

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



December 12, 2016

VIA ELECTRONIC MAIL

Mr. Mamadou Samba
Director, Mayor's Office on African Affairs
2000 14th Street, NW, Suite 401
Washington, DC 20009
Mamadou.samba@dc.gov

RE: #OOG -006_ 12.12.16_AO

Dear Mr. Samba:

The foregoing opinion is issued as a result of an audit conducted by the Office of Open Government (OOG) to monitor compliance of the Commission on African Affairs (COAA) with the requirements of the Open Meetings Act (OMA). (D.C. Official Code §§ 2-571 *et seq.*). This binding opinion is intended to inform the COAA of its areas of noncompliance. The OOG remains at the disposal of the COAA in adhering to the requirements of the OMA.

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.¹ For that reason, a detailed record of all public meetings must be maintained by public bodies. D.C. Official Code § 2-578(a) states: "all meetings of public bodies, whether open or closed, shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept." The OOG has consistently interpreted audio recordings to be feasible in all cases, given the ready availability of the technology. The OMA also requires that a public body provide advance notice to the public which accurately reflects² the date, time, location, planned agenda, and statement of intent to close the meeting or portion of the meeting, including the statutory citation for closure and description of the matters to be discussed (D.C. Official Code § 2-576(1)).

¹ D.C. Official Code § 2-572.

² See D.C. Official Code § 2-576(1) which requires "notice to be required when meetings are scheduled or changed." This provision ensures the public has the correct information regarding a public meeting to exercise the right to be present.

Because of the COAA's failures to record any of its meetings by electronic means during 2016, and to properly notice the location of its meetings, the OOG finds the COAA in violation of the "Recording of meetings" provisions (D.C. Official Code § 2-578) and "Notice of Meeting" provisions (D.C. Official Code § 2-576) of the OMA.

Background

The OOG, by electronic correspondence dated September 9, 2016,³ gave notice to the COAA that the Public Body central calendar at <http://www.open-dc.gov/public-bodies/meetings> and the Mayor's Commission on African Affairs websites at <http://oaa.dc.gov/page/role-commission-african-affairs>, and <http://oaa.dc.gov/event/mayors-commission-african-affairs-monthly-meeting> did not reveal published notice of public meetings or agenda for 2016. The OOG notice requested the COAA publish "missing notices of public meetings and agendas no later than September 16, 2016."⁴

As a result of the September 9, 2016, correspondence several telephone conversations and electronic communications took place between COAA's Executive Director, Mamadou Samba and OOG Attorney Advisor Johnnie Barton concerning the OOG's request.⁵ In Attorney Barton's November 4, 2016, electronic correspondence to the COAA, Director Samba was asked whether the COAA was recording its meetings. Director Samba's response to this inquiry was, "[N]o meetings are not recorded at all."

Discussion

THE COAA IS A PUBLIC BODY SUBJECT TO THE OMA

The OMA provides the statutory framework which governs meetings of District government public bodies. For reasons which follow, the OOG finds that the COAA meets the statutory definition of a public body. A public body is defined as:

“(3) "Public body" means any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, or an advisory body that takes official action by the vote of its members convened for such purpose . . .” D.C. Official Code § 2-574(3)

The Commission on African Affairs, as established under Section 4 of the Office of and Commission on African Affairs Act of 2006, effective June 8, 2006 (D.C. Law 16-111; D.C. Official Code § 2-1393), is statutorily required “to advise the Mayor, the Council, the Director of the Office of African Affairs, and the public on the views and needs of the African communities in the District” (D.C. Official Code § 2-1393). The COAA consists of fifteen public voting members, appointed by the Mayor with the advice and consent of the Council, and eleven *ex-officio* non-voting members (D.C. Official Code § 2-1394). The COAA's enabling legislation

³ September 9, 2016, letter from OOG Director, Traci L. Hughes, to Mamadou Samba.

⁴ *Id.*

⁵ The COAA did subsequently supply the missing records to satisfy the September 9, 2016, OOG request.

cited above states its members convene for the purpose of taking official action by vote. Pursuant to D.C. Official Code § 2-574(1), the convening of an entity such as the COAA for the purpose of taking official action by vote is descriptive of a public body.⁶ The COAA's status as a public body is made abundantly clear in the legislative history of the OMA.

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 {sic} section 1-523.016. . .

Report on the Committee on Government Operations and the Environment on Bill 18-716, the Open Meetings Act of 2010, at 5 (Council of the District of Columbia December 2, 2010) (Committee Report).

