

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



February 2, 2021

VIA ELECTRONIC MAIL

Ms. [REDACTED] Barber
[REDACTED], Road
[REDACTED] 20724
[REDACTED]@aol.com

RE: Resolution of Complaint Concerning the Commission on Selection and Tenure of
Administrative Law Judges of the Office of Administrative Hearings
Complaint #OOG-2020-0001-M

Dear Ms. Barber:

Pursuant to 3 DCMR § 10400 *et seq.*, I reviewed and assessed the September 19, 2020, Open Meetings Act (“OMA”) complaint¹ that you submitted to the Office of Open Government (the “OOG”). The complaint alleged that the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (“COST”), violated the OMA on September 18, 2020. The relief you requested in the complaint was stated as follows: “[A]ny action allowed under Open Meetings Act, including voiding of events pertaining to matters not properly noticed and in compliance with Open Meetings Act. Remove Williams as chair of COST based on multitude of violations. Have chief judge bring in new appointment.”

Upon review of this complaint and similar complaints filed with the OOG, I determined that the September 19, 2020 OMA complaint concerns the same OMA violations that you alleged occurred during various dates in 2016. You submitted five (5) complaints to the OOG about these alleged violations and the OOG dismissed those complaints as untimely or without merit. In those dismissals, the OOG also opined it could not grant your requested relief.

As discussed below, I find that the instant complaint failed to state any action by the COST that violated the OMA on September 18, 2020.² Additionally, I cannot grant your request that I void matters and remove personnel from a public body.³ Based upon the reasons detailed below, I must dismiss this complaint. The analysis of the facts supporting the dismissal begins

¹ At the OOG’s request the complainant provided copies of the five (5) exhibits referenced in the complaint. This information is not new and had been previously submitted or reviewed by the OOG.

² Pursuant to 3 DCMR § 10403.1(b), this is grounds to dismiss a complaint.

³ See D.C. Official Code § 2-579(a)(1).

with a discussion of the two conflicting dates contained in the September 19, 2020 OMA complaint and concludes with a discussion of the OOG's authority under the OMA.

1. *The instant complaint does not meet the OMA standard to establish a violation of the OMA occurred on September 18, 2020. The complaint resurrected allegations raised against the COST in the five (5) prior OMA complaints with the OOG that were dismissed.*

You submitted the instant complaint using the OOG's online form. In the section labeled "Description of Alleged Violation," your complaint stated:

On September 18, 2020, COST member Eugene Adams (nonvoting member) admitted there were numerous COST meetings held in 2016 about me. Many of these meetings violated the Open Meetings Act. They were never properly noticed, minutes were not taken, agenda did not exist, and recording of events were omitted. Dates of events were revealed in his deposition and cited in Exhibits 1-4. They include a conference call referenced in a May 24, 2016 letter occurring the morning of May 24, 2016. They include a May 25, 2016 email referencing COST addressing many {sic} issue and that CaoST {sic} met about dates to hold my evidentiary hearing. Those meetings were never publicly noticed, with agenda, nor minutes taken. Also COST convened on July 8, 2016 failing to publicly notice, record, produce agenda, etc. COST also met before my hearing at 10:30 am based on an email that leaked disclosing a private meeting with the prosecution team. No formal public notice was given to a meeting {sic} one half hour prior to the hearing.

You listed September 18, 2020, in the box labeled "Date of Alleged Violation." However, in the "Description of Alleged Violation" box you described and complained of meetings that occurred in 2016. You specifically stated that "there was an admission made on September 18, 2020, that COST violated the OMA at various times during 2016." You allege that "COST member Eugene Adams (nonvoting member)" made this admission apparently while deposed. The language in your current complaint mirrors that which you alleged in your previous five (5) OMA complaints. So, it is apparent that the alleged violations are for various dates in 2016, not the actual date stated in the complaint. This is relevant for a determination in this matter since the OOG dismissed those previous five (5) OMA complaints as time-barred or without merit. These five (5) complaints alleged that COST violated the OMA on these same dates in 2016 as alleged in the instant complaint.

