Investigations Closed:	3	3	1
Investigations Currently Open:	41	35	32
Investigations Stayed (Inactive):	8	8	8

Stayed (Inactive) Cases		
Nature of Stay	Number	Date Rec
Maryland Court (fugitive)	1	Jan. 2016
DC Superior Court (from OEA)	1	Feb. 2017
OIG	4	Jan. 2016
OAG (pending civil False Claims Act complaint)	2	Sept. 2016
Total Stayed Cases	8	

b. Publication and Reporting Obligations

We have posted the 3rd Quarter Report to our website. That report is in the drop box. We have also completed the 3rd Quarter's Performance statistics.

c. Trainings/Outreach –

i. Attended by staff – Our Auditor Ishmael took a course on Project Management Essentials. Attorney Cooks attended two ADA related courses, one entitled “Accessible Outreach on Social Media,” and the other “Title II Roundtable Discussion.” General Counsel Flowers attended the Annual Meeting of the Uniform Law Commission.

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 5 trainings, one more than the 4 reported at the last meeting. The trainings consisted of 2 new employee orientations, our Monthly Ethics Training, a training held at OAG, and a Learn, Earn, Advance and Prosper (LEAP) Orientation Program Training for young people.

2018 Ethics Day- 2018 Ethics Day will be held on October 4th, following the monthly Board meeting. The following entities have confirmed participation: Office of General Counsel for the D.C. Council, Office of Campaign Finance, Office of the Inspector General, D.C. Bar, and, of course OOG. We have already received positive inquiries from those employees who attended last year and plan to attend this year.

iii. Newsletter –

In keeping with the Board's direction that OGE and OOG should collaborate more closely with one another on subjects of mutual interest, Niquelle and I have

been working on ways to expand our ability to disseminate content from both offices to District agencies and employees, as well as the general public.

Because our agency is also one of the few District agencies whose operations are nearly universal in scope when it comes to impacting other District agencies, we are engaging OCTO in discussions to possibly allow us to disseminate both OGE's monthly newsletter and OOG's quarterly newsletter via mass email to all dc.gov email account holders along the lines of Mayor Bowser's weekly newsletters and the messages that DCHR Director Gibson sends out on a fairly regular basis. OOG and OGE will also cross-promote one another's newsletters when our own newsletters are published.

We are planning to relaunch OGE's newsletter at some point in September. I have assigned our new attorney, Sonya King, with primary responsibility for preparing and organizing OGE's monthly newsletter. One of our major goals is to transform the newsletter from a Word or PDF publication into something more like Mayor Bowser's weekly newsletters, where the content is directly embedded in an email, as well as being available for download from the agency's website, and Sonya is reaching out to some former colleagues who have experience preparing similar materials for their guidance and assistance.

d. Advisory Opinions/Advice –

Informal Advice: approximately 66. This is substantially the same as the 64 reported at the last meeting. We are preparing inquiry letters to entities accused of lobbying without registering.

Formal Advice requests: We have received no formal advice requests since the Board's last meeting.

e. Ethics Legislation/Comprehensive Code of Conduct

We have received inquiries from at least one lobbying firm inquiring about the effective dates of the changes to the lobbying statute and whether we would be offering guidance prior to the implementation of those changes. The new lobbyist quarterly filing reporting requirement is effective as of January 1, 2019. The definition changes, including the change to bring procurement lobbying within the statute, will take effect on October 1, 2018. We are in the process of preparing a proposed "implementation timeline" with target dates for us to complete tasks such as updating our training materials, possibly asking the Committee staff to review the updated training materials and provide their feedback to ensure that our guidance doesn't conflict in some way with the Council's legislative intent in changing the statute, and conducting a training program for Lobbyists on the changes.

f. Rulemaking

As we informed the Board at our last meeting, we are currently drafting rules to further flesh out the procedures and standards to be applied to both FDS and Lobbyist waivers and appeals. Once we began the process, we learned that relevant provisions were in 3 different places, the Ethics Act, the DPM, and our own rules. We can only amend our own rules, so we have to ensure that what we propose is consistent with those other authorities.

g. Budget:

The solicitation for our new case management system has closed and OCP has informed me they have selected a qualified bidder for the project. OCP has further indicated they are working to get all the paperwork completed and approved by today. Per the terms of the solicitation, the new system must be operational by September 30.

