

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

DRAFT MINUTES OF MEETING

February 6, 2020

The District of Columbia Board of Ethics and Government Accountability held a meeting on February 6, 2020 at 10:00 a.m., in Room 540 South of the One Judiciary Square Building, 441 4th Street, N.W., Washington, D.C. The Board’s Chairperson Norma Hutcheson was present as well as Board Members Charles Nottingham, Felice Smith, Darrin Sobin, and Melissa Tucker.

Members of the public are welcome to attend. Questions about the meeting may be directed to 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 10:02

II. Ascertainment of Quorum

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously approved the agenda and the January 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.

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

1. Advisory Opinions: On January 27, 2020, I issued a FOIA Advisory Opinion (#OOG-003_9.12.19_ AO) regarding whether the Office of Administrative Hearings (“OAH”) is in compliance with the mandatory disclosure requirements of D.C. Official Code §§ 2-536(a)(3) and 2-536(b)). As the Board is aware, these provisions require that OAH make publicly available, on its website or the Internet, final opinions, including concurring and dissenting opinions, as well as

orders made in adjudication of cases. My findings were: (1) that while OAH has made significant efforts to comply with D.C. Official Code §§ 2- 536(a)(3) and 2-536(b) in FY20, the agency still is noncompliant with these provisions; (2) that its non-compliance is not willful and is due to staffing and budget constraints; and (3) that OAH cannot move towards compliance with FOIA until it implements a case management system that makes applicable final orders publicly available on the internet.

2. Informal OMA/FOIA Advice:

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

- The Office provided FOIA substantive advice to 7 querants;
- The Office provided OMA substantive advice to 6 querants; and
- The Office provided 38 responses to requests for technical assistance with open-dc.gov.

B. Training/ Outreach:

1. OOG ANC FOIA Training: Provisions of the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (D.C. Official Code § 1-309.12(e)(6)) require the OOG to provide a training session at least twice per calendar year on Commission obligations under FOIA. On Tuesday, January 14, 2020 and Thursday January 16, 2020, I conducted FOIA ANC trainings. Both trainings were well attended by ANC Commissioners. We plan to conduct another round of training sessions for ANCs this summer.
2. Board and Commissions Training: On January 29, 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 portion of the training session.
3. On Tuesday January 28, 2020, OOG's Computer Systems Analyst, Tiffany Montgomery attended the "State of the Net Conference" that was held at the Convene in Washington, D.C. Policy makers, including US senators, discussed with internet industry leaders and top scholars, the impact of today's internet policies effecting government, public interest, and communications.
4. On Thursday, January 30, 2020, Computer Systems Analyst, Tiffany Montgomery attended a "Mass & Fake Comments in Rulemaking" seminar at the General Services Administration. Federal policy makers and industry leaders discussed issues related to government policies and public feedback intake with respect to high volume comments online from private citizens (and possibly malicious actors). Attorney Barton also attended this conference electronically.

C. Legislative Update:

The “Access to Body Worn Camera Temporary Amendment Act of 2019,” is currently undergoing Congressional review. March 14, 2020 is the projected law date, the emergency measure expires March 22, 2020. To date, no permanent version of the bill has been introduced.

D. Administrative Matters:

1. The Office of Open Government has posted the Attorney-Advisor position on the DC Office of Human Resources website. The vacancy will be posted for 30 days. We hope to conduct interviews in March 2020 and have the vacancy filled on or before May 1, 2020.
2. On January 23, 2020, I visited the Commission on the Arts and Humanities regarding the artwork in Suite 540S. We will be returning the current artwork in the suite and I selected new artwork that will be installed on February 24, 2020 at 10:00am. The artwork is on loan to BEGA for two years.

This concludes the Office of Open Government’s February 6, 2020 report.

