

DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

MINUTES OF MEETING
April 4, 2019

The District of Columbia Board of Ethics and Government Accountability held a meeting on April 4, 2019, at 10:00 am, in Room 540 South of the One Judiciary Square Building, 441 4th Street, N.W., Washington, D.C. The Board's Chairperson Tameka Collier was present as well as Board Members Darrin Sobin and Norma Hutcheson. Senior Attorney Advisor, Rochelle Ford, was also present.

Members of the public are welcome to attend. Questions about the meeting may be directed to bega@dc.gov.

AGENDA

I. Call to Order

Chairperson Collier called the meeting to order at 10:01 a.m.

II. Ascertainment of Quorum

Chairperson Collier established that a quorum was present.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda. The Board approved the following meeting minutes, subject to technical revisions:

1. February 7, 2019 minutes.
2. March 14, 2019 minutes.

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 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 March 29, 2019, the OOG issued an advisory opinion regarding the DC Public Charter School Board's (DCPCSB) Open Meetings Act

compliance (OOG-0003_11.2.10). The Advisory Opinion addressed whether the DCPCSB: (1) met in an improper closed/executive session; (2) improperly noticed to the public its October 31, 2018 meeting; (3) failed to timely report to the public the outcome of a vote taken in closure; and (4) draft meeting agenda did not provide the public with proper notice of the closed/executive session.

The OOG's findings are as follows: (1) the DCPCSB violated D.C. Official Code § 2-575 by noticing its October 31, 2018, meeting as closed to the public; (2) pursuant to District case law the DCPCSB is a quasi-judicial public body; (3) the DCPCSB's October 31, 2018, meeting in closure was lawful as a quasi-judicial public body meeting to deliberate upon a decision in an adjudication action or proceeding; (4) the OMA requires a public body to report on the record any official action taken during closure, but only when it is appropriate to do so; (5) the DCPCSB did not vote during the October 31, 2018, closed/executive session; (6) the DCPCSB's decision to not publicly report the outcome of its closed deliberations on the October 2018-2019 charter reviews and renewals was lawful; and (7) the DCPCSB violated the D.C. Official Code § 2-576(5) by failing to provide, in its December 13, 2017 public meeting notice, the requisite D.C. Code citation to the reason for closure and a description of the matters to be discussed in its December 13, 2017 closed session.

2. Informal OMA/FOIA Advice:

Since March's Board meeting, the OOG has provided responses for informal FOIA and Open Meetings Act (OMA) advice and technical advice concerning the using the OOG's website for OMA compliance. The responses are as follows. The OOG provided eight (8) FOIA and four (4) OMA substantive responses to requests for informal advice. The OOG also provided five (5) responses to OMA requests for technical assistance.

B. OMA/FOIA Audits:

The OOG is continuing its comprehensive FOIA/OMA audit FOIA/OMA which is anticipates completing on or before August 1, 2019 and will report the results prior to September 30, 2019. The OOG is actively seeking the services of a summer intern to assist with the completion of this project.

C. Training/ Outreach:

On March 19, 2019, the OOG and OGE conducted a combined OMA and ethics training for Commissioners and staff of the Corrections Information Council.

D. Rulemaking:

The Office of Open Government has submitted for publication in the DC Register new and revised regulations to implement the recent changes in the law and which makes clarifying amendments to the OOG's regulations at 3 DCMR § 104000. The regulations will appear in the Friday, April 12, 2019, edition of the DC Register.

E. Staffing:

1. Summer Intern

The OOG is working with DCHR to identify as summer intern.

2. IT Specialist

The OOG has selected a candidate to fill the vacant position of IT Specialist. We are working with DCHR to extend a formal offer and plan to have the selectee begin by the end of the month.

F. Legislation

On March 19, 2019, Councilmembers Charles Allen, Brianne Nadeau, Elissa Silverman, Mary Cheh, and Anita Bonds introduced Bill 23-0199, the "Public School Transparency Amendment Act of 2019." The Bill was referred to the Committee on Education and the Committee of the Whole with Comments from the Committee on the Judiciary and Public Safety.

