

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

DRAFT MEETING MINUTES – April 6, 2023

The District of Columbia Board of Ethics and Government Accountability held a meeting on April 6, 2023 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, Darrin Sobin and Melissa Tucker. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting. 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 will be made available on open-dc.gov and BEGA’s YouTube channel.

I. Call to Order

The meeting was called to order at 12:02 pm.

II. Ascertainment of Quorum

A quorum was established with all Board members present.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda for the meeting.

The Board voted to approve the minutes from the March 2, 2023 meeting. Board Member Sobin recused himself from the vote to approve the March meeting minutes since he did not attend 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 of Columbia government and the actions of those who represent them.

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

1. Advisory Opinions and Formal Legal Advice

a. Legal Advice on the use of personal cell phones to conduct government business.

On March 29, 2022, in response to an inquiry of whether members of a public body should use personal cell phones to conduct government business, I provided written legal advice on the issue. I advised that a public body (or its agent) that conducts government business via a text or similar electronic method, under the scope of employment, creates a public record under D.C. FOIA. Such texts meet the definition of “public record[s]” even if the storage device is privately owned. The term “public record” applies where the content is merely “prepared” or “used” by a public body; the means of storage is immaterial. Government personnel cannot evade D.C. FOIA simply by preparing records on media that they own. I reiterated the advice stated in the March 16, 2022, Advisory Opinion #OOG-2022-001, regarding the Applicability of D.C. FOIA to Text Messaging.

b. Advisory Opinion Regarding the STAR Board

On March 21, 2023, I resolved Complaint #OOG-2023-0001-M (“Complaint”), finding that the Stabilization & Reform Board of Commissioners’ (“STAR Board”) properly used the OMA citation to enter a closed session of a meeting to train and develop its public body members and staff, while also finding that the STAR Board violated the OMA’s “Notice of Meetings” requirements because it failed to provide the public proper notice after unreasonable delay to obtain a quorum. I strongly recommended that the STAR Board schedule both OMA and parliamentary procedure training with OOG. This was based upon receipt on February 9, 2023, of the Open Meetings Act Complaint, alleging that the STAR Board’s then-upcoming public body meeting, scheduled for February 13, 2023, violated the OMA, alleging the STAR Board’s justification for entering a closed meeting was improper based on the agenda, asserting that the scheduled closed meeting was not to train and develop public body members and staff, but was rather for a policy briefing and discussion. After OOG concluded an investigation, I found that the STAR Board: (1) cited the proper justification for entering a closed session of a meeting to train and develop public body members and staff on its February 13, 2023, agenda; and (2) that the STAR Board violated the “Notice of Meetings” provision of the OMA by depriving the public of meaningful notice when it delayed the start of the meeting for approximately an hour awaiting a quorum to transact official business.

c. Advisory opinion on whether an entity is a public body subject to the OMA.

On March 30, 2023, I issued Advisory Opinion #OOG-2023-0002-M, in response to an inquiry from a public body’s agency contact about whether the entity was a public body subject to the OMA. I found that the entity falls within the “similar entity” category of the OMA’s definition of a public body, and its scope and purpose constitute public business under the OMA. The OMA’s legislative history also clarifies the D.C. Council’s intent that the statute should cover “any other entity that is created by and exercises authority delegated by the District of Columbia government.” The entity is in the “similar entity” category as supported by the D.C. Council’s intent expressed in the legislative history. Therefore, its meetings are subject to the OMA.

d. Parliamentary Procedure Advice

On April 4, 2023, OOG responded to a public body's request for advice on a parliamentary procedure issue. We sent an advisory memorandum, pursuant to 3 DCMR § 10408.2, to point the public body to the relevant provision of *Robert's Rules of Order*. We advised that even when a member brings back a seemingly identical motion at a later meeting, it is nevertheless a "new" motion (and thus requires no special treatment or supermajority) if there has been an intervening passage of time or change in circumstances so that the group is actually voting in a different context or with different information available to them.

