

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY  
OFFICE OF OPEN GOVERNMENT



March 8, 2016

**VIA CERTIFIED AND ELECTRONIC MAIL**

Ms. Terri Thompson, Esquire  
Chairman  
District of Columbia Housing Authority Board  
of Commissioners  
c/o Ms. Pat Fagin Scott, Director of Board Relations  
1133 North Capitol Street, N.E.  
Washington, DC 20002  
[pfscott@dchousing.org](mailto:pfscott@dchousing.org)

**RE: #OOG-0004\_1.07.16**

Dear Chairman Thompson:

As you are aware, on January 8, 2015, the Office of Open Governments (OOG) electronically transmitted to the District of Columbia Housing Authority Board of Commissioners (Board) the complaint it received from Mr. Fritz Mulhauser, alleging the Board's failure to publish meeting notices, agendas and meeting minutes detailing the reason for closed/executive sessions in violation of the Open Meetings Act (OMA) (D.C. Official Code §§ 2-571 *et seq.* (2015)).

The purpose of this letter is to: (1) apprise the Board of the OOG's investigatory findings regarding the complaint allegations; (2) issue the Board an OOG advisory opinion as directed by the OMA; and (3) demand the Board provide the documents requested since January 8, 2016<sup>1</sup>, by the close of business on March 11, 2016.

After considering all the available information in the complaint and relevant sources<sup>2</sup>, the OOG finds the Board in violation of the "Record of meetings" requirements of the OMA (D.C. Official Code § 2-

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<sup>1</sup> The Office of Open Government (OOG) transmitted in writing two requests of the Board. On January 7, 2016, the OOG requested (1) "all Board meeting dates; draft and final agendas (including corresponding web publication date); (2) any draft and final meeting minutes of all meetings which have occurred from January 1, 2015 to December 31, 2015, which are not currently posted on the District of Columbia Housing Authority website; (3) all audio, video and transcription recordings of closed sessions; and, any relevant documentation you believe useful to the OOG in making a determination regarding Complaint OOG-0004\_1.07.16." On February 11, 2016, OOG renewed the same request.

<sup>2</sup> See, 3 DCMR § 10405.2. In this case, the relevant sources consist of Board Meetings notices from March 3, 2015 through February 10, 2016. The compiled information was obtained from the Board's website at <http://dchousing.org/type.aspx?typeid=21&topid=23>.

578 (2015)), for failing to provide full records of Board meeting minutes, and for not making these minutes easily accessible to the public as discussed *infra*. The OOG also finds the Board in violation of 3 DCMR § 10405.4, for failing to “address the complaint and other questions raised by the Director.” The OOG finds the Board’s inaction rises to the level of willful or reckless disregard of the OMA and the regulations which implement the OMA.”<sup>3</sup> Therefore, to prevent future violations of this provision, the OOG may exercise its statutory enforcement authority to petition the Superior Court to enjoin the Board from continuing to disregard the OMA.

The complaint also raises serious allegations of the Board holding closed meetings in violation of the “Notice of meetings” requirements in the OMA (D.C. Official Code § 2-576 (2015)). While the OOG is not able to fully investigate these allegations or to issue findings at this time because of the Board’s failure to supply requested records, if these allegations are found to be true, the OOG may seek legal redress to include: (1) imposition of civil fines of up to \$250 for each violation; (2) enjoining future violations of D.C. Code § 2-576; (3) seeking a declaration that the Board is in violation of the OMA; and (4) having the court declare action taken at such meetings to be void if the facts warrant this extreme remedy.

## **Discussion**

### *OOG Investigatory and Enforcement Authority*

The purpose of the OMA is to provide the public with full and complete information regarding the affairs of government and any official actions taken by government officials.<sup>4</sup> Therefore, the OOG reviews complaints with the aim of supporting the policy of the OMA, and will strictly construe the application of exceptions to the Act. The legislature provided the OOG with the authority to investigate and seek legal redress where a Public Body has violated the OMA, as in the instant case.

The regulations promulgated pursuant to D.C. Official Code § 2-593(a)(4) (2015)) are found at 3 DCMR § 10400 *et seq.* (2015) and provide the OOG with exclusive jurisdiction to investigate alleged violations of the OMA by a Public Body. Where such violations constitute a willful or reckless disregard of the provisions of the OMA or the requirements of 3 DCMR § 10400, the OOG may enforce compliance with the Act by filing suit in the Superior Court of the District of Columbia against the Public Body. D.C. Official Code § 2-579; 3 DCMR § 10406.4.

The grant of investigative authority also empowers the OOG to “issue an Advisory Opinion addressing the complaint that a Public Body violated the Open Meetings Act.” 3 DCMR § 10406.1. The Board’s lack of cooperation in meeting the information request and its failure to timely respond to the complaint leaves the OOG no statutory recourse, but to issue this binding advisory opinion “based on the information available from the complaint and any other relevant sources.”<sup>5</sup>

### *The Board is a Public Body Subject to the OMA*

The Board is an eleven-member governing body of the District of Columbia Housing Authority. The Board is clearly a “Public Body” defined by the OMA under D.C. Official Code § 2-574(3), and therefore subject to the OMA. The Board’s status as a Public Body is made abundantly clear in the legislative history of the OMA which states:

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<sup>3</sup> 3 DCMR § 10406.4.

<sup>4</sup> D.C. Official Code § 2-572.

<sup>5</sup> 3 DCMR § 10405.2.