Other than that, we are continuing to work on completing the remainder of our planned FY18 acquisitions within our allocated budgetary funding.

h. Staffing –

We have one permanent position that is currently vacant, the Paralegal position that I originally proposed to turn into an Investigative Auditor position. However, I asked DCHR on July 27 to reclassify that vacant position into a third Investigator position in light of our other Investigator's absence from the office, and DCHR should complete that reclassification and post the position next week.

I would like to take this opportunity to introduce you to our new Compliance Specialist, Nikaela Redd, who joined our office on July 9 but was unable to attend the last Board meeting because she was tied up at New Employee Orientation. She is an attorney who is licensed to practice law in DC, New York, New Jersey, and Virginia, and comes to us with an impressive background, including compliance and investigation work at several large and mid-sized private law firms.

I would also like to introduce you to our new Attorney Advisor, Sonya King, who just joined us on Monday. Sonya most recently served as Deputy Section Chief with the OAG, where she supervised 18 lawyers and 5 support staff in the Juvenile Section of the Public Safety Division. Prior to that, she spent more than 7 years as an assistant prosecutor in Prince George's County, Maryland, after starting her career as a law clerk for a Circuit Court Judge in PG County and a brief stint with the PG County Public Defender's Office.

i. Litigation

Status of pending cases.

•Gerren Price – (CA No. 16-AA-1230), Both Mr. Price and the District have filed their briefs. The case is currently awaiting calendaring.

- Edwin Edokwe – (2016 CA 007889 P(MPA), FDS Designation appeal. Dismissal of Petition announced by Judge Holeman of DC Super Ct. on 2/9/18 – No change from the last meeting. We continue to wait for the final written order from chambers affirming the Board’s ruling.

- Larry Hicks – (2017 CA 008091). This is an enforcement (collection) action filed to reduce the Board’s \$20,000 fine imposed on Mr. Hicks to judgment. The Board imposed the fine in February of 2014 after a contested hearing. Our enforcement action in Superior Court was dismissed because we had not furnished the record. The OAG refiled this case and a show cause hearing was held Wednesday and continued to Thursday (yesterday) to resolve service of process issues.

- Rahsaan French vs. BEGA, D.C. Superior Court (C.A. 2018 CA 002306 P(MPA). Employee is appealing the imposition of a \$600 ministerial fine. The pro se case was filed on April 6. The next status hearing in this matter is set for November 30, 2018 at 2 pm.

- J. Dillion vs. BEGA, OEA Matter No. J-0030-18. This is an employment matter involving a separated employee. OAG is preparing an appeal of the ALJ’s initial finding in favor of the employee.

j. Lobbyist/Financial Disclosure Matters

There are currently 317 non-filers remaining, 90 of which are ANCs. We sent a non-compliance notice to the non-filers on August 1st giving them until August 10th to come into compliance; that notice was sent out via email and hard copy. We will begin the fines and enforcement process after August 10th. We have prepared the list we are required to submit to the DC Register and we should be ready to submit by this coming Monday. One matter we did resolve was that the publication requirement applies to financial disclosure reports, not to certifications filed by ANC’s or candidates. We do have the discretion to publish the same information for those required to file certifications, but there is no statutory obligation to do so.