In general, OOG's regulations provide that "[a] Public Body shall be clear and simple in its procedures and avoid invoking the finer points of parliamentary procedure when doing so would obscure the issues and confuse the public." 3 DCMR § 10408.1. But here, it appeared that, even under the strictest adherence to parliamentary procedure, the public body had multiple routes by which to call up and consider the proposed motion.

2. Informal OMA/FOIA Advice

Since the last Board meeting, OOG has responded informally, via e-mail or telephone, to requests for assistance as follows:

OOG responded to 4 requests for OMA advice.
OOG responded to 7 requests for FOIA advice; and
OOG responded to 4 requests for technical assistance with open-dc.gov.

B. Remote Meeting Monitoring

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

During March 2023, OOG attended 43 remote public body meetings. As a result of the monitoring, 13 instances of written corrective measures were taken. Among other things, the public bodies failed to post agendas that included the OMA regulatory statement at the bottom of the agenda and failed to properly cite the proper statutory provision for closure of part of a meeting.

OOG provided advice and correction on these legal issues: (1) the OMA requires each meeting notice to include the date, time, location, and planned agenda that the public body will cover at the meeting, pursuant to *D.C. Official Code § 2-576(5)*; and (2) Pursuant to 3 DCMR 10409.2, public bodies must post the following OMA regulatory statement at the bottom of the meeting agenda: "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" on all draft and final meeting agendas.

C. Training/Outreach

Trainings and Outreach Events Attended by OOG Staff:

1. Office of Attorney General (OAG) Training on “Rulemaking 101”

On March 1, 2023, myself, Chief Counsel Barton, and the legal staff attended the virtual course, “Rulemaking 101,” presented by the Office of the Attorney General, which provided an overview of the rulemaking process in the District of Columbia, insights into best practices for drafting rules, as well as examples of the “right and wrong ways to draft different rules” using our local drafting conventions.

2. Staley v. Bowser & District (Case Nos. 2021 CA 003930 B (D.C. Super. Ct.))

On March 7, 2023, Chief Counsel Barton and I, along with the legal staff, virtually observed oral arguments before the Court of Appeals in *Staley v. Bowser & District*, a case that involves the D.C. “Sunshine Act,” which I will discuss, with other pending litigation, momentarily.

3. “Recent FOIA Decisions” by American Society of Access Professionals (ASAP)

On March 14, 2023, Myself, Chief Counsel Barton, and the legal staff attended the “Recent FOIA Decisions” briefing presented by the American Society of Access Professionals (ASAP). This briefing covered several procedural issues, as well as specific decisions impacting FOIA Exemptions Nos. 4 thru 7. The training was useful and very current.

4. Open Government Coalition (OGC) “Sunshine Week Summit”

On March 15, 2023, Board Chair Hutcheson and I spoke and answered questions as a panel for the Open Government Coalition (OGC) Sunshine Week Summit, held in-person at the Open Gov Hub space. We discussed specific items from the Board’s Best Practices Report, discussing, among other things, the possibility of bringing Advisory Neighborhood Commissions under the OMA and permanent legislation mandating retention of electronic messages by government employees. Additionally, there was discussion of possibly a Task Force to consider reforms to both FOIA and the OMA. The event was well attended, and response has been positive.

5. Mayor-DC Council Breakfast

On March 22, 2023, I attended the breakfast meeting between Mayor Bowser and the District of Columbia Council where the Mayor presented her FY24 Budget proposal that included an overview of her budgetary priorities.

6. Mayor Bowser's Get Together with Women Leaders

On March 27, 2023, Mayor Bowser hosted a gathering of the District of Columbia government's women leaders. The event was held at the Washington Convention Center and Director Cooks and I attended. The Mayor introduced her new Chief of Staff, Lindsay Parker, at the event and they both made remarks.