Nonetheless, I thoroughly investigated this matter to verify that the allegations referred to are a separate instance from the previous complaints. I used September 18, 2020,⁴ as the date of

⁴ I did so, having found the 2016 dates time-barred and to construe the complaint in a light most favorable to you.

the alleged violation, since it was the stated date of the violation in the OMA Complaint Form. My investigation revealed that COST did not meet on September 18, 2020. It disclosed that the Advisory Commission on the Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings met in mid-September 2020.⁵ But this meeting occurred on September 17, 2020.⁶ Pursuant to the OMA, the meeting was recorded by electronic means. I reviewed the meeting recording and found that M. Deborah Carroll was introduced at that time as the Acting Chief Judge of OAH. Additionally, the Committee Chair inquired if Mr. Adams was present on the call. He was not. This information established that Mr. Adams was not a member of COST on September 18, 2020, and that the COST did not meet on this date. The record exonerates the COST from any violation of the OMA.⁷

Further, I have already opined that the dates you cited as 2016 OMA violations by the COST are time-barred. Therefore, based on the foregoing, I must find that the COST did not violate the OMA as alleged. Next, I discuss why I cannot provide the relief you requested.

2. *The OMA does not confer a private right of action to the public for violations of its provisions.*

This is the sixth complaint you have filed with the OOG against COST. This is relevant to this determination because the OMA's regulations mandate that I consider your previous five (5) complaints to resolve this matter.⁸ Therefore, a brief review of these five (5) complaints was necessary and I am summarizing those complaints here. Each prior complaint alleged that COST violated the OMA when it met about your tenure with the Office of Administrative Hearings ("OAH"). *Inter alia*, the complaints requested that the OOG void, rescind or nullify actions allegedly taken by COST. The OOG found that your five (5) previous complaints had no merit, were time-barred or that the relief requested could not be granted.⁹ The instant complaint requested this same relief.

In reaching this determination, I also must consider your ongoing civil litigation about your tenure with OAH because I am required to consider the "nature content, language or subject matter of other verbal and written communications" to OAH when resolving this matter.¹⁰ The litigation alleges wrongdoing by the COST similar to what is alleged in this complaint. Given the totality of the circumstances, I find that filing suit under the OMA is tantamount to maintaining a private right of action against COST on your behalf. As stated in prior dismissals issued to you by the OOG, the OMA does not create or imply a private right of action for violations of its

⁵ This public body provides advice to the COST, but it is a separate public body from COST.

⁶ I reviewed public meeting notices issued in September 2020. You may view the calendar here: <https://www.open-dc.gov/public-bodies/commission-selection-and-tenure-administrative-law-judges-office-administrative>

⁷ You may view the meeting here: https://www.youtube.com/watch?v=DTe_t_gD0f8&t=674s

⁸ See 3 DCMR § 10402.1(b), which in relevant part states, "[T]he Director shall consider, at a minimum, the following factors when issuing findings, determinations, and conclusions under this chapter: (b) The nature, content, language or subject matter of prior or contemporaneous complaints by the person making the complaint . . ."

⁹ You may review the resolution of these complaints here: <https://www.open-dc.gov/documents/oma-complaints-resolved>.

¹⁰ See 3 DCMR § 10402.1(c), which in relevant part states, "[t]he Director shall consider, at a minimum, the following factors when issuing findings, determinations, and conclusions under this chapter: (c) The nature content, language or subject matter of other verbal and written communications to any Public Body or any official of a Public Body from the person making the complaint."

provisions.¹¹ For these reasons, I cannot provide the relief you requested in your September 19, 2020 complaint. Lastly, I will briefly reiterate why I do not have the authority to remove COST's Chairperson.

3. *The Director does not have statutory authority to remove members of a public body.*

You also requested that the OOG replace a member of the COST. The relief you request exceeds the scope of my authority under the OMA.¹² The OOG does not have legal authority to discipline members of a public body if they have violated the OMA. Thus, I am not able to provide the relief requested in your complaint.

This concludes my opinion on this matter. My findings are limited specifically to the facts and circumstances of this complaint. For the reasons stated herein, and pursuant to the OOG's regulations, this matter is dismissed. Attached is a copy of your complaint.¹³

Sincerely,



NIQUELLE M. ALLEN

Director of Open Government

Board of Ethics and Government Accountability

Enclosure: Copy of OOG-2020-0001-M

cc: Louis Neal, Esq.,
General Counsel, Office of Administrative Hearings

¹¹ See D.C. Official Code § 2-579(a)(1). The following "Resolution of Complaint" documents, which you previously received from OOG, contain analysis of this issue: OOG_0002-2.6.18, OOG-0006_5.24.18, OOG-0004_9.29.18 and OOG-2019-0006-M.

¹² The following "Resolution of Complaint" documents, which you previously received from OOG, address this issue: OOG_0002-2.6.18, OOG-0006_5.24.18, and OOG-2019-0006-M.

¹³ See 3 DCMR § 10403.2.