The COAA is among those boards and commissions top of mind of the members of the Council as evidenced by D.C. Official Code § 1-523.016.A footnote numbered "6" to the above Committee Report's language expressly identifies the COAA⁷ as an entity subject to the OMA. The Committee Report also states that entities listed in D.C. Official Code § 1-523.016 are public bodies which fall under the OMA's regulatory scheme. Since a review of the COAA's enabling statute and the OMA's legislative history makes clear that the COAA is a public body, the COAA must strictly adhere to the OMA in the conduct of public meetings.

THE OMA'S "RECORDING OF MEETINGS" PROVISIONS REQUIRE THAT ALL MEETINGS OF PUBLIC BODIES, WHETHER OPEN CLOSED ARE RECORDED BY ELECTRONIC MEANS

To ensure "the public receives full and complete information regarding the affairs of government and any official actions taken by government officials" (D.C. Official Code § 2-572), the OMA mandates that public bodies maintain records of all meetings. The OMA's "Record of meetings" provisions found at D.C. Official Code § 2-578 states:

(a) All meetings of public bodies, whether open or closed, shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept.

(b) Copies of records shall be made available for public inspection according to the following schedule; provided, that a record, or a portion of a record, may be withheld under the standard established for closed meetings pursuant to § 2-575(b):

(1) A copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than 3 business days after the meeting.⁸

⁶ The COAA meets to "consider, conduct or advise on public business," and therefore functions as a public body (D.C. Official Code § 2-574(1)).

⁷ The COAA is the last entity in the list of public bodies at paragraph 47.

⁸ In its interpretation of the OMA, and in an effort assist all public bodies to comply with the Act, the OOG opined that public bodies may post draft meeting minutes within the three business day timeframe imposed by the OMA, with a heading at the top of the document indicating the minutes are in draft form, and final detailed meeting

(2) A copy of the full record, including any recording or transcript⁹, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.

The COAA admits in its November 4, 2016, response to the OOG, to failing to record any of its meetings by electronic means thus far in 2016.¹⁰ The COAA's admission is a clear violation of the OMA "Recording of meeting" requirements. Specifically, D.C. Official Code § 2-578(a), mandates that public bodies record by electronic means all meetings, whether the meeting is open or closed.

FEASIBILITY OF RECORDING OF ALL COAA MEETINGS

It is clear that all meetings of public bodies are to be recorded by electronic means and that it is feasible for public bodies to do so in today's technologically advanced era. However, the COAA never cited a reason for its failure to do so. The COAA's 2016 agendas reveal that all meetings took place in Suite 400N,¹¹ a conference room in the Reeves Center at 2000 14th Street, NW. The OOG conducted its own inquiry, and was informed that the designation for the COAA meetings in 400N is incorrect, and the meetings actually took place in 400S, the same location in which the Alcoholic Beverage Review Board (ABRA) conducts its meetings. This is significant since ABRA's Board meeting room is equipped to record by electronic means all COAA's meetings. To clarify the suite where the COAA holds its meetings, in an electronic communication on November 17, 2016, the OOG asked Mr. Samba, "[A]re Commission meetings held in the ABRA Board Hearing room at the Reeves Center?" Mr. Samba has yet to respond to this inquiry.

THE OMA'S "RECORDING OF MEETING" PROVISIONS REQUIRE ADVANCED, ACCURATE PUBLIC NOTICE OF MEETINGS.

The OMA's "Notice of Meeting" provisions found in D.C. Official Code § 2-576, governs the advance public notice required to hold a public meeting. Before a meeting in open or closed session, a public body shall provide advance public notice, by meeting specific criteria.

The "Notice of Meeting" provisions require: (1) public notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting; (2) posting in the office of the public body or a location that is readily accessible to the public; and either on the website of the public body or the District Government; (3) publication of the notice of meeting in the

minutes will be published on the next meeting date of the public body. See http://www.open-dc.gov/sites/default/files/12.12.13%20OOG%20Opinion_HPTF_Meeting%20Record_Minutes%20Audio%20Video%20Transcripts.pdf

⁹ These are transcripts taken by a stenographer or official court reporter.

¹⁰ November 4, 2016, email from M. Samba to J. Barton. Many boards and commissions do not have the server capacity on their respective websites, or their governing agency's website to post and maintain audio files for an extended period of time. The posting of documents in PDF format utilizes far less space and is a commonly accepted means of accessing written materials on the Internet. Alternatively, the COAA may post and publish all materials the OMA requires to the Central Calendar at OPEN.dc.gov, which has greater server capacity.