7. Meeting with Detroit City Board of Ethics

On March 29, 2023, I attended a meeting at BEGA's offices, hosted by Director Cooks and Supervisory Attorney Stewart-Mitchell, with the Executive Director of the City of Detroit Board of Ethics, Christal Phillips. Executive Director Phillips sought to learn about BEGA's operations and share ideas about the offices.

8. NITA Trial Advocacy Webinar

On March 30, 2023, Myself, Chief Counsel Barton, and the legal staff attended the webinar "Direct Examination: Being the Guide for Your Jury," presented by the National Institute for Trial Advocacy (NITA). This webinar discussed the complexity and impact of direct examination and showed how to use direct to guide a fact-finder through a narrative by using structure, verbiage, visual aids, and other elements.

9. BEGA Advice Tracker Questions and Answers

On March 31, 2023, the legal staff attended the staff training "BEGA Advice Tracker Questions and Answers," which introduced the staff to the new inquiry tracking software for both Offices.

10. "How to Structure a Winning Argument for FY23" (OAG)

On April 5, 2023, the OOG legal staff and I attended "How to Structure a Winning Argument for FY23," presented by the Office of the Attorney General.

Webinars Conducted by OOG Staff:

1. Open Meetings Act (OMA) Training for Local School Advisory Teams (LSATs)

On March 8, 2023, March 22, 2023, and March 25, 2023, Attorneys Sheree DeBerry, Nicholas Weil, and Anthony J. Scerbo presented trainings to members of the D.C. Local School Advisory Team (LSAT) community, covering the requirements of the OMA as they apply to LSATs, as well as suggested best practices for maximal compliance. In addition, during the March 22, 2023, training, Attorney Weil presented additional material on parliamentary procedure. The recordings of all of these trainings are posted on the D.C. Office of Open Government YouTube channel.

2. OMA Training

On March 22, 2023, Attorney DeBerry presented a training on the OMA with the Alcoholic Beverage Control Board, covering the requirements and best practices for the OMA.

3. FOIA Training

On March 23, 2023, Attorney DeBerry presented a training on “FOIA 101” to the Office of Risk Management, covering the requirements and best practices for the D.C. Freedom of Information Act. She was supported by members of OOG’s legal staff who were present to answer questions.

4. FOIA Training

On March 28, 2023, Attorney DeBerry presented a training on “FOIA 101” to the Alcoholic Beverage Control Board, covering the requirements and best practices for the D.C. Freedom of Information Act. She was supported by members of OOG’s legal staff who were present to answer questions.

5. OMA Training

On March 30, 2023, Attorney DeBerry presented a training on the OMA to the Department of Licensing and Consumer Protection Occupational and Professional Licensing staff, covering the requirements and best practices for the OMA. She was supported by Attorney Scerbo, who assisted her with questions and answers. This webinar is now posted on our YouTube channel.

6. OMA Training

On April 4, 2023, Chief Counsel Barton presented a training on the OMA to the Automated Traffic Enforcement Equity and Safety Task Force.

D. Litigation and Legislative Update

1. Litigation

- a. Staley v. Bowser & District (“Sunshine Act” case) (Case Nos. 2021 CA 003930 B (D.C. Super. Ct.); 22-CV-0303 (D.C. Ct. App.))

I previously reported on this case, in which three residents of Brentwood seek to enjoin (on mostly environmental grounds) the construction of a school-bus terminal at Montana Ave. and W Street N.E.

OOG staff listened to the oral argument before the D.C. Court of Appeals. The plaintiff-appellants’ attorney, Johnny Barnes, made a brief mention of the legislation that would become D.C.’s private-enforcement Sunshine law (section 742 of the Home Rule Act (D.C. Official Code § 1-207.42)). The Sunshine language was introduced in the Committee of the Whole of the

U.S. House of Representatives on October 10, 1973. The District of Columbia Code Annotated lists only four published opinions that arguably construe the Sunshine provision. This rarity of litigation is evidence of the valuable benefit of OOG’s administrative-complaint procedure—and our trainings and other communication with the public—which likely divert some complainants away from the expense and complexity of a lawsuit.