The Bill proposes that:

- Public Charter school authorities publish information regarding contracts over \$25,000;
- Require Public Charter Schools, including its Board of Trustees to comply with FOIA and the OMA;
- Require the Public Charter School Board to deliver a report to the DC Council regarding the number of FOIA requests and the cost of FOIA requests; and
- Require the OOG to provide bi-annual training to public charter school employees and the Board of Trustees on FOIA and the OMA.

As Director of Open Government, I fully support the aspects of this legislation that subject public charter schools to FOIA and the OMA and require the affirmative release of information to the public. I see this as a step forward in increasing accountability and transparency in public education. My only concern with the Bill is the increased burden on the OOG staff to provide training. Given our small staff, if the Bill passes, it bolsters the argument that the OOG needs another attorney or other

resources to facilitate increased training capabilities. The OOG will monitor the progress of this bill.

This concludes the OOG Director’s report for April 4, 2019.

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	21
Open - Show Cause Hearing	2
Open - Negotiations	1
Grand Total	24

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	13
Closed Pending Appeal to DC Court of Appeals	1
Closed - Pending External Action	3
Stayed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	2
Stayed - OIG Investigation	7
Stayed - US District Court Case	5
Grand Total	32

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	1
Open - Appeal to Director	2
Open - Board Appeal	1
Grand Total	28

	Current	Last month	March 2019
Investigations Currently Open:	24	29	31
Investigations Stayed (Inactive):	15	11	10

B. Publication and Reporting Obligations

Now that the second quarter of FY19 is complete, we are working on the next Quarterly Complaint Report (QCR) for the first quarter of FY19 and will publish it to our website later this month. After working with our CMTS vendor, the bulk

of the QCR each quarter will be automatically generated directly from CMTS, requiring much less manual effort than in the past. We are also working to assemble our 2nd quarter performance and workload measurements which must be entered into Quickbase by April 19.

C. Trainings/Outreach –

i. Attended by staff – – Investigator Corrales attended three training webinars: Collecting Advertiser ID Evidence in Criminal Investigations webinar (NW3C); Cognitive Interviewing & Court Room Testimony (NW3C); and Interviewing Children in an Investigative Setting: More Than Meets the Eye (i-sight). Investigator Bradley also attended NW3C’s Collecting Advertiser ID Evidence webinar.

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 8 trainings, 1 more than the 7 we conducted last month. The 8 trainings consisted of three ethics trainings for PCSB members, HBX and Councilmember Todd’s staff; one Board & Commission training for the Correctional Informational Council, two new employee orientations, and two training webinars on the new Lobbyist e-filing system. We are conducting a live, in-person training program on the new Lobbyist system tomorrow morning at 11:00 a.m. in a conference room on the 11th floor here at One Judiciary Square, and we have two more training webinars on the new system scheduled for next week.

On March 19, 2019, the OOG and OGE conducted a combined OMA and ethics training for Commissioners and staff of the Corrections Information Council. Lastly, I gave an ethics presentation on Saturday March 16 as part of the Office of the Attorney General’s annual ANC Legal Seminar.

D. Advisory Opinions/Advice –

Informal Advice: approximately 53, which is lower than the 72 reported at the last meeting. This number does not include responses we have provided to questions regarding the new Lobbyist e-filing system. Additionally, it should be noted that only 21 days have passed since the Board’s last meeting rather than a full month.

Formal Advice requests: We have no pending formal advice requests.

E. Ethics Legislation/Comprehensive Code of Conduct

Chairman Allen has introduced this year’s version of the CCC for the Council’s consideration, and CM Brianne Nadeau introduced another bill on March 19, 2019 entitled the “Ethics Reform Amendment Act of 2019.” As I mentioned during last month’s meeting, one provision from CM Nadeau’s proposed bill that is particularly encouraging from OGE’s standpoint is language that would authorize

us to obtain search warrants for electronic evidence as referenced in our 2018 Best Practices Report. We look forward to working with Chairman Allen, CM Nadeau, and their respective staffs to advance these legislative efforts in furtherance of our agency's mission.