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 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	31
Open - Negotiations	3
Open - Show Cause Hearing	5
Grand Total	39

OPEN "UNDOCKETED MATTERS"	
Grand Total	1

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	24
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	38

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	1
Grand Total	25

	Current	Last month	Dec. 2019
Investigations Currently Open:	39	38	51
Investigations Stayed:	14	14	14

The number of current number of open investigations, reflects 6 new investigations opened since the beginning of the year.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

Auditor Amanueil Tujuba completed a webinar on Polishing Your Skills for Excellent Customer Service by DCHR.

2. Conducted by staff:

Since the date of the last meeting, OGE conducted 8 trainings, which is 5 more than the 3 conducted last month. The 8 trainings include 2 new employee orientations, 1 monthly ethics training, 1 ethics training for OAG Ruff Fellows, 1 donations training at the DCPS Operational Training Institute, 2 Boards and Commissions training (MOTA and the Developmental Disability Council), and 1 ethics overview for the Office of the Directorate of Public Prosecution of Kenya.

In addition, 47 employees completed the online ethics training through PeopleSoft during the month of January.

C. Advisory Opinions/Advice:

Informal Advice: approximately 38 which is 14 less than the 52 reported at the last meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems

D. Legislative Update

CM Grosso introduced the “BEGA Loophole Closure Amendment Act of 2020” on February 4, 2020. Apparently, the bill drafted in light of the O’Melveny and Myers Report and the work of the Council’s Ad Hoc Committee regarding former CM Jack Evans. Councilmembers Anita Bonds, Elissa Silverman, Charles Allen, and Mary Cheh joined Grosso as co-introducers of the bill.

On Monday, February 3, 2020, OGE provided Charles Allen’s office with our thoughts and impressions of the proposed Bill. Please see the documents uploaded for this month’s meeting. Generally, the Bill seeks to require:

- BEGA to conduct annual mandatory training;
- Analysis of financial disclosures for accuracy and completeness, and provide feedback when public officials submit inaccurate or incomplete financial disclosures;
- Establishment of formal processes to identify, address, and resolve conflicts of interest, appearance of conflicts of interest, and violations of the Code of Conduct;
- Refines the scope of the prohibition on the use of official positions in a manner that the employee knows is likely to have a direct and predictable effect on the employee’s financial interests, or the financial interests of the employee’s spouse, child, family member, or affiliated organization.
- That clients of employees’ affiliated organizations are captured in financial disclosures; and
- Explicitly states that no public official shall be employed as a lobbyist, advisor, or consultant for an entity with business before the District, or an entity that represents a third party with business before the District.

E. Budget:

Our FY2020 budget remains in good shape.

We received OCP approval and have finalized our agreement with Abstract Evolutions to develop and implement the most pressing enhancements needed to improve our current OCTO-designed FDS and LRR e-filing systems. We will continue to explore ways to improve our e-filing systems and technical support that we offer system users by continuing to work with OCTO to continue and considering other vendors as needed.

We are also looking at the costs associated with our planned, enhanced education and outreach efforts and are interested in providing District employees with multiple ways to get assistance from OGE.

F. Staffing:

Our FDS team is in the process of preparing to bring someone on to serve as a temporary Technical Support Specialist. We hope to have someone start by the end of the month.

With respect to the vacant GC position, we have completed interviews and identified a candidate and are working with DCHR to finalize the hiring process.

With respect to the Director of Government Ethics. It was posted on February 3, 2020 and will be posted for 4 weeks.

G. Litigation:

Status of pending cases.

- **Gerren Price –2019 CA 005346 P(MPA).** A status hearing was held in this matter on January 10, 2020 before Judge Shana Frost Matini. OAG represents BEGA in this matter. Judge Matini denied our motion to dismiss, because she found that the petitioner did make timely efforts to file his petition, despite being hindered by technical errors. The Petitioner’s brief in support of his request to reverse BEGA’s decision is due on February 18, 2020. Our response is due on March 18, 2020. The Judge’s order is uploaded with this month’s meeting materials.
- **A. Blaine vs. BEGA, OEA Matter No. J-0030-19.** This was an employment matter involving a separated employee. On January 28, 2020, we were informed that Ms. Blaine’s appeal was dismissed for lack of jurisdiction on June 10, 2019. A copy of the order has been uploaded to the DropBox.