The Congressional Record excerpt cited in the Appellants’ brief is in Dropbox.

Mr. Barnes’s comment during oral argument appears at www.youtube.com/watch?v=JkNIeqxcjYk (from 2:52:36 to 2:53:04).

- b. WaPo lawsuit re: records arising out of Capitol insurrection (Case No. 2021 CA 002114 B (Super. Ct.))

As I have reported, *The Washington Post’s* legal entity seeks certain records relating to the Capitol insurrection, including the Mayor’s WhatsApp messages.

The District filed its supplemental motion for summary judgment (as to the remaining claim) March 17. The motion sets out the details of the records-search of the Mayor’s phone.

The motion and appendix are in Dropbox. Mediation remains set for July 26.

- c. Campaign Legal Ctr. v. D.O.J. re: records surrounding citizenship question on 2020 Census (Case No. 1:18-cv-01771-TSC (D.D.C.))

This case, about the 2020 Census questionnaire, remains in the motions phase in the U.S. District Court on remand.

OOG staff will continue to monitor these cases.

2. Legislation

- a. Budget Oversight Hearing before D.C. Council Committee on Executive Administration and Labor

On March 28, 2023, I, along with Board Chair Hutcheson and Director Cooks, testified at the BEGA Budget Oversight Hearing before the Committee on Executive Administration and Labor, chaired by Councilmember Anita Bonds. We provided a comprehensive overview of our present budget, discussed the currently proposed budget, made specific recommendations and requests for the next fiscal year, and answered questions from Chairperson Bonds. I also advocated for the inclusion of legislation proposed by the D.C. Open Government Coalition in the FY24 Budget Support Act.

- b. Resolutions disapproving the D.C. Council’s adoption of the Comprehensive Policing and Justice Reform Amendment Act of 2022 and the Revised Criminal Code Act of 2022 (H.J. Res. 26, 42; S.J. Res. 12)

Congress’s joint resolution nullifying the Revised Criminal Code Act of 2022 was signed into law on March 20, 2023.

The House has also proposed a joint resolution of disapproval of the Comprehensive Policing and Justice Reform Amendment Act of 2022, which was introduced and referred to committee on March 9.

The DC Open Government Coalition’s blog post on this disapproval resolution is in Dropbox.

- c. School Security and Transparency Amendment Act of 2023 (Bill 25-0170)

On February 23, 2023, nine members of the D.C. Council introduced the School Security and Transparency Amendment Act of 2023, which would exempt from the Open Meetings Act certain briefings on the security of the District of Columbia Public Schools and parks and recreation facilities. (Bill 25-0170 § 2 at p.1 ll.41; p.2 ll.42, 43, 55–57; p.3 ll.67–69, 74, 75 (intro. version).) Covered briefings would include those (1) called by the chairperson of the Committee on Facilities and Family Services in which (2) the Department of General Services presents “work order data regarding deficiencies in” exterior doors or windows or “doors to instructional and regularly used administrative spaces”; public address systems; fire alarms; or security surveillance systems. (*See id.* at p.2 ll.45–56; p.3 ll.67–70, 74, 75.)

The Committee on Facilities and Family Services will hold a hearing on this bill on April 13, 2023, at noon. Comments are due on April 20, 2023.

The introduced bill and hearing notice are in Dropbox.

- e. Fidelity in Access to Government Communications Clarification (Emergency / Temporary) Amendment Acts of 2023 (Bills 25-0165, 25-0166)

Like the similar temporary provision from the last Council Period, these measures would “clarify that communications created or received electronically in the course of official business are subject to” the District of Columbia Public Records Management Act of 1985. As with the last Council Period, the Mayor let the bill take effect without her signature, and it is now D.C. Act 25-56.

A companion temporary version passed first reading on March 7, 2023, and passed this week on the April 4, 2023, after final reading.