¹¹ The OOG has been informed that there is no conference room at 400N of the Reeves Center.

District of Columbia Register¹²; and (4) the notice must contain the date, time, location, and planned meeting agenda. D.C. Official Code § 2-576.

On October 31, 2016, the OOG reviewed the COAA's hearing notices posted online. The COAA's February 3, 2016, agenda does not list a suite number for the meeting. The COAA has published the notices of its hearings as repeating for January, February, March, April, May, June, July, August, September, November, and December on the first Wednesday until [sic] Wednesday, December 6, 2017.¹³ A Wednesday, November 2, 2016, meeting was notice found at <http://oaa.dc.gov/event/monthly-commissioner%E2%80%99s-meeting>.¹⁴ This notice also lists the location of the meeting at the Reeves Center, Suite 400, but fails to clarify whether it is Suite 400N or 400S. D.C. Official Code § 2-576(5) requires each meeting notice to include "the date, time, location, and planned agenda to be covered at the meeting" Due to the incomplete and inaccuracies of notices and agendas for the meeting location, the OOG must find the COAA in violation of the "Notice of Meetings" provisions of the OMA (D.C. Official Code § 2-577). The OOG also noted a second COAA notice of hearing published at <http://oaa.dc.gov/event/mayors-commission-african-affairs-monthly-meeting>.¹⁵ This notice references COAA meetings occurring in 2013 and the DPW conference.

Additionally, the OOG finds the COAA has failed to comply with "Notice of Meetings" provisions of the OMA (D.C. Official Code § 2-577), in that it failed to provide the date, time and location of meetings listed for November 2, 2016, and December 7, 2016. <http://oaa.dc.gov/node/1189816/repeats>.¹⁶

Recommendations

To ensure all future COAA meetings fully comply with the provisions of the OMA, the OOG makes the following recommendations for immediate implementation by the COAA:

(1) immediately record by electronic means all COAA meetings; in the alternative have the minutes taken by stenographer; (2) correct the locations it cites in all future published notice of meetings and agendas to ensure the information required by D.C. Official Code § 2-576(1) is accurate; (3) contact OCTO and request assistance for the removal COAA antiquated webpages; (4) consider publishing all OMA requirements to the Central Calendar found at [OPEN-dc.gov](http://open-dc.gov); and, (5) for the COAA's Executive Director, its attorney adviser if any, and all members of the COAA to attend an open meetings training within 90 days of the issuance of this binding opinion.

¹² Due to consistent technical difficulties with the D.C. Register website, the OOG was not able to determine if the COAA met this publication requirement.

¹³ COAA did not list an October meeting date.

¹⁴ COAA Website last accessed 10/31/2016.

¹⁵ COAA Website last accessed 10/31/2016.

¹⁶ COAA Website last accessed 12/12/2016. The OOG notes there are no meeting agendas, minutes or recordings published on the Office of African Affairs Website. OOG will continue to audit the COAA, and include in an amended request for compliance all notices, agendas, and recordings for meeting dates scheduled after the September 9, 2016, OOG compliance request.

Conclusion

The COAA has failed to record by electronic means all of the entity's meetings for 2016. The COAA failure to do so is in violation of D.C. Official Code § 2-578(a). The OOG has interpreted D.C. Official Code § 2-578(a) to require all meetings of public bodies, whether open or closed, to be recorded by electronic means and that it is feasible for public bodies to do so. The COAA is without excuse as the entity meets in a hearing room that is fully equipped to record COAA meetings by electronic means. The COAA's Notice of Meetings contains inaccurate references to the location of COAA meetings. The OMA requires that a public body provide advance notice to the public which accurately reflects the date, time, location, planned agenda, and statement of intent to close the meeting or portion of the meeting, including the statutory citation for closure and description of the matters to be discussed (D.C. Official Code § 2-576(1)).

The OOG appreciates the quick cooperation of the COAA in its compliance with the OMA upon issuance of this opinion. Should the OOG continue to find the COAA out of compliance, it may consider the public body to have willfully or recklessly disregarded the provisions of the OMA, and may bring suit in Superior Court of the District of Columbia as provided under D.C. Official Code § 2-579.

Sincerely,



TRACI L. HUGHES, ESQ.

Director, Office of Open Government

Board of Ethics and Government Accountability