H. Lobbyist/Financial Disclosure Matters:

Financial Disclosure – On Monday, February 3, 2020 we sent out the “Agency Head Memo” to all Ethics Counselors, officially kicking off the Financial Disclosure season. Ethics Counselors are required to submit their agency’s lists of Public and Confidential filers on or before Monday, March 2, 2020.

We have scheduled four (4) Mandatory Ethics Counselor trainings for next week (Monday at 2:30 pm, Tuesday at 10:30 am, Wednesday at 2:30 pm and Thursday at 10:30 am); each Ethics Counselor is required to attend one training. Our contract with Abstract Evolutions has been approved and we look forward to working with them to enhance the Financial Disclosure and Lobbyist e-filing systems and we plan to bring on additional technical support.

New this year is OGE’s Ethics Counselor Incentive Program, which will recognize ethics counselors who timely complete all of their financial disclosure related

responsibilities with a certificate or token items. – Uploaded to Dropbox along with memo sent out.

Lobbying Registration and Reporting (LRR) System – The deadline to file Lobbyist Registration Reports and Lobbyist Activity Reports was on January 15, 2020. For this reporting period, 261 Lobbying Registration Reports were filed, including 34 new registrations. 426 Lobbyist Activity Reports were filed for the same reporting period.

In addition, it is worth sharing that OGE only received 42 support ticket requests and phone calls seeking assistance. This represents a 95% success rate at filing LRR reports without requiring help from this office.

Our Compliance Specialist, Mr. Kosick is also creating short, video instructions to provide filers with targeted training and information on how to file. There is a short, sample video uploaded to the DropBox.

Lastly, our Auditor completed his review of the CY2019 Lobbyist Activity reports. After selecting a meaningful sample for random testing and completing his audit, Mr. Tujuba determined that there were “no major concern over the Lobbyist Registration and Reporting (LRR) System or completeness and accuracy of the reports filed for CY2019,” and he only identified a small number of potential enforcement matters.

E-filing system With respect to e-filing upgrades, I am pleased to report that our Program Specialist met with OCTO and our new vendor yesterday, and the meeting we are looking forward to working with them both on this project OCTO is very amenable to working with the vendor, they identified a list of priorities, and set a plan for going forward. Good job to Mr. Kosick for successfully getting off to a strong start in our plans to fix and upgrade the system.

I. Non-Confidential Investigations:

1. 18-0006-P, *In re*: Jack Evans – This formal investigation involves allegations that former Councilmember Evans violated the Council Code of Conduct. We are working with our partner agencies to ensure that any investigative actions we undertake will not interfere with the related law enforcement investigation.
2. 20-0004-F, *In re*: Jack Evans. This is a formal investigation initiated pursuant to a sworn and notarized complaint from Alan Roth alleging that CM Evans violated DPM §1801 (a), and indirectly alleging a violation of the conflict of interest provisions that by not recusing himself from votes related to ethics investigations into his actions. Mr. Roth submitted additional argument in support of his claim on December 23, 2019. OGE is still researching the issues raised by the complaint.

This concludes the Office of Government Ethics’ February 6, 2020 report.

VI. Opportunity for Public Comment

Mr. Alan Roth provided public comments. Mr. Roth inquired as to why the complaint he submitted regarding former CM Jack Evans, *20-0004-F, In re: Jack Evans*, had not been resolved and he explained to the Board that it should direct OGE to prioritize completing its investigation and report to the Board as soon as possible.

VII. Executive Session (non public)

VIII. Resumption of Public Meeting

The Board had no matters to report out.

IX. Adjournment

The next BEGA Board meeting will be held on March 5, 2020.