

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

**MINUTES OF MEETING
NOVEMBER 5, 2020**

The District of Columbia Board of Ethics and Government Accountability held a meeting on November 5, 2020 at 12:00 p.m. remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Melissa Tucker, and Darrin Sobin. Questions about the meeting may be directed to bega@dc.gov

The public portions of the discussion and meeting were recorded and may be found at: https://youtu.be/ANKj4FG_9ak

I. Call to Order

Chairperson Hutcheson called the meeting to order.

II. Ascertainment of Quorum

Quorum established.

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously approved the agenda and the September 21, 2020 Meeting Minutes with no changes.

The Board unanimously approved the October 1, 2020 Meeting Minutes with one change of “12:00 a.m.” to “12:00 p.m.” to reflect the correct meeting time.

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 Opinion: On November 5, 2020, I issued FOIA Advisory Opinion (#OOG-002-10.1.19-AO) regarding the Metropolitan Police Department’s

(“MPD”) redaction of body-worn camera (“BWC”) footage before releasing the footage under the D.C. Freedom of Information Act (“D.C. FOIA”) My findings were that to be transparent and in full compliance with FOIA, MPD and the District of Columbia government must implement the following changes to their BWC program: (1) MPD must provide a publicly available fee schedule that provides redaction costs per minute and per individual or object for BWC footage; (2) D.C. FOIA should be amended to require MPD to use redaction technology that provides the least costly commercially available method of redacting BWC recordings, to the extent possible and reasonable; (3) MPD police officers do not have an expectation of privacy when performing their duties in a public place, so MPD’s redaction of police officers’ faces, badge numbers, and other information that would identify the police officers does not have a basis in D.C. FOIA; (4) D.C. FOIA does not support MPD’s redaction of third parties in BWC video footage in every instance; (5) D.C. FOIA exempts from disclosure vehicle license plates to protect personal privacy; however, because the Driver’s Privacy Protection Act prohibits the release of personal identifiable information associated with vehicle license plates, redacting vehicle license plate information is unnecessary; (6) MPD may rely on D.C. FOIA’s personal privacy exemption to redact residential addresses, but the exemption does not apply to business addresses; and (7) the exemptions applicable to BWC video footage applies to audio containing personal private information.

The advice provided in this Advisory Opinion is consistent with the testimony I provided before the D.C. Council, which I will discuss later in this report.

2. Informal OMA/FOIA Advice:

OOG continues to experience a high volume of requests for advice and assistance on open government matters since the commencement of the public health emergency on March 16, 2020. I would like to commend my staff on their hard work and professionalism in handling these requests. Since the last Board meeting, the OOG’s responses for informal and technical FOIA and OMA advice and assistance are as follows:

- The Office responded to 22 requests for FOIA advice;
- The Office responded to 22 requests for OMA advice; and
- The Office responded to 6 requests for technical assistance including with open-dc.gov.

B. Training/ Outreach:

1. FOIA Training: On October 1, 2020, Attorney DeBerry facilitated a virtual basic FOIA training session for the Alcoholic Beverage Regulation Administration’s (ABRA) FOIA Officer.

2. OMA Training: On October 7, 2020, Attorney Barton facilitated a virtual OMA training with the Fatality Review Committee. Attorney DeBerry was also in attendance.