F. Rulemaking

In the drop box, you will find the rulemaking that has been several months in the making. It contains a number of conforming and technical changes to our rules, including the change from a 3 to 5 member board and the accompanying quorum change. It is focused on the criteria the Board considers when it has before it waiver requests, whether for e-filing, or FDS or lobbyist fines. It also includes criteria for employee designation appeals. There are two versions in the drop box, one a redline version so that you can discern the changes, and a clean version that would be published in the DCR. Upon request, the redline version will be provided to the public – if not published on our website.

Currently, it includes only entire sections that are being amended. It is contemplated that when the final rule is published, it will contain our entire body of rules, so they are more readily accessible to the public. Another thing to keep in mind is that the agency has the discretion to finalize all or only parts of the rule, depending on the comments it receives as well as its further consideration of the rules. We are asking that the Board approve the proposed Rulemaking which was originally shared, in part, in February regarding our regulatory appeal process, subject to modification by the legal staff if needed to comply with the technical and compliance requirements applicable to the Rulemaking process.

1. The Board unanimously voted to approve the proposed rulemaking, subject to modifications by the legal staff if needed to comply with the technical and compliance requirements applicable to the Rulemaking process.

G. Budget:

We received updated proposed budget figures from OFRM on March 20 reflecting a net increase of \$80,000 over the original draft we received on March 11. However, I'm concerned because while our NPS budget went up by \$70K from FY19, \$50K of that appears to be a one-time enhancement to fund the replacement of our A/V equipment. Moreover, they cut our line item for "Regular Pay – Continuing Full Time" by \$101K from FY19, while budgeting \$171K for "Regular Pay – Other."

Because of the reclassification and position changes we enacted in FY18, BEGA's Schedule A budget for FY20 should be more along the lines of \$1.77M-- which coincidentally happens to be the total amount we were allotted for the two "Regular Pay" line items. Even if we fill the Auditor, IT Specialist and Compliance Specialist positions at the bare minimum Step 1 level for their respective grades, we would still need \$1,747,895.01 to cover our salary

expenses. Moreover, by shifting those PS funds from “Regular Pay – Continuing Full Time” to “Regular Pay – Other,” I worry that it theoretically could make it easier for them to attempt to remove that second line item in the future, thereby jeopardizing our ability to keep the current number of FTEs on our staff, let alone to fund the additional 2 FTEs we requested in our FY20 Budget Enhancement Requests.

Our FY19 budget currently looks to be in good shape, as we have passed the halfway mark and our local funds currently have an available balance of 57% of our appropriation while our O-Type funds currently have an available balance of 63% of our appropriation. Our staff members have begun actively looking for training programs they believe may be well-suited for their individual needs and career goals. I have provided the Board with a spreadsheet reflecting both the methodology I used in formulating our FY19 training budget as well as each staff member’s individual training budget, based on their respective operational roles.

Lastly, our FY20 budget hearing is scheduled for Wednesday, April 10. Niquelle and I have been collaborating to prepare for the hearing, including written testimony. We are also meeting with our OFRM partners tomorrow to discuss a few details and further prepare for the hearing.

H. Staffing –

We interviewed three candidates for our vacant Auditor position next week, and I anticipate extending an offer next week. We also interviewed several candidates identified by temporary staffing agencies to help manage our Lobbyist and FDS programs, and we selected Caleb Smith to fill that role. Caleb recently completed a two-year stint as a Program Analyst with the Environmental Protection Agency, where he created and maintained master production schedules related to the agency’s budget submissions to the White House and Congress. He also led and coordinated meetings with the EPA’s Office of Budget senior staff and regional offices regarding the production of the agency’s budget submissions and followed up with the regional offices to ensure action items and deliverables were completed on time. He also has experience developing process improvements and drafting SOPs, and we are happy to have him at BEGA.

