

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



**COUNCIL OF THE DISTRICT OF COLUMBIA
PUBLIC HEARINGS
AGENCY PERFORMANCE OVERSIGHT HEARINGS
FISCAL YEAR 2019-2020**

**Testimony of
Niquelle M. Allen
Director of Open Government
Board of Ethics and Government Accountability**

**Wednesday, February 12, 2020
9:30 a.m.
1350 Pennsylvania Avenue, N.W.
Room 123
Washington, D.C. 20004**

Good afternoon, Chairperson Allen, members of the Judiciary Committee (the “Committee”), and staff. I am Niquelle Allen, Director of Open Government. I lead 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 and performance of OOG.

OOG’s mission is to ensure that the public receives full and complete information regarding the government that represents them. OOG’s primary function is to ensure compliance with the Open Meetings Act (OMA) and to provide advice and guidance on the fair and efficient administration of the District of Columbia Freedom of Information Act (FOIA). OOG is continually striving improve its effectiveness in ensuring that the public receives the information it is entitled to under District of Columbia law. OOG is also committed, through the exercise of its mission, to increasing transparency in how the District of Columbia government conducts its business. In my testimony today, I will discuss OOG’s performance in FY19 and our plan for executing our mission in FY20.

I. Summary of Fiscal Year 2019

To further the goals of increasing openness and transparency in how the District of Columbia conducts its government business, and to advance OOG’s mission, the office focused on the following primary initiatives in FY19. First, OOG issued new regulations that addressed the legislative changes to the OMA and other important issues. Second, OOG completed an audit of the District of Columbia government’s websites to determine public bodies’ compliance with the requirements of the OMA and FOIA to provide certain information online. Third, OOG expanded its training portfolio by offering new training courses. Fourth, OOG issued advisory opinions and provided advice regarding the interpretation and application of the OMA and FOIA.

A. Regulations

OOG’s new and revised regulations (3 DCMR § 10400) took effect on May 31, 2019. In part, the regulations: (1) authorize aggrieved party appeals to BEGA for reconsideration when OMA advisory opinions are issued at the request of a public official, at the request of a government employee, or are issued *sua sponte*; (2) provide that public bodies may conduct public meetings using the latest edition of Robert’s Rules of Order; (3) provide that the Director of Open Government may provide advice and training on parliamentary procedure; (4) require draft and final meeting agendas to provide notice that the meeting is governed by the OMA and that questions or complaints about the OMA may be addressed to OOG; (5) permit the acceptance of anonymous OMA complaints; (6) set forth the procedures for conducting public meetings by electronic means; (7) state the components of detailed meeting minutes; and (8) require the

retention of meeting records pursuant to District of Columbia law and the General Records Retention Schedules.

B. OMA/FOIA Audit

OOG completed a comprehensive audit of public bodies' websites, which included 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, which requires the government to make certain information available online and available to the public without the submission of a FOIA request; and, with the Opening Meeting Act's posting of public notice and meeting records requirements, set forth in D.C. Official Code §§ 2-576 and 2-578. OOG published the raw data that resulted from the audit on its website.

C. Training

OOG provided training on the OMA and FOIA in FY19 on its own and at the request of District of Columbia agencies and public bodies. Over the past Fiscal Year to date, the OOG has conducted 13 OMA trainings and 8 FOIA trainings. OOG has also partnered with several organizations to provide instruction on government transparency in FY19. OOG collaborated with the National Attorneys General Training & Research Institute, Center for Ethics and Public Integrity; Archive Social, a non-governmental provider of social media archiving; and the American Society of Access Professionals. OOG also collaborated with the D.C. Open Government Coalition (DCOGC) in FY19 to inform the public concerning open government issues. Notably, OOG partnered with the D.C. Open Government Coalition to present a FOIA Forum during BEGA "Ethics Day." OOG also partnered with a Professional Registered Parliamentarian, Rosalie Stroman, to provide basic training on Parliamentary Procedure and with the Office of the Chief Technology Officer to provide training on FOIAXpress.

D. Advisory Opinions

In addition to training, OOG provided written advice regarding the application of the OMA and FOIA in FY19. OOG has issued thirteen advisory opinions during FY19 and FY20, to date, none of which were issued *sua sponte*. OOG provided advice on the following topics:

- The notice of meetings provision of the OMA;
- DCPS Local School Advisory Teams are subject to the OMA;
- Agency compliance with the FOIA internet publication requirements;
- The application of FOIA to DC Public Charter Schools;
- The application of the OMA to federal entities of which DC is a member;
- FOIA exceptions as applied to FOIA requests for body worn camera footage;

- Deliberative process privilege and Attorney-Client privileges as exceptions to FOIA;
- OOG's authority to compel the production of documents under the OMA; and
- First-party FOIA requests.

II. Fiscal Year 2020 Performance and Priorities

In FY20, OOG strives to build upon its successes in FY19 and continue to provide programs and execute initiatives designed to increase openness and transparency in the operations of the Government of the District of Columbia.

A. Staffing and Resources

In FY20, OOG is expanding its professional staff. OOG is currently recruiting a capable attorney to fill our attorney-advisor position vacancy. We anticipate that the addition of this new attorney will greatly enhance OOG's ability to timely meet demand for services, especially advisory opinions. OOG has made significant outreach efforts that have resulted in an increased demand for training and advice. The addition of this attorney will enhance OOG's effectiveness.

While OOG has made impactful efforts to train public bodies on the OMA, the possibility of willful violations of the OMA still exists. The Council contemplated this possibility when it empowered OOG to bring an action in Superior Court to enforce the OMA. Although enforcement actions remain a last resort for OOG, the statute requires that the office be capable of seeking this remedy, if necessary. OOG is not prepared to bring such an action, if it becomes necessary. To remedy the situation, BEGA has sought a budget enhancement request in FY21 to add a trial attorney and paralegal position to OOG. My hope is that OOG will be fully staffed by FY21 and able to execute the full breadth of its statutory mission, if circumstances so require.

B. Online Training Option and Training Video Production

OOG seeks to enhance its training portfolio by offering its trainings via teleconference and online in FY20. OOG performed its training of Local School Advisory Teams via web conference and was able to make the training materials available on its YouTube channel. Providing training options outside of in-person trainings gives public body members an enhanced opportunity for learning in a convenient setting. OOG is also working with the Office of Cable Television, Film, Music, and Entertainment to produce a training video. OOG is looking to produce a video that is similar to and of the same quality as OGE's "Miss Ethics" training video, which has proven to be very successful in in-person and online training sessions.

C. Comprehensive OMA/FOIA Audit Report

In FY20, OOG will use the results of its comprehensive FOIA/OMA audit to release a report that incorporates the audit results and provides recommendations for best practices respecting compliance with FOIA and OMA requirements that certain information be available on the

Internet. The report will also address strategies for compliance. It is our aspiration that the information provided in the report will lead to full compliance with the law by District agencies and public bodies.

D. Public Outreach

OOG will continue its outreach to the government and public in FY20 to further the goals of increasing openness and transparency in District of Columbia government operations. OOG will continue to issue its bi-annual newsletter, *The OpenGovist*, and continue to provide FOIA and OMA trainings opportunities in and outside of the District government. OOG has partnered with the Office Advisory Neighborhood Commissioners in FY20 to provide FOIA training to ANC Commissioners and will also continue to attend ANC meetings with the Office of Government Ethics to educate the public regarding our mission and services. Additionally, since OOG will have a larger staff in FY20, the office will attend public bodies' meetings as a member of the public or as a guest of the public body to assist with open government issues.

III. 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.