3. OMA Training: On October 8, 2020, Attorney DeBerry facilitated a virtual OMA training for the Alcoholic Beverage Regulation Administration's (ABRA) FOIA Officer.
4. COVID-19 HSEMA Briefing: On October 13 and October 26, 2020, I attended the COVID-19 Coordination and Support Plan (CSP) Briefing. The briefing provided updates on the District's response to the pandemic.
5. OAG Training Course: On October 15, 2020, Attorney Barton attended a training with the Office of Attorney General on the "Introduction to the District of Columbia Rule Act." Former OGE General Counsel Brian Flowers was one of the presenters.
6. OOG Ethics Weeks Trainings: On Monday, October 19, 2020, I gave a brief introduction and greeting to Ethics Weeks participants. The Office of Open Government provided three virtual training sessions during Ethics Week on October 21, 2020. The Office provided two FOIA training session and one OMA session. We received positive ratings from participants for our training sessions. I facilitated the course, "Social Media and FOIA." This training focused on compliance with FOIA when conducting public business via social media platforms. Attorney Barton facilitated, "FOIA Advisory Opinions and Hot Topics." This session covered advisory opinions issued by the Office of Open Government and provided an overview of federal and D.C. FOIA law. Attorney DeBerry facilitated "Open Meetings Act Basic Training." The session provided training for administrative points of contact for boards and commissions and provided instruction on the Open Meetings Act and Open Meetings Act Regulations. The Office also presented on Friday, October 23, 2020, in the "Ask BEGA" session. We each presented an overview of the office and our role in the office.

The Office staff also attended Ethics Weeks training sessions as participants. We attended the following ethics sessions:

- *Ethics Updates* (Sheree DeBerry, Johnnie Barton, Niquelle Allen)
- *Local Hatch Act* (Sheree DeBerry, Johnnie Barton)
- *Seeking and Negotiating Future Employment and Post-Employment* (Sheree DeBerry, Niquelle Allen)
- *Social Media and Ethics* (Niquelle Allen, Kevon Bridges, Sheree DeBerry, Johnnie Barton)
- *Ethics Best Practices* (Sheree DeBerry, Johnnie Barton, Niquelle Allen)
- *Legal Ethics and Government Attorneys* (Sheree DeBerry, Johnnie Barton, Niquelle Allen)
- *Investigations Presentation* (Sheree DeBerry, Johnnie Barton)

I would like to take this opportunity to commend the presenters and participants from both offices for putting on a great “Ethics Week” program. Due to the virtual format, OOG was fortunately able to attend many of the ethics training sessions. I would like to also offer a special thanks to OGE Supervisory Attorney Ashley Cooks for coordinating and facilitating all of the training courses. It was definitely a job “well done.”

7. NAAG Consumer Protection Virtual Fall Conference: On October 27, 2020, Attorney DeBerry, attended the NAAG Consumer Protection Virtual Fall Conference. The conference focused on consumer privacy laws. An in-depth discussion was held on the implications of the California Consumer Privacy Act, California Public Records Act, and the General Data Protection Regulation.

8. AINS (FOIAXpress) User Conference: On October 28-29, 2020, I, along with the entire OOG staff, attended the 15th annual AINS (FOIAXpress) User Conference. The two-day training highlighted: recent significant FOIA cases; processing requests through FOIAXpress; future upgrades coming to FOIAXpress; and the future of FOIA and remote work.

9. Monitoring Public Body Meetings: OOG continues to play an important role in ensuring that Boards, Commissions, and other public bodies successfully conduct government business remotely. OOG continues to ensure the public’s right of access to public meetings by monitoring public body compliance with the OMA as amended by the “Coronavirus Support Congressional Review Emergency Amendment of 2020.” We are monitoring public meeting notices to ensure they provide remote meeting access information for the public to observe these meetings. We are also attending meetings remotely to observe meetings as participants.

C. Litigation and Legislative Update:

1. BWC Public Hearing Testimony: On October 15, 2020, I testified before the Committee on the Judiciary and Public Safety, chaired by Councilmember Charles Allen, on B23-0882, the “Comprehensive Policing and Justice Reform Amendment Act of 2020.” As the Board knows, Title B of the legislation seeks to improve public access to BWC video. My testimony concerned that portion of the police reform bill. If enacted, the legislation would require the Mayor to publicly release the names and body-worn camera recordings of any officer who committed an officer-involved death or serious use of force, unless the subject or their next of kin objects to its release. My testimony highlighted the following significant barriers to transparency that exist when members of the public and the media request BWC footage through the FOIA process; (1) the over-redaction of the video footage; (2) the need for timely production of the video footage, (3) the high cost associated with processing FOIA requests; and (4) the lack of redaction guidance

that explains the cost of the act of redaction in actual work hours (cost per hour). My testimony is available on Open-dc.gov and there is a copy in dropbox.