Although OCTO’s Pipeline process did not function as smoothly as we anticipated, we eventually identified three candidates for the Tech Support Specialists who we believe will be able to fill those roles successfully and should be onboarded by next Monday. Additionally, I am planning to hold off on adding a temporary System Developer for a month or so because I want to incorporate feedback from the Lobbying Working Group into the next stage of development efforts for the Lobbyist e-filing system. I’ll discuss that issue at greater length shortly.

Lastly, I am sad to report that next Friday, April 12 will be the last day at BEGA for our General Counsel, Brian Flowers. We were all saddened to hear that he had accepted another position with the District, and he leaves big shoes to fill. Personally, I will greatly miss his astute legal insight and prudent advice, but we

all want to wish him the very best of luck in his new position, as I am sure his new agency will greatly benefit from his unrivaled knowledge of District government as well as his seasoned judgment.

I. Litigation

Status of pending cases.

- Gerren Price – (CA No. 16-AA-1230), This case was submitted on October 24, 2018, and we are awaiting the Court’s decision.
- Blaine vs. BEGA, OEA Matter No. J-0030-19. This is an employment matter involving a separated employee. We have submitted our draft response to OAG, which they will file on our behalf before our April 12 deadline

J. Lobbyist/Financial Disclosure Matters

I am happy to report that the April quarterly activity report filing period for lobbyists has been going much smoother than the last one in January. Last Friday, we sent an email to LRR system users and Key Contacts reminding them of the recent statutory changes and letting them know that we are taking a flexible approach again this filing period and will refrain from taking enforcement action as long as registrants submit their activity reports for the first quarter of Calendar Year 2019 no later than April 30, 2019 – even though the established deadline is April 15. The email also included links to our website where they can download an updated version of our Frequently Asked Questions document, as well as a new Instructional guide we have completed for the new e-filing system. Lastly, the email informed registrants that BEGA and OCTO will conduct three more webinars and one live, in-person training program on the new e-filing system between April 3 and April 12 – in addition to one webinar we conducted on March 27 – and provided links where lobbyists could pre-register to attend those trainings.

The feedback I have received regarding the new Instructions guide has been very positive, and the number of Support Tickets we have received from lobbyists requesting help with the e-filing system has dramatically dropped when compared to the volume of help requests we received back in January. Thus, I am cautiously optimistic that the publication of the new Instructions guide coupled with the numerous training programs we have offered and are continuing to offer may be helping us to turn the corner and move beyond the new system’s rocky rollout in January.

Some of the proposals I’ve received from lobbyists regarding potential changes to the new e-filing system actually involve proposed operational changes to the way we have historically administered the Lobbying program that I feel were thought-provoking and worthy of serious discussion and exploration.

As I reported last month, Mr. Flowers and I participated in a Lobbying Working Group meeting at the Wilson Building with Committee staff and three lobbyists. After learning more about the nuances of the lobbying program over the past few months, I have proposed to the Committee that we make our Lobbying Working Group a more structured and ongoing monthly calendar event, as opposed to a meeting that is only convened when some crisis arises. I have asked for one of the Committee's staff members to participate in those meetings on a regular basis, as it would allow the Working Group to obtain direct feedback from the Committee on a real-time basis regarding ideas under discussion, thereby allowing us to modify and refine those ideas more effectively. I will also keep the Board informed of those discussions to ensure that any proposed operational changes meet with your approval before they are implemented.

In the next two weeks we plan to notify all Public Financial Disclosure Statement filers of their filing requirement via email and hard copy. We have engaged a mail merge service to handle the hard copy notices and Mr. Smith is creating a master list of filers that we plan to submit to OCTO on Monday so that it can be uploaded to the e-filing system by the end of next week. After the master list is uploaded we can send an email notification to all the public filers and OCTO can begin creating this year's user profiles. We anticipate all FDS filers receiving notice and having access to the e-filing system by Monday, April 15, 2019.

