

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
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BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT

AGENCY PERFORMANCE OVERSIGHT HEARING
FISCAL YEARS 2016-2017

Testimony of Traci L. Hughes, Esquire
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2:00 PM
Room 123

Good afternoon, Chairman Allen and members of the Committee. I am Traci Hughes, Director of the Office of Open Government (OOG), an independent office within the Board of Ethics and Government Accountability. It is a pleasure to be here today to update the Committee and the public on the operations of the OOG.

The statutory charge of the OOG is to ensure agency and public compliance with the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA). Specifically, the OOG oversees compliance of more than 175 boards, commissions and public bodies; and FOIA compliance of more than 90 District government agencies, including the Executive Office of the Mayor and the Council of the District of Columbia. The OOG also works to ensure that all branches of government comply with existing statutes, regulations and Mayor's Orders by providing advice on transparency policies and programs with the aim of increasing and improving the means of public access to records.

Over the past year, the OOG has solidified its reach and effectiveness regarding its statutory mandate. In February of 2016, the OOG began to log all requests for formal and informal advice regarding compliance with the OMA and FOIA. The OOG has answered nearly 400 requests for advice from agencies, public bodies, the public, and non-profit entities that serve our most vulnerable residents. The nature of these substantive and technical requests varies in complexity. The substantive responses include: (1) advice to FOIA officers on the proper application of FOIA and applicable case law; (2) answers to public body inquiries about proper OMA protocols to follow; (3) requests from the public to mitigate, and oftentimes investigate agency responses to FOIA requests; and, (4) guidance on how to submit a FOIA request. Technical advice includes: (1) navigating a FOIA request from its submission to the final agency determination; (2) assistance on how to process through the FOIA portal; and, (3) assistance on how to access and publish records statutorily mandated by the OMA to the Central Meetings Calendar.¹

In an effort to better track our efforts in this regard, and to improve agency transparency, the OOG launched this week a visual dashboard on the OPEN-DC.gov website. This insightful, user-friendly tool will provide webpage viewers with access to: (1) all formal OOG advisory opinions issued to resolve complaints of a public body found to be in violation of the OMA; (2) all sua sponte opinions issued, in many cases as a final recourse, in response to an OOG compliance audit; and, (3) the types of legal and technical requests the OOG fields and the general nature of the responses.

In addition to providing legal and technical advice, the OOG works collaboratively with the Mayor's Office of Talent and Appointments (MOTA) and the Mayor's Office of Legal Counsel (MOLC) to conduct OMA trainings of newly sworn public body members and yearly trainings for FOIA officers, respectively. As a result of the mandatory training requirements of all public body members, the Office of the Chief Technology Officer (OCTO) by way of MOTA, now supplies District Government email addresses to public body members. This ensures that all emails regarding District Government business may be reached more easily by FOIA.

¹ The Central Meeting Calendar was developed by the OOG in 2014, and is maintained by the OOG on behalf of all public bodies.

The OOG also conducts trainings upon request by public bodies, agencies and entities such as the D.C. Federation of Civic Associations (DC Federation). Over the past Fiscal Year, the OOG has conducted 26 OMA trainings for more than 100 public bodies; and 31 FOIA trainings of approximately 30 agencies, including the Washington Legal Clinic for the Homeless.

The OOG is happy to report that our training and advice giving efforts have shown a cognizable return. In an August 2016 audit of all public bodies conducted by the OOG, we found that all but four of the 170 public bodies listed on the Central Meetings Calendar were in compliance with the OMA.

The electronically performed audit was no small undertaking. Compliance monitoring is ongoing, but remains tedious as public bodies are not required to publish meeting dates, agendas, notices, and related records on the Central Meetings Calendar. As a result, the auditing process requires the OOG to track the records on the central calendar and to hunt for meeting information on respective agency websites. The placement of the public body meeting information on government websites is both lacking and inconspicuous in many instances. Of equal import is the public's inability to easily find all public body meeting records in one place, further frustrating access to government information.

As a result of the audit, the OOG was forced to initiate its first OMA enforcement action in the Superior Court against the Mayor's Advisory Commission on Caribbean Community Affairs. A hearing in that matter is currently scheduled for March 24, 2017.

The public is also proving to be an important monitor of compliance as well. The OOG has investigated and resolved eight OMA complaints during Fiscal Years 2016-2017, all of which were initiated by the public.

The OOG has been able to accomplish all of this with just two staff members: Waddah Kittab, OOG IT Specialist; and Johnnie Barton, OOG Attorney Advisor.