Public Body would include any council, board, or commission of the District government established by statute, regulation, or order. This definition would include all boards and commissions defined under the D.C. Official Code section 1-523.01<sup>6</sup>..”

A footnote numbered “6” to the above language identifies the Board as one of many of entities subject to the OMA. Since the Board is a Public Body it must adhere to the letter of the law in the conduct of public meetings.

### *Board Violations of the OMA*

Prior to electronically transmitting a copy of the complaint to the Board on January 8, 2016, the OOG Director, Traci Hughes, spoke by telephone with Pat Fagin Scott, Director of Board Relations, notifying her that the notification of complaint would be immediately forthcoming, and to confirm Ms. Scott’s email address to ensure receipt of the complaint. In an email to Director Scott, also on January 8, 2016, the OOG reiterated January 22, 2016, as the statutory deadline for the Board to comply with the information request. However, the Board did not provide the information requested by January 22, 2016. Therefore, on February 11, 2016, OOG Director Hughes sent an additional email to Ms. Scott which asked, “[D]oes the Board intend to supply the requested Records?” Because the Board did not respond to the complaint or provide the information requested by the OOG, the OOG finds the Board in violation of 3 DCMR § 10405.4.”<sup>7</sup>

The OMA requires that detailed records of all public meetings<sup>8</sup> must be maintained by a Public Body such as the Board. Detailed records are in the form of detailed minutes, electronic recordings<sup>9</sup>, and transcripts.<sup>10</sup> Detailed meeting minutes are required to be posted to the website,<sup>11</sup> along with the agenda of every meeting. As the majority of boards and commissions are unable to post meeting minutes within the three business days as required under the OMA, draft meeting minutes must be posted within three business days upon the conclusion of the meeting, with annotation at the top of the document that full meeting minutes will be posted to the website on the next meeting date of the board or commission.<sup>12</sup>

<sup>6</sup> The Housing Authority Board of Commissioners is among the list of Boards and Commissions referred to in the statute and is found at D.C. Code § 1-523.01(27).

<sup>7</sup> 3 DCMR § 10405.2, requires the Public Body to in good faith, make every effort to respond to the complaint within thirty (30) days.

<sup>8</sup> D.C. Official Code § 2-574(1). “A meeting is a “gathering of a quorum of the members of a public body, including hearings and roundtables, whether formal or informal, regular, special or emergency...”

<sup>9</sup> The complaint states: “we asked the Authority staff in 2014 and learned meetings are indeed recorded, just not available (except by paying a fee to a contractor).” The OOG is unable to issue findings at this time as to whether the Board is in compliance.

<sup>10</sup> D.C. Official Code § 2-578.

<sup>11</sup> Although D.C. Official Code §2-578(b) states copies of records shall be made available for public inspection, the Office of Open Government interprets public inspection in concert with the §2-576(2)(B) where notice shall be provided by posting on the website of the public body or the District government. Notice of meetings, to include the posting of agendas, must be provided in each format and location practicably relied upon by the public: via print publication, posting of a notice in the physical location where the meeting will take place, and on the Internet.

<sup>12</sup> See December 12, 2013, OOG Advisory Opinion to DHCD. [http://www.open-dc.gov/sites/default/files/12.12.13%20OOG%20Opinion\\_HPTF\\_Meeting%20Record\\_Minutes%20Audio%20Video%20Transcripts.pdf](http://www.open-dc.gov/sites/default/files/12.12.13%20OOG%20Opinion_HPTF_Meeting%20Record_Minutes%20Audio%20Video%20Transcripts.pdf).

The OOG's investigation of Complaint OOG-0004\_1.07.16 reveals that excluding the months of August, 2015 and January, 2016, the Board held meetings from March, 2015 through February, 2016. The OOG is unable to ascertain whether any of these were closed meetings. The Board did post meeting agendas for these months along with embedded "pdfs" of resolutions the Board had acted upon. However, what the OMA requires, and what is absent from the Board's website, are the detailed meeting minutes for this same period. Such records may be provided in the form of electronic recordings or transcripts. The complaint states "we reviewed the board's records online for the full year 2013 -14 we saw no full records as the law requires." The OOG accepts these allegations as true, and along with its findings from March, 2015, through February, 2016, concludes the Board's lack of compliance with the requirements of the OMA represents a "willful or reckless" pattern of violations of D.C. Official Code §2-578 (2015).

### **Conclusion**

It is the binding opinion of the OOG that the Board has willfully or recklessly violated the "Record of meetings" requirements of the OMA by failing to timely make available on its website meeting minutes, essentially from 2013 through February, 2016. The OOG also finds the Board in violation of 2 DCMR § 10405.4, as it failed to address the complaint upon notification from the Director.

The OOG is not able to opine at this time on whether the Board has failed to publish meeting notices, agendas and meeting minutes detailing the reason for closed/executive sessions. These allegations of the complaint remain active due to, *inter alia*, the Board's failure "to in good faith, make every effort" to answer the complaint within the statutory required thirty (30) days ( DCMR § 10405.2); and its failure to address the complaint and other questions raised by the Director. (3 DCMR § 10405.4). If the Board fails to respond to the OOG demand by the close of business on March 11, 2016, the OOG will pursue all lawful means to obtain the necessary documents to close this case and ensure Board's future compliance with the OMA.

Sincerely,

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TRACI L. HUGHES, ESQ.  
Director, Office of Open Government  
Board of Ethics and Government Accountability