

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

MEETING MINUTES – September 8, 2022

The District of Columbia Board of Ethics and Government Accountability held a meeting on September 8, 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, and Melissa Tucker. Questions about the meeting may be directed to bega@dc.gov.

Members of the public were welcome to attend, and a recording of the meeting is available on open-dc.gov and [BEGA’s YouTube channel](#).

I. Call to Order

The meeting called to order at 12:01pm.

II. Ascertainment of Quorum

A quorum was established with Chairperson Hutcheson and Board Members Charles Nottingham and Melissa Tucker present at the start of the meeting.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda and to approve the minutes for the August 4, 2022 meeting.

The Chair notes that Board Member Felice Smith joined the 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 government and the actions of those who represent them.

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

1. Advisory Opinions

a. ABC Board OMA Advisory Opinion

On August 26, 2022, I issued advisory opinion #OOG-2022-0004-M. The advisory opinion dismissed an OMA complaint against the Alcohol Beverage Control Board (“ABC Board”). The complaint alleged that the ABC Board violated the OMA by not allowing the owner of an establishment under its investigation to attend, in-person, its January 26, 2022, public body meeting.

The meeting was held via video conference. The advisory opinion made the following findings and conclusions: (1) the OMA does not require a public body to provide access to its offices when conducting a virtual meeting; (2) the ABC Board's January 26, 2022, public meeting notice contains the required notice of intent to enter into a closed session (to discuss an ongoing investigation); and (3) the ABC Board's discussion, of its investigation in closed session, was lawful.

b. Healthcare Workforce Task Force OMA Advisory Opinion

On September 2, 2022, I issued advisory opinion #OOG-2022-0005-M. The advisory opinion made the following findings and conclusions regarding the Healthcare Workforce Task Force's ("Task Force") compliance with the OMA: (1) the Task Force is a public body subject to the OMA; (2) the Task Force violated the OMA's "Notice of meeting" provisions by failing to post its public meeting notices on its website or the central meeting calendar; and (3) the Task Force agendas did not provide language that its meetings are subject to the Open Meetings Act and to contact the OOG with questions. My recommendations are: (1) that the Department of Health ("DOH") correct its "News" section where the Task Force's meeting information is located to include meeting agendas; (2) those agendas also need to provide the proper language regarding OMA complaints; and (3) that DOH's Administrative Point of Contact for health-related public bodies attend an OMA training.

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 nine (9) requests for FOIA advice; and
OOG responded to twenty-seven (27) requests for technical assistance with open.dc.gov.

B. Remote Meeting Monitoring

To ensure compliance with the OMA OOG attorneys attend remote public meetings and inspect public body websites and the OOG's central meeting calendar for public meeting notices and public meeting records. We provide legal advice on OMA compliance and take corrective action if necessary.

During August 2022, OOG attended nine (9) remote public body meetings. As a result of the monitoring, five (5) instances of written corrective measures were taken, including notification:

1. That the end of public meeting agendas must state, "This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov." 3 DCMR § 10409.2.

2. That public meeting notices and meeting records are missing from the public body's website or the central meeting calendar. The OMA also requires timely posting of these items. D.C. Official Code §§ 2-576; 2-578; 3 DCMR §§ 10409.3; 10409.4; 10409.5.

C. Training/ Outreach

1. FOIA Basic Training

On August 5, 2022, Attorney Weil presented a FOIA training for the Office of Administrative Hearings. Chief Counsel Barton and Attorney DeBerry attended the training. The training was well received.

2. D.C. FOIA Templates

On August 9, 2022, OOG distributed a collection of templates for responses to requesters under D.C. FOIA. The templates cover all aspects of D.C. FOIA and will be helpful to all agencies, especially those that do not use FOIAXpress.

3. Open Meetings Act Training

On August 10, 2022, Attorney Orji presented an OMA training for the District of Columbia Retirement Board. The training included practical advice for ensuring OMA compliance. Chief Counsel Barton participated in the training.

4. Microsoft 365 Workshop Series Presented by OCTO

On August 11, 2022, Chief Counsel Barton and Attorney Weil attended the webinar "Collaborate with SharePoint" presented by OCTO's Tech Enablement Team. The training was a continuation of the series of workshops on the use of MS Office 365 applications.

5. FOIA Basic Training

On August 16, 2022, Attorney Weil facilitated FOIA training for the Department of Energy and Environment. The training was well received.

6. Microsoft 365 Workshop Series Presented by OCTO

On August 18, 2022, I, along with Chief Counsel Barton, Attorney DeBerry, and Attorney Weil, attended the webinar, "TEAMS UP! Go Beyond Chat and Meetings with TEAMS." OCTO presented the training on the use of MS Office 365 applications.

