

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

**MINUTES OF MEETING  
MARCH 14, 2019**

The District of Columbia Board of Ethics and Government Accountability held a public meeting on Thursday, March 14, 2019, at 12:00 p.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. Board Members Darrin Sobin and Norma Hutcheson participated in the meeting via teleconference. 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](mailto:bega@dc.gov).

**AGENDA**

**I. Call to Order**

Chairperson Collier called the meeting to order at 12:02 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 tabled adoption of the February 7, 2019 until the next 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 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: The Office has not issued any written Advisory Opinions since the last Board meeting.
2. Informal OMA/FOIA Advice: Since February's Board meeting, the OOG responses for informal and technical FOIA and Open Meetings Act (OMA) responses are as follows: (1) 16 FOIA and 5 OMA

substantive responses; and 2 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.

C. Training/ Outreach:

1. On February 13, 2019, OOG Attorney Barton and OGE Attorney Ashley Cooks attended FOIAXpress training given by AINS at OCTO.
2. On Thursday March 7, 2019, the OOG Attorney Barton conducted OMA training for the points of contact to the Child support Guidelines Commission.
3. On March 8, 2019, the OOG attended Freedom of Information Act Day at the Newseum. The Honorable Elijah Cummings was the event's keynote speaker.
4. On March 12, 2019, I presented the welcome address at the D.C. Open Government Summit. Councilmember Charles Allen, Board Counsel Rochelle Ford and General Counsel Brian K. Flowers were also in attendance. Councilmember Charles Allen mentioned that he would hold a press conference on Wednesday, March 13, for a bill he will introduce next week, "the Public School Transparency Amendment Act of 2019." This bill would bring D.C. charter schools under the same transparency requirements as traditional public schools. He also mentioned that in California the governor signed a bill that would subject all of California's 1,300 charter schools to open meetings laws and public records requests. He stated that the District is an anomaly in how it handles this issues and most states require this. We look forward to presenting the Board with more details about the bill once it is introduced.
5. On March 13, 2019, OOG, I provided an overview of the OOG to ANC2B as the OOG's contribution to the BEGA Roadshow.

D. Rulemaking:

The Office of Open Government has submitted for consideration by the Board 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 proposed regulations have been reviewed

informally by the OAG's Legal Counsel Division and incorporates many of their recommendations.

E. Staffing:

On March 11, 2019, the OOG conducted interviews of the three candidates to fill the vacant IT specialist position. The OOG is currently evaluating candidate's responses and interviewer's scores.

F. This concludes the OOG Director's report for March 14, 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.

<b>OPEN INVESTIGATIONS BY STATUS</b>	
Open	25
Open - Show Cause Hearing	2
Open - Negotiations	2
Grand Total	29

<b>PENDING/STAYED INVESTIGATIONS BY STATUS</b>	
Closed - Pending Collection	11
Closed Pending Appeal to DC Court of Appeals	1
Closed - Pending External Action	1
Stayed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	2
Stayed - OIG Investigation	5
Stayed - US District Court Case	3
Grand Total	24

<b>REGULATORY MATTERS BY STATUS</b>	
Closed - Pending Collection	25
Open	1
Open - Appeal to Director	2
Open - Board Appeal	1
Grand Total	29

	Current	Last month	Jan. 2019
Investigations Currently Open:	29	31	31
Investigations Stayed (Inactive):	11	10	10

B. Publication and Reporting Obligations

We have completed the Quarterly Complaint Report (QCR) for the first quarter of FY19 and published it to our website. 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.

C. Trainings/Outreach –

i. Attended by staff – Attorney Cooks attended FOIAXpress training. This training is designed to permit our office to process FOIA requests in the city-wide software. It also allows us to generate our annual FOIA report automatically.

ii. Conducted by staff –

Since the date of the last meeting, we conducted or participated in 7 trainings, three more than the 4 we conducted last month. The seven trainings consisted of two new employee orientations, a monthly training session, and three FDS training sessions.

Last night, we took the BEGA Road Show to an Advisory Neighborhood Commission Meeting, and provided them with an overview of our agency, including information on both the OGE and the OOG.

D. Advisory Opinions/Advice –

i. Informal Advice: approximately 72, which is higher than the 67 reported at the last meeting.

ii. 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 plans to introduce another bill next week entitled the “Ethics Reform Amendment Act of 2019.” 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

We have no new developments to report, although we renew our request that the Board approve the proposed Rulemaking we shared in February regarding our regulatory appeal process, subject to modification by the General Counsel if needed to comply with the technical and compliance requirements applicable to the Rulemaking process.