The signed emergency act and the engrossed temporary bill are in Dropbox.

e. Medical Examiner Records Privacy Amendment Act of 2022 (D.C. Law 24-241)

This legislation, which covers certain content of autopsies and external medical examinations of decedents—such as photographs—and excludes them from treatment as “public records” for FOIA purposes, took effect on March 10, 2023.

The signed act is in Dropbox.

f. National Conference of Commissioners on Uniform State Laws

The Uniform Law Commission’s Study Committee on Redaction of Personal Information from Public Records met on March 27, and is writing up its final report on whether or not to proceed to the next step—forming a committee to draft a uniform/model act.

g. Recodification of federal open-meeting statute (Public Law 117–286, §§ 3(a), 7)

The federal counterpart to the OMA was modernized as part of a codification project by the U.S. House of Representatives.

The Federal Advisory Committee Act (FACA) was repealed but replaced by the new Chapter 10 (“Federal Advisory Committees”) of Title 5 of the United States Code. Pub. L. 117–286, § 3(a), 7, approved December 27, 2022 (136 Stat. 4197–4206, 4361; 5 U.S.C. § 1001 *et seq.*, app’x). The new provisions cover “committees, boards, commissions, councils, conferences, panels, task forces, [and] . . . similar groups, . . . established or utilized to obtain advice or recommendations for . . . officers of the Federal Government.” *Id.* at 4197 (some plural endings added for conformity). These federal bodies are required to provide notice of their meetings, open their meetings to the public barring permissible exceptions, and release minutes and transcripts. *Id.* at 4202–04; *see also* 41 C.F.R. pt. 102-3, subpt. D (“Advisory Committee Meeting and Recordkeeping Procedures”) & app’x A (“Key Points and Principles”).

The codification bill (Public Law 117–286) is in Dropbox. (Relevant pages are 8–10 and 167 of the PDF file.)

h. Virginia Freedom of Information Act amendment re: posting of fee policy (Bill No. H 2007 (Va. Gen. Assem.))

As I have reported, the purpose of HB 2007 is to clarify Virginia’s FOIA fee structure and abolish subjective fees and costs incurred by requesters.

The governor signed the bill on March 26, and it will take effect on July 1.

The enrolled act is in Dropbox.

OOG will continue to monitor all relevant legislation.

D. Administrative Matters

1. BEGA 1030 15th Street, NW Relocation

The weekly meetings continued this month regarding BEGA's relocation to its new office. On March 8, 2023, March 15, 2023, and April 5, 2023, I, along with Director Cooks, Chief of Staff Mitchell, and Administrative staff members met with the Department of General Services and the Office of the Chief Technology Officer to discuss the progress of the agency's relocation to its new facility at 1030 15th Street, NW.

2. Information Technology Specialist

On March 17, 2023, BEGA posted an open, full-time position (CS-12) for Information Technology Specialist. The position description and application are available on the D.C. Human Resources (DCHR) website. The position description is also posted on open-dc.gov. The successful candidate will be responsible for, among other things, performing all development and maintenance of BEGA's websites and online records. The vacancy announcement will be open for applications until April 16, 2023.

3. Newsletter

Our Paralegal Specialist Kimberly Brown, assisted by the entire staff, is preparing the next issue of *The Opengovist* newsletter, which we expect to publish on April 26, 2023.

4. Website Redesign

As previously reported, BEGA is redesigning its website, bega.dc.gov. I along with Director Cooks, Senior Attorney Tran, and Chief of Staff Mitchell have been working on the project. Senior Attorney Tran is leading the implementation of the project since the departure of our IT Specialist. The redesign team met on March 10, 2023, and March 30, 2023. The project is in its final stages and moving toward completion and we will be setting a firm launch date soon.

This concludes the Office of Open Government's April 6, 2023, report. I am happy to answer any questions the Board may have at this time.