Our small staff is having an impact, locally, nationally and internationally. During the fiscal period under review by this Committee, I received direct requests from business and government delegations from Thailand, Brazil, the Republic of Georgia, Jakarta, Ukraine, Japan and Italy inquiring about the Office of Open Government and its initiatives. I have also conducted training sessions for participants in the White House Young African Leadership Institute regarding government transparency policy and best practices. The OOG's local efforts were also cited in the online publication State Scoop <http://statescoop.com/legislatures-need-to-get-serious-about-modernizing>), and highlighted during my keynote remarks at the Sunlight Foundation's annual Transparency Camp.

To date, the OOG has been able to register this degree of success despite extremely limited financial and human resources. The office is now entering its fourth year, and the strain on operations because of the level of funding the OOG receives continues to make it extremely difficult for the office to fulfill its purpose of ensuring that government operations are as open and transparent as this Council contemplated six years ago.

The OOG faces ongoing and significant administrative and structural barriers to its operations. When the Council passed legislation creating the Open Government Office (now referred to as the Office of Open Government), it was understood that the intent of the law was for it to be an independent agency. This meant that the OOG was to have its own budget authority, and autonomy to hire personnel. However, when the Council placed the OOG under the Board of Ethics and Government Accountability, it migrated the OOG and its entire budget to BEGA, but retained the independence of the Office. Although the Council, in moving the OOG to BEGA, did so in an effort to fully fund BEGA, it has led to unintended consequences resulting in severe budgetary constraints and imbalances that are directly impeding the day-to-day operations of the OOG.

As BEGA holds the line item, it has given the director of government ethics sole management authority over the BEGA budget. Although we are to share the budget, as a co-equal director under BEGA, I am required to get all expenditures approved by the ethics director. This can include everything from the purchasing of office supplies to travel. Additionally, the OOG is so intertwined with the ethics office that even my time must be approved by the ethics director.

To ease some of the budgetary burden, the Council agreed to provide the OOG with an allotment of \$43,000 for the FY 2017 budget. This allotment was not intended to cover BEGA operation costs, but to give the OOG a small bucket of funding to pay for trainings, travel, marketing materials, equipment, etc. However, at the start of the Fiscal Year, the ethics office determined that it would require the OOG to cover its own operational costs of more than \$20,000.

It is my hope that this Committee will undertake a careful review of this imbalance, and provide the OOG with the appropriate funding and necessary structure to fulfill its statutory mandate.

Despite levels of funding and current structural limitations, the OOG is looking ahead to improving its outreach to the government and to the public. To further the goals of openness and transparency, and to advance the OOG's mission, the office is focusing on three primary initiatives in Fiscal Year 2017: (1) legislative changes to the OMA and FOIA; (2) continual monitoring of public body compliance with the OMA; and, (3) public outreach.

Bill 21-0577, the "Strengthening Transparency and Open Access to Government Amendment Act of 2016", died during the previous Council Period. However, that measure contains the precise provisions that would greatly assist the OOG's work under FOIA and the OMA. Key provisions of the bill would: (1) require the mandatory placement of public body meeting information on the Central Meeting Calendar; (2) empower the OOG to resolve appeals of FOIA denials; (3) increase the number of days for agencies to respond to FOIA requests from 15 to 20 days; and, (4) include ANCs under the OMA. The OOG looks forward to working with the Committee to implement legislative changes to FOIA and the OMA.

Secondly, the OOG must continue to monitor public body compliance with the OMA. This is necessary to ensure public bodies comply with, among other provisions, the OMA's "Notice of meeting" and "Recording of meeting" provisions. These two key provisions of the OMA respectively provide the public with access to public body meetings, and a record of what occurs during meetings. Consistent monitoring of public body activities ensures District government is

open and transparent, and will reduce the likelihood of enforcement actions. The OOG's goal is to assist public bodies with compliance with the OMA.

Lastly, the OOG will devote significant energy toward public outreach this fiscal year. The OOG will continue to issue its newsletter, *The OpenGovist*, and to provide FOIA and OMA trainings to grassroots groups such as civic and community associations and nonprofit providers. The OOG will also create online training tools for public bodies and agency FOIA officers. And the newly launched OOG dashboard will provide even those with the most basic computer skills, with access to the OOG's database of advisory opinions and legal advice. In short, the OOG will continue to make access to government records as streamlined and efficient as possible.

Thank you, Chairman Allen, and members of the Committee, for the opportunity to testify. I am happy to answer any questions you may have.