7. "Managing the FOIA Process" Webinar

On August 24, 2022, I facilitated the "Managing the FOIA Process" training. The training was the first of a series of webinars hosted by the OOG on various D.C.

FOIA topics. Fifty-two (52) FOIA Officers and other District personnel attended the training. The webinars will continue into September 2022. All sessions will begin at 1 pm and run for about an hour, including questions and answers.

8. “Your Obligations when Searching Electronic Records” Webinar

On August 31, 2022, Attorney Weil presented the "Your Obligations when Searching Electronic Records" webinar. Fifty-four (54) FOIA Officers and other District personnel attended the training. The training continued the series of OOG sponsored webinars focused on D.C. FOIA.

D. Litigation and Legislative Update

1. Litigation

a. Washington Post FOIA lawsuit re: records arising from the Capitol insurrection (Super. Ct. Case No. 2021 CA 002114 B).

As I have reported, the Washington Post's legal entity WP Company LLC ("The Post") has sued the District under D.C. FOIA, seeking certain records relating to the Capitol insurrection. The Superior Court dismissed The Post's claim concerning the Mayor's e-mail messages, but other claims remain contested.

The mediation session is reset for October 26, 2022, and dispositive motions were due on September 6, 2022.

The revised scheduling order is in the Dropbox.

b. Campaign Legal Ctr. v. D.O.J. re: records surrounding citizenship question on 2020 Census

This case concerns a proposed item on the 2020 Census questionnaire to ask respondents about their citizenship status.

As I reported before, the U.S. Court of Appeals (Case Nos. 20-5233, -5234) had remanded for further consideration of the withholding of five e-mails that may not have qualified as pre-decisional. The judgment and mandate are in the Dropbox.

The District Court, Case Nos. 1:18-cv-01771-TSC held a status conference on remand on August 19, 2022. It appears from the parties' joint status report and their remarks at the status conference that the five contested e-mails were discretionarily disclosed by August 8, 2022; however, the parties have been ordered to file dispositive motions as to their positions on the applicability of the appellate opinion on any remaining issues (including the "foreseeable harm" (federal FOIA) prong). The last of the briefs are due on December 21, 2022. The scheduling order, joint status report, and docket sheet are in the Dropbox.

- c. Richards v. Office of Finance & Treasury re: UDC paycheck (Case No. 2021 CA 003762 B).

In this *pro se* case, the plaintiff sued the Office of Finance and Treasury and the University of the District of Columbia, putatively under D.C. FOIA, but also seeking records from a private bank. The Superior Court quashed her self-issued “subpoenas,” but the parties remain in a discovery dispute. Mediation is February 9, 2023.

OOG staff will continue to monitor court activity.

2. Legislation

I have no updates at this time. The Council is currently on recess returning September 15, 2022 and will have a legislative meeting on September 20, 2022.

3. Other News Item: Justin Doubleday, FED. NEWS NETWORK, “Does the government need a FOIA enforcer?” (Aug. 10, 2022)

The FOIA Advisory Committee has recommended that Congress give the Office of Government Information Services—which acts as a mediator in disputes between federal agencies and the public—the ability to issue *binding* FOIA decisions. “About 80 countries and more than two dozen U.S. states have” quasi-adjudicative bodies that decide public-record disputes outside the court system. For example, “[a] requester in Pennsylvania can file a complaint with the Office of Open Records[, and i]f mediation can’t settle the matter, then a complaint officer can issue a binding decision.” That decision “can still be challenged in court,” which “happens with about 3% of decisions.”

E. Administrative Matters

1. OOG’s New Paralegal Specialist:

I am pleased to introduce to the Board the OOG's Paralegal Specialist, Ms. Kimberly Brown. Ms. Brown has a Bachelor of Science degree in Criminology from North Carolina State University and a Master of Arts in Legal and Ethical Studies from the University of Baltimore. Prior to coming to OOG she was as a legal assistant with the Office of Administrative Hearings (“OAH”). During her tenure with OAH, Ms. Brown supported the Principle Administrative Law Judge and Associate Administrative Law Judges at OAH’s Department of Licensing and Enforcement. We are delighted to have Ms. Brown on board!

2. BEGA Office Relocation

The D.C. Council approved the lease between DGS and the landlord the lease has finally been executed. DGS in the process of scheduling its kickoff construction meeting. We hope to have a construction timeline to report in the near future.

This concludes the Office of Open Government’s September 8, 2022, report.