2. Update on D.C. FOIA Lawsuit: As reported to the Board in August, on July 13, 2020, Terris, Pravlik & Millian, LLP ("TPM"), filed suit alleging that the District of Columbia government failed to produce and post online various budget-related documents as required by FOIA. The Complaint alleges that the Executive Office of the Mayor failed to produce documents related to the Office of the State Superintendent of Education (OSSE) and District of Columbia Public Schools (Civil Action No. 2020 CA 003087 B). On October 13, 2020, the District filed a Motion to Dismiss. The court has granted plaintiff a two-week extension to file its opposition to the District's motion. OOG will continue to monitor this lawsuit is simply monitoring the litigation because it is of relevance to the office mission.

D. Administrative Matters:

1. FY22 Budget Planning: October 14, 2020, I along with Director Ford attended the fixed cost estimates budget meeting held by the Office of the Chief Technology Officer. Director Ford and I are currently preparing the offices FY22 Budget. Of primary interest is seeking funding to relocate the office to a more suitable space. I also intend to request funds for a paralegal specialist position.

2. Attorney-Advisor and Trial Attorney Vacancies: The Education Attorney Advisor position was posted on DCHR's website on October 14, 2020, and we are accepting applicants through DCHR until November 14, 2020. We are on track to have that position filled by December 31, 2020. I am working with DCHR on a position classification for the trial attorney position. I anticipate listing that position by the end of the month.

3. Open Meetings Act Training Video: I met with producers from the Office of Cable Television, Film, Television and Entertainment to discuss the production of the OMA training video. I am working on the script and we are looking to begin filming in early January 2021. We were looking to produce a video similar to "Ms. Ethics." I would also like to mention that the OCTFME producers praised that video as one of the best training videos in government.

This concludes the Office of Open Government's November 5, 2020 report.

V. Report by the Director of Government Ethics

Good morning, Chairperson Hutcheson and Members of the Board. My name is Rochelle Ford and I am 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 Office of Government Ethics (OGE) Operations: First I will provide a recap of the previous month's activities. Given the COVID-19 emergency, OGE's staff has continued to investigate pending matters as is feasible given the stay at home orders. 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	50
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	50

OPEN "UNDOCKETED MATTERS"	
Grand Total	4-

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	30
Closed - Pending DC Superior Court Case	0
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	9
Stayed - US District Court Case	0
Grand Total	43

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	0
Grand Total	24

	Current	Last month	August
Investigations Currently Open:	50	48	53
Investigations Stayed:	11	13	13

Investigations initiated and closed: The number of open investigations 8 newly initiated investigations opened since the Board last met.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

As far as trainings attended, Auditor Tujuba completed 6 trainings related professional development, organizational efficiency, and administrative training.

General Counsel Raj attended the first half of a virtual conference titled “Women Lawyers in Leadership” which concludes in November.

2. Conducted by staff:

From October 19-23, 2020, OGE launched its first all-virtual Ethics Week, which allowed our office to provide an expanded array of trainings and panel discussions. opportunities for participants. On Monday, CM Charles Allen welcomed participants and affirmed the District’s commitment to ethics as the public health crisis has required District employees to adapt quickly to changing work environments, public service needs, and limited resources offered 12 ethics and open government presentations which were viewed by 1,293 attendees and both OGE and OOG employees participated. The OOG provided trainings on Wednesday, which were very well attended and informative.

We received an overwhelming amount of positive feedback from those who attended. Guest panelists from DCHR, OCP, the Mayor’s Office, OAG, and the Office of Human Rights and the OIG also participated in Ethics Week events.