V. Report by the Director of Government Ethics

Good afternoon, Chairperson Hutcheson and Members of the Board. I am Ashley Cooks, the Director of Government Ethics. I am pleased to present this report on the activities of 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 because of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	49
Open - Negotiations	2
Open - Show Cause Hearing	1
Grand Total	52

OPEN "UNDOCKETED MATTERS"	
Grand Total	4

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	31
Stayed - Pending DC Superior Court Case	4
Stayed - OAG False Claims Act Case	2
Stayed - OIG Investigation	4
Stayed - US District Court Case	0
Grand Total	41

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	26
Open	5
Grand Total	31

	Current	Last month	January
Investigations Open	52	53	55
Investigations Stayed	10	10	10

The number of open preliminary and formal investigations includes 15 new matters. The investigative team has resolved 16 investigations since the Board last met. The investigations team resolved 15 complaints that were dismissed for a lack of jurisdiction.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

During the month of March, Attorney Advisor Maurice Echols and General Counsel Rashee Raj took “Rulemaking 101” presented by the Office of the Attorney General for the District of Columbia. Chief of Staff Christina Mitchell completed “How to Avoid Caving to Unreasonable Requests” presented by eCornell University. Investigator Ileana Corrales took “Interview Resistance” training by Wicklander-Zulawski. Program Support Assistant Naquita Titus completed “Leadership Training” presented by the Department of Human Resources.

On March 22-24th, Attorney Advisors Fran Vann and Millicent Jones, Supervisory Attorney Asia Stewart-Mitchell, General Counsel Rashee Raj, Senior Board Attorney Lynn Tran, and I attended the 18th Annual Conference for the Leadership Institute for Women of Color Attorneys. The two-and-a-half-day conference included engaging panel discussions such as: Law Firm Life from the Perspective of High-Ranking Women of Color Partners, Steps to Re-strategize your Career to Land your Dream Job, Salary Negotiations, Wealth Building, Retirement, and Legacy Planning for Attorneys, and a Spotlight on Wellness.

2. Conducted by staff

Since the March Board meeting, OGE conducted 4 trainings: the March Monthly Ethics Training, the second of two trainings for the DC Office of Risk Management, the Lobbyist E-filing Training, and the March Brown Bag session.

Last Monday, Attorney Advisor Millicent Jones presented the March Ethics Counselor Brown Bag Session on the General Principles under the District Personnel Manual § 1800.3. Several Ethics Counselors enjoyed participating in scenarios provided by other Ethics Counselors in attendance. A copy of the presentation was placed in the drop box for your review.

This month marks one year since the launch of OGE’s online Learning Management System (“LMS”). The LMS provides employees and public officials with on-demand ethics courses on topics such as Financial Conflicts of Interests, Receiving Gifts, Becoming an Ethical Leader, Ethical Decision Making, Post-employment Restrictions, Nepotism, Financial Disclosure Statements, and many more critical ethics subjects. Thanks to outreach efforts by the Training Team, we were able to develop a relationship with the Metropolitan Police Department (“MPD”) to ensure that MPD employees receive ethics training on an annual basis through the LMS. Based upon a list of 4,088 employees provided by MPD, Program Coordinator Kosick initiated a bulk upload and campaign, in which the LMS sent registration notices to those employees. He also provides weekly updates of training completions to high ranking MPD officials. In addition to uploading MPD’s employee, we have uploaded 7,200 financial disclosure filers to the LMS. Per the ethics rules filers are required to take ethics training on an annual basis.

Since the last Board meeting, 3,829 new users have registered for the system which equals a total of 4,261 users. Additionally, during the month of March, fifty (50) employees completed our online ethics training via PeopleSoft.