V. Report by the Director of Government Ethics

General Counsel Rashee Raj presented the report for 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.

OPEN INVESTIGATIONS BY STATUS	
Open	47
Open - Negotiations	1
Open - Show Cause Hearing	0
Grand Total	48

OPEN "UNDOCKETED MATTERS"	
Grand Total	4

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	27
Stayed - Pending DC Superior Court Case	4
Stayed - OAG False Claims Act Case	6
Stayed - OIG Investigation	5
Stayed - US District Court Case	1
Grand Total	43

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	30
Open	18
Grand Total	48

	Current	Last month	June
Investigations Currently	48	49	46
Investigations Stayed	16	16	16

The number of open preliminary and formal investigations includes 7 new matters. The investigative team resolved 8 investigations since the Board last met. The Quarterly Complaint Report for the third quarter of Fiscal Year 2022 was posted to the website in early August. It was uploaded to the DropBox for your convenience.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

Auditor Amanueil Tujuba completed the following trainings: Maintaining a Cohesive Multigenerational Workforce, Accomplishing Goals with Perseverance and Resilience, Remaining Tactful and Diplomatic under Pressure, and Planning Meetings Fit for Purpose. Program Specialist Stan Kosick completed Encouraging Team Communication and Collaboration on Percipio. Investigator Ralph Bradley completed Motivational Interviewing presented by the National Criminal Justice Training Center and Microsoft Teams - Becoming One with One Drive. Investigator Ronald Cook completed a 2-day Skillpath Business Writing and Grammar Webinar.

I attended two sessions offered by the Office of the Attorney General: Eleventh Hour Legal Ethics Training Session and the Craft of Legal Writing. Director Cooks attended Collaborating with SharePoint and Team Up: Go Beyond Chat and Meetings with Teams which were offered by the Office of the Chief Technology Officer.

Finally, I would like to congratulate Supervisory Attorney Asia Stewart-Mitchell on her acceptance to the nationally accredited Certified Public Manager Program. The program is administered by the Department of Human Resources and is designed to enhance the skills of District Government managers and provide them with the tools to be more effective leaders. Academic rigor is brought to the program through strategic partnerships with the George Washington University, as well as renowned government, nonprofit and private-sector practitioners. Participants will complete 300 hours of graduate-level instruction over twelve months. The program includes modules such as Basic Leadership, Leading Change, Leadership Values and Ethics, and Managing Human Resources Issues. Finally, most members of OGE completed the mandatory Harassment Prevention Training.

2. Conducted by staff

Since the August Board meeting, OGE conducted five trainings: the August Hatch Act Training, August Monthly Ethics Training, ethics training for the Administrative Law Judges of the Office of Administrative Hearings, the August Brown Bag session, and the September Hatch Act Training.

Last week, OGE Attorneys together led our Monthly Ethics Counselor Brown Bag session which consisted of an overview of the Comprehensive Code of Conduct. Each Attorney presented a part of the proposed legislation to the Ethics Counselors who were in attendance. Our next Brown Bag session will take place on Monday, September 26, and will focus on the DC One Fund, which traditionally kicks off during the first week of October.

During August, 25 employees completed our online ethics training via PeopleSoft.

3. Outreach

OGE and OOG continue to meet with the Office of the Chief Technology Officer's website development staff to discuss the BEGA website refresh. The website refresh will improve organization, searchability, and user friendliness, as well as the overall appearance of the website. We are currently working on changing the website's design, so that information is readily available with minimal search efforts.

4. Ethics Week 2022

OGE is preparing for Ethics Week 2022. This year's theme is "Ethics in Practice", and it will take place October 11-14th as a virtual event. The event will feature courses presented by OGE and OOG staff, as well as guest presentations and panel discussions by leading ethics and compliance professionals. The course schedule and registration information can be found on the BEGA website. A copy of the final schedule was placed in the drop box for your review.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 24 ethics inquiries, which is 8 more than the 16 reported at the August meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

2. Formal Advice

OGE has completed a *sua sponte* Advisory Opinion entitled Outside Employment and Private Representation. The opinion provides guidance on the outside employment and activity restrictions set forth in the District Personnel Manual § 1807. The opinion clarifies that employees are prohibited from engaging in outside employment that is incompatible with government service, and that Board or Commission Members are prohibited from representing a third party before their board or commission and employing agency. The opinion references employees' conduct which violated the outside employment restrictions and resulted in a civil penalty. It also provides examples of permissible and prohibited outside employment and activities. Pursuant to D.C. Official Code § 1-1162.19(2), the opinion will be sent to the D.C. Registrar for a 30-day notice of publication. A copy of the opinion was placed in the drop box for your review. OGE is also in the final stages of editing an Advisory Opinion focusing on the fundraising prohibition of the Local Hatch Act.