G. Budget:

We have unfortunately learned that DGS is working to transition the Metropolitan Police Department (MPD) into One Judiciary Square, which massively impacts their ability to accommodate our requests to obtain additional space at OJS because MPD will need approximately 200,000 square feet for its operations. Thus, it appears that BEGA will need to relocate to leased space from a private sector landlord to obtain the square footage we need. However, according to a rough draft FY20 Budget Chapter we received from OCFO on Monday, it appears the Mayor's Office is declining to fund our Enhancement Request to relocate to leased space from a private sector landlord to obtain the square footage we need.

Through follow-up conversations with our partners at OFRM, it is our understanding that the City Administrator's Office is still fine-tuning our proposed FY20 budget, with the understanding that our total allotted funding by-and-large will be consistent with what was contained in the rough draft Budget Chapter. If so, BEGA's proposed FY 2020 gross budget (for both OGE and OOG operations) is estimated to be \$2,537,908, which represents a 3.6 percent increase over our FY 2019 approved gross budget of \$2,450,358. This draft budget includes \$2,384,421 in Local funds and \$153,487 in Special Purpose Revenue (SPR) funds. It should also be noted that on February 11, OCFO originally planned to reduce our FY20 O-Type funding by almost \$40,000 because the revenue generated by fines and Lobbyist Registration fees between FY15 and FY18 was much lower than projected. However, after reviewing a detailed explanation I provided regarding our plans to improve collection efforts in FY19 and beyond, the draft FY20 Budget Chapter maintained our O-Type funding at \$153,000 rather than the \$113,800 being contemplated on February 7.

H. Staffing –

We are interviewing four finalist candidates for our vacant Auditor position next week, and we are currently interviewing candidates identified by temporary staffing agencies for immediate placement to help manage our Lobbyist and FDS programs. OCTO has also opened our requisitions for a System Developer and three Tech Support Specialists and shared them with its vendors through the Pipeline process. The Tech Support Specialists in particular are supposed to be on-boarded no later than March 28 for two days of training to equip them to

provide customer service for the new Lobbyist e-filing system when the next quarterly reporting season begins on April 1.

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.

J. Lobbyist/Financial Disclosure Matters

We had about 29 Ethics Counselors attend the Mandatory Ethics Counselor Trainings in February. To date, we have received 77 filer list submissions of the approximately 90 we generally expect to receive. We are engaging a mail merge service to generate and prepare the April 15th hard copy filer notice to public filers. And as previously discussed, we expect to onboard a temporary employee next week to play a key role during the upcoming active FDS season, as well as the IT resources being recruited through OCTO’s Pipeline contract.

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.

1. 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.

K. Non-Confidential Investigations

1. 18-0002-F, *In re* Antwan Wilson -- Pursuant to D.C. Official Code § 1–1162.12 (a), we conducted formal investigations into whether the actions of former-Chancellor Antwan Wilson and former-Deputy Mayor Jenifer Niles in connection with the Chancellor’s daughter’s mid-year transfer to an out-of-boundary school during the 2017-2018 school year violated the Code of Conduct. We are proposing a negotiated disposition with former Chancellor Wilson that will be presented to the Board in closed session
2. 18-0006-P, *In re*: Jack Evans – This formal investigation into allegations that Councilmember Evans violated the Council Code of Conduct is currently stayed.

VI. **Opportunity for Public Comment.** Michael Sindram provided public comment via telephone. Mr. Sindram first inquired into how long the investigation with respect to Councilmember Evans will remain stayed. OGE’s Director stated that the investigation remains stayed in light of law enforcement investigations. Mr. Sindram commented on OOG’s recent opinion on FOIA requests for body worn camera recordings. OOG Director Allen explained that the office gives advisory guidance on FOIA and that the issues that OOG addressed related to the timing of responding to requests for body worn camera recordings and the related costs to process them. Lastly, in discussing BEGA’s need for new space, Mr. Sindram then offered suggestions on options the District should consider in order to best accommodate the request.

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**

The Board approved the following negotiated dispositions:

1. 18-0002-F, *In re* Antwan Wilson
2. 18-0019-P, *In re* Abyie Ghenene

IX. **Adjournment**

BEGA’s next meeting is April 4, 2019 at 10:00 a.m.