Since the last Board meeting, OGE attorneys gave four ethics trainings to DC One Fund, EOM, and two to DOES to include social media ethics training. 50 employees took online ethics training in October 2020.

OGE did not host a brown bag this month in order to host BEGA’s 2020 Ethics Week. We hope to resume these informal sessions with one more before the end of the year.

C. Advisory Opinions/Advice:

Informal Advice: approximately 72 which is 26 more than the 46 reported at the October meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

OGE did not issue any advisory opinions since the last meeting.

D. Budget

FY21 Budget: OGE is now working to prepare for FY22 budget planning with Director Allen. Also, as we anticipate budget restriction as a result of the global pandemic, OGE has worked with the CFO and will work with OAG to perfect and secure outstanding debts to BEGA. Auditor Tujuba reached out to the OCFO Central Collection Unit (Harris & Harris Collection Services) for updates on any BEGA debts collection efforts in October for an update. They have reached out to 5 debtors, but do not have anything to report back yet.

E. OGE Administrative Matters

- **Office Status:** OGE's staff continues to work remotely, although some staff members go into the office on an ad needed basis to handle mail and other matters onsite as needed.
- **BEGA will post vacancy announcements for a new OGE attorney and a Senior Board Advisor this month.**
- **OGE is working to identify a candidate to serve as a remote intern**
- **OGE confirmed that it's Performance goals for FY21 will remain the same as our FY20 goals so that we can set a benchmark to identify additional KPIs**

A spreadsheet of our FY20 Key Performance indicators has been uploaded to the Dropbox.

F. Financial Disclosure and Lobbyist Registration Programs:

Financial Disclosure – The FDS team finalized a list of Financial Disclosure Statement non-filers and sent fine notices to the 151 recipients on October 27th. OGE is preparing the DC Register Lists of Filers and Non-Filers to be published next week.

Auditor Tujuba completed the audit of designated filers and have identified potential designees for discussion with OGE.

Board Member Sobin asked a question about how OCFO is helping BEGA in debt collection from non-DC Government employees. OGE Director responded that Auditor Tujuba was instrumental in getting an MOU in place with OCFO for debt collection.

OCTO has agreed to proceed with allowing for Councilmembers to make semi-annual electronic FDS filings, going forward, which they had not been able to do previously.

Please see email in DropBox.

Lobbying Registration and Reporting (LRR) System – September 30, 2020 marked the end of the 2020 3rd Quarter for Lobbyist Reporting. Lobbyists filed 434 Activity Reports announcing 3,943 Contacts with DC Elected/Appointed officials and various DC Staff during the 3rd Quarter. Additionally, Lobbyist reported 15 New Clients, 5 Renewals, and 21 Terminations. Lobbyist reporting officials filed 27 support tickets primarily seeking help with adding DC Officials for reporting and seeking general assistance with completing the Activity Reports. There were several phone calls and email requests for assistance this month. October 15th marked the end of the official Lobbyist Registration and Reporting for the 3rd Quarter. OGE has prepared a Notice of Non-Compliance to the 8 lobbyists who did not comply with reporting. Also, Auditor Tujuba discussed the findings on the Lobbyist audit with OGE and agreed on a corrective action plan.

Thank you. This concludes the Office of Government Ethics' November 5, 2020 report.

Board Member Sobin asked whether there was a timeline on when DC Government employees will return to offices. Director Ford said no, noting DCPS had to adjust its student return dates this month, and that it will likely be spring of 2021. Board Member Sobin commented that DC Bar and several corporations such as Google are looking to phase in potential returns to office at the close of their Fiscal Year, the end of June 2021.

VI. Acknowledge of Public Comment – no comments submitted as of the meeting.

VII. Executive Session (non public)

VIII. Resumption of Public Meeting

Board Members affirmed the OGE Director's decision on the appeal of 20-0023-P, In Re Muhammad and on the appeal of 20-0011-P, In Re Johnson.

IX. Adjournment