

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**



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**COUNCIL OF THE DISTRICT OF COLUMBIA  
PUBLIC HEARINGS  
AGENCY PERFORMANCE OVERSIGHT HEARINGS  
FISCAL YEAR 2018-2019**

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**Testimony of Niquelle M. Allen, Esq.  
Director of the Office of Open Government**

**Tuesday, February 19, 2019  
1:00 p.m.  
1350 Pennsylvania Avenue, N.W.  
Room 120  
Washington, D.C. 20004**

Good afternoon, Chairperson Allen, members of the Judiciary Committee (the “Committee”), and staff. I am Niquelle Allen, Director of the Office of Open Government (OOG), an office within the Board of Ethics and Government Accountability (BEGA). It is a pleasure to be here today to update the Committee and the public on the operations of OOG.

## **I. Introduction**

The statutory charge of OOG is to ensure agency and public body compliance with the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA). Specifically, OOG oversees OMA compliance of more than one hundred and seventy five (175) boards, commissions, and public bodies; and, advises ninety (90) Independent and Mayoral agencies, the Executive Office of the Mayor, and the Council of the District of Columbia regarding compliance with FOIA. OOG also assists the public with their submission of proper FOIA requests. OOG is an advocate for government transparency and continually strives to ensure that all the information and advice that OOG provides are fair, objective, and provide a vehicle for greater understanding of the application of the OMA and FOIA laws and regulations.

I assumed the role of the Director of Open Government in July 2018. In my first six months as Director, I have focused on re-establishing relationships and communication with the Executive Office of the Mayor and government agencies. I have also established working relationships with the Council of the District of Columbia (the “Council”) and with organizations that share OOG’s mission and interest. From my interaction with government officials and transparency advocates, I believe that there is an even greater need for education and training regarding the OMA and FOIA laws and regulations than I expected. Meeting this need has been my focus since joining BEGA as the Director of Open Government.

## **II. Summary of Fiscal Year 2018 to Date**

Fiscal Year (FY) 2018, brought a lot of changes for OOG. Notwithstanding, I along with former Director Traci Hughes and Interim Director Brian Flowers have continued OOG’s reach and effectiveness regarding its statutory mandate during

FY2018 and FY2019 to date. Next, I will provide a summary of OOG's activities and programs to highlight our operations.

### **A. Training**

OOG is ensuring government transparency by conducting training sessions on the OMA and FOIA. 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 for newly sworn public body members and yearly trainings for FOIA officers, respectively. Over the past Fiscal Year to date, the OOG has conducted sixteen (16) OMA trainings and eight (8) FOIA trainings.

OOG also procured a video camera in FY 2018 which it intends to use to record trainings it provides as well as public meetings it attends. The recordings of the sessions and meetings will be published on OOG's website, open-dc.gov. OOG also produced a public service announcement (PSA) regarding FOIA, which it published on OOG's YouTube channel and website. The PSA was produced with the assistance of the District of Columbia Bar.

### **B. Advisory Opinions**

In addition to training, OOG provided written advice regarding the application of the OMA and FOIA. OOG answered seventy-three (73) requests for formal and informal advice regarding the OMA from agencies, public bodies, the public, and non-profit entities that serve our most vulnerable residents. OOG issued nineteen (19) advisory opinions during FY2018 and FY2019, to date. Sixteen (16) of those advisory opinions were issued at the request of a complainant or person seeking advice and three (3) were issued *sua sponte*.

With respect to the OMA, OOG provided binding advice on the following topics: (1) requirements for compliance with the notice of meetings and recording of meetings requirements of the OMA; (2) whether an organization is a public body subject to the OMA; (3) the bounds of the enforcement authority of OOG; (4) whether a public body properly entered into executive session; (5) whether a subcommittee meeting is a meeting under the OMA; (6) what constitutes the proper cancellation of a meeting under the OMA; (7) the proper conduct of electronic meetings under the OMA; (8) what is considered public business under

the OMA; and (9) the public's right to address a public body under the OMA. OOG issued fifteen (15) OMA advisory opinions on these topics.

With respect to FOIA, OOG issued four (4) advisory opinions on the following topics: (1) whether an agency can require a requester to provide verification of their identity (e.g. a driver's license) for a first-party FOIA request; (2) whether it is appropriate to require a FOIA requester to present valid identification to submit a FOIA request; (3) whether an agency can withhold financial records when those records contain attorney-client privileged information and could reveal the theory of the agency's case; and (4) the requirements for invoking an extension of time to provide body-worn camera footage when the agency has not timely dispatched a FOIA determination.

OOG's entire catalog of advisory opinions are available on OOG's website, [open-dc.gov](http://open-dc.gov). Further, OOG has published its advisory opinions in the District of Columbia register to make them available to persons that lack computer access.