FDS Partial Waiver Factors:

As discussed in the portion of the meeting on Rulemaking, we have begun drafting the rulemaking to implement standards for FDS partial waivers, FDS designation appeals, and lobbyist fine waivers.

a. Lobbyists

Non-profits

We have begun to receive payments from some of the 28 nonprofit organizations that Mr. Okai identified as not qualifying for the reduced registration fee (\$50 vs. \$250) available to 501(c)(3) organizations. I have asked the organizations to reimburse us for the underpayments related to January 2017 and January 2018

registration periods. To date, we have collect an additional \$5,200 in Lobbyist registration fees based on the results of Mr. Okai's audit, and if all 28 organizations bring themselves into compliance, we would recover an additional \$11,200 in registration fees.

Lobbyist Activity Reports

Lobbyist reminders went out to all registered lobbyists on Monday, June 4, 2018. The deadline for filing Lobbyist Activity Reports ("LARs") was July 10, 2018, and as of last month, we had received 119 LARs. There are seven lobbyist non-filers.

k. Non-Confidential Investigations

1. #1634-001, *In re*: Rochelle Wilson - This is a formal investigation that we have previously discussed, involving a former OSSE employee who, before her separation from the District government, failed to submit full, accurate, and complete financial disclosure forms for three consecutive years. On July 19, 2018 Ms. Wilson appeared before the Director of Government Ethics to show cause why she should not be fined for her continued failure to file complete, accurate and true Public Financial Disclosure Statements. Ms. Wilson introduced no evidence that she did not violate the Code of Conduct, and I do not believe the evidence she submitted as mitigating circumstances constituted sufficient cause to excuse her from being fined for her violations. Thus, we are preparing Findings of Fact, Conclusions of Law and a written Order imposing a ministerial fine in this matter.
2. #1398-001 *In re*: Courtney Snowden – **[Board Member Sobin recused himself and left the room]**. This is an investigation referred by the Office of the Inspector General involving the Deputy Mayor for Greater Economic Opportunity. According to the OIG's Report of Investigation, on three occasions in late-summer 2015, Ms. Snowden used government resources for other than official business and ordered, directed, or requested subordinate employees to perform personal services, in violation of DPM §§1807.1 (b) and (c).
3. #1031-016, *In re* Antwan Wilson and #1031-017, *In re* Jenifer Niles **[Board Member Sobin returned to the dais]**

Pursuant to D.C. Official Code § 1-1162.12 (a), we opened a preliminary investigations into whether former-Chancellor Antwan Wilson and former-Deputy Mayor Jenifer Niles violated the Code of Conduct by transferring the Chancellor's daughter to an out-of-boundary school after the start of school year 2017-2018. The Board authorized this as a formal investigation at the last meeting. We have since interviewed both the former Chancellor and Deputy Mayor for Education and several DCPS employees.
4. #1101-003, *In re*: Jack Evans – This is a formal investigation into whether Councilmember Evans violated the Council Code of Conduct by lobbying the Council on behalf of a client for a law firm at which he was employed.

VI. Opportunity for Public Comment

Mr. Michael Sindram provided comments on the following areas – He believes that the General Counsel Flowers should recuse himself on the Jack Evans matters. He also inquired about status of the FDS designation appeal of Edwin Edokwe that was discussed earlier in the meeting. He wants the Public Service Commission to be brought under the jurisdiction of BEGA. (See D.C. Official Code § 1-1162.01a (Comprehensive applicability to employees and public officials). He also reminded the Board that he was seeking confirmation of his reasonable accommodation allowing him to participate in the meetings by telephone. There was later a discussion as to how he is to be notified if the meeting dates change. The Chair noted his objection and stated that if the September meeting date changes, we will call him in advance of the meeting.

VII. **The Board voted unanimously to deliberate in Executive Session** (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b), 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: 11:41 am.

a. Discussion of any remaining public items

--The Chair announced that BEGA #1706-001 In re: Rustin Lewis, had been authorized by the Board to proceed as a public, formal investigation under the Local Hatch Act, D.C. Official § 1-1171.01 et seq., and included the authority to issue subpoenas in the matter.

IX. Adjournment

NEXT Board Meeting – September 6 at 10 am.