We still have approximately 200 PFDS non-filers from last season. We are continuing to formulate a strategy for conducting enforcement and will bring that strategy back for discussion with the Board in the coming months.

One subject I would like to discuss with the Board is the scope of my authority as Director to correct late payment penalties that may be erroneously generated by our e-filing system without needing to request the Board's approval for such action. It is my view that in such instances where late payment penalties are erroneously generated by the e-filing system, it would be unduly burdensome to require affected Registrants to formally request waivers of those penalties and bring them before the Board for adjudication. Instead, I believe the Director has the inherent or implied authority to correct those erroneously generated late payment penalties unilaterally without seeking the Board's consent or ratification. However, I would appreciate receiving confirmation the Board agrees with that position before proceeding to take unilateral corrective action in those instances.

K. Lobbyist Filing Waiver Requests --

Pursuant to D.C. Official Code § 1-1162.32(c), the Ethics Board may waive the penalty imposed for untimely filing of a Lobbyist Activity Report for "good cause shown."

1. 18-0031-R. MD|DC Credit Union Association. Mr. Murray's stated reason for his firm's failure to timely file its activity report is that he was hired on July 2, 2018, and that he submitted his own information on July 9, 2018. He states that he was not notified about the fact that the deadline

had been missed, but upon discovering that fact he immediately filed the activity report when he got back to his desk. Respondent's LAR was filed on July 23. The amount of the fine levied was \$90. On December 27, 2018, Mr. Murray responded to our follow-up questions, including the following explanation, "I do not have any evidence that my predecessor had filed, however, I also had no evidence or indication that my predecessor had not filed. I did not have documents or emails from my predecessor which indicated that he did not file so I would need to. He oversaw all PAC related matters so no one else in the Association would have known that this was not filed. I was simply working under the assumption that he had filed all of the necessary paperwork in a timely manner." We ask the Board to deny this request for a waiver, as our subsequent research has shown that the Credit Union Association not only filed its July 2018 activity report in an untimely manner, but that it still has not filed its January 2018 activity report at all.

The Board unanimously denied this request.

2. 19-0011-R. Goldblatt Martin Posen LLP (DC09, LLC). This is the situation I raised during the Board's last meeting, where the e-filing system erroneously assessed a late fee against a registrant. It is my view that in such instances, the Director should be authorized to waive those erroneously-assessed late fees without requiring affected Registrants to formally request waivers of those penalties and bring them before the Board for adjudication. However, until the Director's authority in this context is clarified, I felt it was prudent to submit this particular waiver request for the Board's determination, and we ask the Board to grant this request for a waiver.

The Board unanimously approved this request.

3. 19-0012-R. American Heart Association. Stuart Berlow from the AHA has asked for a waiver of the \$300 late filing penalty assessed against the AHA due to confusion over the new e-filing system. Mr. Berlow indicated that he thought he had submitted the firm's registration back in January when he entered all the information needed to do so, but may have either A) inadvertently failed to jump through all the hoops needed to submit the registration report, or B) failed to pay the \$50 registration fee. OGE does not oppose this request.

The Board unanimously approved this request.

L. Financial Disclosure Waiver Requests –

Pursuant to D.C. Official Code § 1-1162.21(a)(3) anyone adversely affected by a civil penalty imposed under Section 221 of the Ethics Act may appeal said penalty to the Ethics Board. None to report.

M. Non-Confidential Investigations

1. 18-0006-P, In re: Jack Evans – This formal investigation into allegations that Councilmember Evans violated the Council Code of Conduct is currently stayed.

N. Opportunity for Public Comment. There were no public comments.

- O. The Board voted unanimously to deliberate in Executive Session at 10:59 a.m. (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).

P. Resumption of Public Meeting

Q. Adjournment

BEGA's next meeting is May 9, 2019 at 12:00 p.m.