### **C. Compliance Audit**

In FY 2019, OOG is undertaking a comprehensive audit of the District of Columbia's website, DC.GOV, and the OOG's Central Meeting Calendar to determine if District of Columbia public bodies are in compliance with the provisions of D.C. Official Code § 2-536 (information which agencies must make public without submission of a FOIA request) and the Opening Meeting Act's posting of public notice and meeting records requirements (D.C. Official Code §§ 2-576 and 2-578). OOG will complete the audit on or before August 1, 2019 and report the results on or before September 30, 2019.

### **D. Website Relaunch with Visual Dashboard**

Upon assuming the role as OOG Director, I reviewed the OOG's website [open-dc.gov](http://open-dc.gov), and assessed that it needed to be redesigned and updated to be more user friendly. I also found that OOG's visual dashboard was not populated with information. It has been removed from the website until the webpage can become functional. The OOG's visual dashboard was designed to 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. However, it was never populated with this information. OOG will rectify this issue and update website once it has hired a new information technology professional.

#### **E. Staffing and Resources**

OOG has been able to accomplish all the aforementioned operations, in FY 2018 to date, with just two staff members: Waddah Kittab, OOG's former IT Specialist; and Johnnie Barton, OOG Attorney Advisor. To date, OOG has been able to register this degree of success despite extremely limited financial and human resources. The strain on operations because of the current level of staffing makes it difficult for the office to fulfill its purpose of ensuring that government operations are open and transparent, as this Council contemplated.

In the past, OOG was an independent office that was only administratively aligned with BEGA, with the OOG budget falling under BEGA. Former Director Hughes reported to the Council that there were unintended consequences to this structure that resulted in severe budgetary constraints and imbalances that impeded the day-to-day operations of OOG. BEGA's internal budgetary issues, as reported by former Director Hughes, have been resolved, in my opinion. My experience to date has revealed a large effort by the BEGA Board and Director of the Office of Government Ethics (OGE) to relieve these budgetary issues with the OOG. As a result, OOG was able to spend the funds allotted to it in FY 2018 and I expect the same to occur in FY 2019. Though both offices are working through limited budgets, OOG has been able to work collaboratively with OGE to make sure each office's needs are met. Further, the Board has given OOG wide latitude with respect to open government issues and provided executive discretion concerning the performance and operation of OOG.

As I mentioned earlier in this testimony, as Director, I have made significant outreach efforts since taking the helm of OOG. This has had the consequence of increased visibility for the office. This increased visibility has resulted in a marked increase for advice and training. Attorney Barton and I are working to timely fulfil

these requests, but it is a challenge. OOG desperately needs another attorney to assist in meeting the growing need for oral and written advice and training.

### **III. Fiscal Year 2019 Performance and Priorities**

OOG will continue its outreach to the government and to the public, despite its limited resources in FY 2019. To further the goals of openness and transparency, and to advance the OOG's mission, the office is focusing on the following primary initiatives in Fiscal Year 2019: (1) issuing new regulations to address the legislative changes to the OMA; (2) continual monitoring of public body compliance with the OMA and FOIA by conducting a comprehensive audit; (3) increasing public outreach through OOG's provision of increased training opportunities and participation in public meetings; and (4) tracking OOG's success by participating in a performance plan in FY 2019.

First, OOG has promulgated regulations to implement provisions of the BEGA Amendment Act of 2018. The major issues the regulations address are as follows: (1) the appeal of advisory opinions to the Board of Ethics and Government Accountability; (2) the use of parliamentary procedure; (3) the conduct of meetings by electronic means; (4) the maintenance of public meeting records; and (5) the clarification of past advisory opinions due to changes in the OMA. The Office of the Attorney General is currently reviewing OOG's proposed regulations before the notice of rulemaking is published in the District of Columbia register. This is an informal review.

Second, the OOG will continue to monitor public body compliance with the OMA and FOIA through its comprehensive audit, mentioned previously. Through this process OOG will also assist public bodies with updating their websites to reflect information required to be published according to the OMA and FOIA law.

Third, OOG is planning to roll out a training portfolio and have scheduled classes at its facility in addition to the training currently offered with MOTA and the MOLC. OOG will also continue to devote significant energy toward public outreach this fiscal year. OOG will also 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. OOG will also continue to create online training tools for public bodies and agency FOIA officers.

Last, OOG has elected to participate in performance planning. I elected for OOG to participate in performance planning to increase transparency and accountability regarding OOG's own operations.

#### **IV. Conclusion**

Thank you, Councilmember Allen and members of the Committee, for this opportunity to highlight OOG's operations and vision for the future. I am pleased to answer any questions you or members of the Committee may have.