D. Legislation Updates

1. Pro Bono Legal Representation Expansion Amendment Act of 2021

On June 28, 2022, the Mayor signed the Pro Bono Legal Representation Expansion Amendment Act of 2021, Bill 24-0298. This legislation will allow employees to provide pro bono legal representation before District and federal courts and agencies, subject to certain restrictions. The Act was approved by Congress on July 5th and became effective on August 16, 2022. A copy of the legislation was placed in the drop box for your review.

2. Comprehensive Code of Conduct

OGE's legal team continues to review and update the Comprehensive Code of Conduct ("CCC") with the goal of submitting an updated version of the legislation to the Board and then the Council. As defined in the Ethics Act, the Code of Conduct consists of seven different statutes and regulations with varying applicability. The CCC is legislation that consolidates the District's ethics laws and standardizes the ethical practices between the legislative and executive branches. With the end of this Council period approaching in December 2022, OGE plans to submit the updated CCC during the next Council period in 2023.

E. OGE Administrative Matters

1. OGE Staffing

I am pleased to announce that Ms. Christina Mitchell has been offered and accepted the Chief of Staff position. Her start date will be next week on September 12th. The Attorney Advisor vacancy is posted on careers DC and will remain open until September 30th. The next vacancy for posting is the Program Support Assistant.

2. Budget

We recently received notice from the Department of General Services that the lease for BEGA's new office space, located at 1050 15th Street N.W., has been executed. The next step is to schedule a kick-off construction meeting with the project team. Additionally, OGE and OOG continues to work with the Office of Chief Financial Officer to close-out funding for the remainder of this fiscal year, as well as preparing for expenditures in the fiscal year 2023.

F. Financial Disclosure Statement (FDS)

OGE continues to review the Financial Disclosure Statements from the 2022 season. Auditor Tujuba completed two audits, one for the Public Financial Disclosure Statement Conflict of Interest audit and another of Confidential Financial Disclosure Statements that were flagged by Ethics Counselors. The results of both audits are under review by the FDS team.

On August 10th, OGE sent fine notices to confidential and public filers who failed to file or were late filers. A garnishment memo, containing 275 names was sent to the Office of Pay and Retirement Services for the processing of a one-time payroll deduction in the amount \$300.00.

The e-filing system upgrades for the FDS system are underway. This upgrade consists of enhancing log-in privileges for Council members and adding certification language that is consistent with the Member's bi-annual filing requirements.

G. Lobbying Registration and Reporting (LRR)

Since the end of the second quarter, Lobbyists have filed six new registrations and the LRR Team answered 5 Support Tickets. One notable highlight is that no late filings were received. We believe this is evidence that the periodic trainings given by Attorney Advisor Echols and Program Specialist Kosick are resonating with attendees.

Thank you. This concludes the Office of Government Ethics' September 8, 2022 report.

Chairperson Hutcheson asked General Counsel Raj to confirm the location of the new offices and the start date of new Chief of Staff Christina Mitchell.

Board Member Melissa Tucker commended OGE on the outside employment advisory opinion, noting that she found the examples helpful and much appreciated.

Chairperson Hutcheson noted for the record that Board Member Felice Smith joined the meeting earlier.

VI. Public Comment

The Board received one public comment.

Hello!

In March 2022, the Office of Open Government published a 17-page opinion advising Mayor Bowser that texts are subject to FOIA and ephemeral messaging apps ("like WhatsApp") should not be used to conduct public business. https://www.open-dc.gov/FOIA_AdvisoryOpinion_TextMessages

Why wasn't this opinion issued in 2020, when WhatsApp use across DC government was first reported?

Has the Mayor's office responded? Has the DC government ceased using WhatsApp for government business? If not, what steps will BEGA take to sanction intentional violation of public records laws?

Has the emergency law the Council passed to address this egregious pattern of secrecy lapsed?

<https://dcogc.org/blog/ditch-those-disappearing-message-apps-open-government-office-advises-d-c/> If so, does BEGA & OOG recommend the Council enact a more permanent amendment to the statute to address text messaging and ephemeral apps?

Best regards,
Alex Howard
Director, Digital Democracy Project

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 1:16 pm

The Board approved the negotiated disposition in **22-0077-P In re C. Thornton.**

IX. Adjournment

The Board will meet next on October 6, 2022 at 12:00 p.m.