3. Outreach

OGE and OOG are finalizing the changes to the new BEGA website in collaboration with the Office of the Chief Technology Officer's website development staff. We recently submitted final changes to the new website and according to OCTO the website will be ready to launch next month.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 45 ethics inquiries, which is 6 more than the 39 reported at the last Board meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

2. Formal Advisory Opinions

OGE has drafted advisory opinion, "Guidance on the Financial Disclosure Statement Filing Process". The opinion addresses the history and purpose of financial disclosure filings, who is required to file (including the designation process), how to file a financial disclosure statement, and the importance of reviewing financial disclosure statements to determine any apparent or potential conflicts of interest. Given that the 2023 filing season has begun, this opinion will answer some frequently asked questions and concerns. The draft has been posted to the BEGA website and will be sent to the D.C. Register for a 30-day comment period. A copy was placed in the drop box for your review.

D. Legislation Updates

1. 2022-2023 Budget Oversight

On March 30, 2023, Chairperson Hutcheson, Director Allen, and I provided testimony and information on the agency's spending and fiscal year 2024 budgetary needs before the Committee on Executive Administration and Labor. Although the Mayor has proposed to increase BEGA's operating budget by \$158,119 to reflect projected salary steps and fringe benefits costs, the increase does not include any of the budget enhancements that the agency requested as essential to fulfilling its statutory obligations. I provided testimony concerning BEGA's enhancement request for funding to hire a Public Information Officer, Legal Fellow, and investigative staff to serve as a Lobbying Task Force to ensure compliance with the government's lobbying filing requirements. I also requested funding to make necessary upgrades to the Lobbying Registration and Reporting E-Filing System, which is the central database for lobbyists filing within the

District government. The E-Filing System currently allows lobbyists to terminate their registration without filing an activity report; does not distinguish between a lobbyist and client; does not properly calculate late filing fees; and allows lobbyists to file activity reports without filing prior reports, etc. Additionally, I testified about BEGA's enhancement request for funding to increase the non-personnel services fund, which ensures that the agency can continue to receive services under existing contracts and provide training to employees. A copy of my testimony and BEGA's budget submission were placed in the drop box.

2. Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022

This Act allows BEGA to transfer delinquent debts associated with settlements and judgements for ethics and Open Meeting Act violations to the District's Central Collection Unit, and for the funds collected on BEGA's behalf to be deposited into the Ethics Fund or OMA Fund instead of the General Fund. The Act became effective in December 2022. The additional funding will allow BEGA to supplement its operations budget. OGE has begun discussions with the Central Collection Unit to send an updated list of delinquent debts, so that collection action can begin.

E. OGE Administrative Matters

1. OGE Staffing

OGE plans to post announcements for its Auditor, Investigator, and Attorney Advisor vacancies this month.

2. Office Relocation

Our office relocation is still underway! We continue our bi-weekly meetings with the Department of General Services, and the project management team to discuss the build-out of the space, furniture, and finishes. Yesterday, we met to discuss details regarding signage, construction, and technology. An update on the IT production provided by OCTO will not delay our move date. The proposed move-in date remains July 2023.

F. Financial Disclosure Statement (FDS)

The FDS 2023 season preparations are underway. The FDS Team has determined which District employees will serve as Agency Ethics Counselors. As stated at the last board meeting, the FDS Agency Head memorandum, which provides details for employee designations and filings, was sent out at the beginning of February. A list of public filers and the cover letter have been sent to Total Office Product for printing and envelop stuffing. Delivery is expected on April 10. We are looking forward to the start of this year's filing season. We are predicting a slight increase in the number of filers this year.

	2023	2022	% Increase
PFDS	4186	3830	9.3
CFDS	4263	3614	18.0

G. Lobbying Registration and Reporting (LRR)

As mentioned earlier, the LRR Team conducted a Lobbyist Reporting and Registration training on March 22. Attorney Advisor Echols and Program Coordinator Kosick met with 30 attendees to discuss the Lobbyist laws and how to file registrations and activity reports. The 2023 first quarter Activity Reports are due April 18, 2023. On March 29, the LRR team contacted 538 Registrants and Clients to inform them that their 2023 Quarter 1 Activity Reports are due Tuesday, April 18, 2023, as April 15 is a Saturday and April 17 is DC Emancipation Day (observed).

Additionally, the LRR Team sent 9 letters to late Activity Report and Registration filers. To date, 1 recipient responded by paying \$1400 in late fees.

Lobbyist activity in March 2023 compared to March 2022

	Year To Date			March		
	2023	2022	% chg	2023	2022	
NEW	45	79	-43.04	5	6	-17
RENEW	359	392	-8.42	0	6	-100
TERMINATIONS	43	55	-21.82	0	2	-100
ACTIVITY REPORTS	460	466	-1.29	0	0	None

Thank you. This concludes the Office of Government Ethics’ April 6, 2023, report.

Board Member Sobin asked Director Cooks if there was a reason for the predicted increase in the number of financial disclosure filers. Director Cooks noted that increased identification of individuals who should file along with increases in salaries explained the expected increase in filers.

VI. Public Comment – if received

A. Public Comment

The Board received one public comment from Gottlieb Simon:

Statement of Gottlieb C. Simon to the
Board of Ethics and Government Accountability
April 6, 2023

I appeared at BEGA’s oversight hearing earlier this year to ask if the Office of Government Ethics has sufficient resources to enforce its orders. My question was prompted by the fact that the orders entered in 2020 against two former ANC Commissioners, A. Mohammad (Case No. 20-0023-P) and J. Johnson (Case No. 20-

0011-P). OGE acted against the two for their failure to return government purchased equipment when their terms ended in 2018, and in one case, for refusing to cooperate with BEGA investigators. The two cases have remained in “closed—pending collection” status for more than two years. These two cases are not unique, however. According to the “BEGA Complaint Quarterly Summary Report for FY23 Qrt 1” there are more than two dozen cases that are pending collection, some for even longer than two years.

Looking at just these two cases, it is not clear from my contacts with the relevant government officials that *any* efforts have been made to collect the debts owed the District. One case involves a fine of \$4,000, the other, \$5,000. In fact, in communicating with the Office of Government Ethics and the Central Collection Unit, I found there was disagreement over whether the OGE had even referred the two cases to the CCU.

I respectfully suggest that the Board determine what specific actions the OGE or the CCU have taken, and when, to collect these two debts. The Board should also consider whether these two cases, and the other cases that are in pending status, are pending because there is a lack of resources or whether the delay is due to management issues.

While the District obviously can always use any additional funding, what is really at stake here is not money but whether BEGA’s orders mean anything and whether our ethical standards will be enforced or flagrantly and scornfully ignored.

B. Discussion of Public Comment

Board Member Nottingham noted that he looked forward to hearing more about how the agency is responding to the questions raised by Mr. Simon about the collection of delinquent debt and noted the two matters listed by Mr. Simon and the Redmond matter.

Director Cooks noted that with respect to the two matters referenced by Mr. Simon, OGE sent the matters over to the Central Collection Unit (CCU) for collection in 2020. OGE re-submitted the two matters to the CCU again on March 17 and General Counsel Raj has been in communication with the CCU on these matters. Director Cooks also stated that OGE planned to submit an updated list of delinquent debt to the CCU that would include these two matters along with the Redmond matter and noted that one of the reasons for the Delinquent Debt Recovery Amendment Act of 2022 was to allow BEGA to retain delinquent debts collected by the CCU.

In response to a question from Board Member Nottingham on other options to collect delinquent debt, Director Cooks noted that one other option was to have the Office of the Attorney General seek a judgement on behalf of BEGA in Superior Court, but that judgement would still need to be collected. Director Cooks also noted that in the past the agency’s auditor sent collection notices when fines were overdue. Board Member Nottingham suggested that sending a collection letter after the debt was overdue should be standard practice. Board Member Sobin agreed with Board Member Nottingham, noting his experience with similar collection letters at the DC Bar.

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 2:06 pm

The Board approved a negotiated disposition in **23-0100-P In re K Boodlal**.

IX. Adjournment

The Board will next meet on May 4, 2023, at 12:00 p.m.