



**BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
GOVERNMENT OF THE DISTRICT OF COLUMBIA**



February 2, 2022

VIA ELECTRONIC MAIL

Dionne Bussey-Reeder
Chairperson
District of Columbia Housing Authority
Board of Commissioners
1133 North Capitol Street, NE
Washington, DC 20002

RE: Open Meetings Act Complaint Concerning the District of Columbia Housing Authority Board of Commissioners Compliance with the Open Meetings Act Complaint (#OOG-2021-0003-M)

Dear Chairperson Bussey-Reeder:

On May 27, 2021, the Office of Open Government (“OOG”) received an anonymous complaint #OOG-2021-0003-M (“Complaint”), which alleged the D.C. Housing Authority Board of Commissioners’ (“Board”)¹ Emergency Meeting, held on May 27, 2021, violated the Open Meetings Act’s (“OMA”) “Notice of meetings” provision (D.C. Official Code § 2-576(5)). To address the issues raised in the complaint, I am issuing this Advisory Opinion pursuant to 3 DCMR § 10400 *et seq.*² The OMA reiterates the District government’s long-standing public policy that all persons are entitled to full and complete information regarding the affairs of government and the actions taken by those who represent them.³ For that reason, the OMA requires that a public body: (1) provide the public with advance notice of its meetings; (2) notify the public in advance of its intent to enter a closed session; (3) provide the statutory citation for entering a closed session; (4) provide a description of the matters to be discussed during the closed session; and (5) open emergency meetings with a statement explaining the subject of the meeting, the nature of the emergency, and how the public notice was provided.

Upon review of the May 27, 2021 Complaint, the Board’s Complaint response, the Board’s May 27, 2021 Emergency Meeting Notice, the Board’s May 27, 2021 Emergency Meeting recording, and the Board’s May 27, 2021 Emergency Meeting minutes, I find the Board violated the OMA’s “Notice of meetings”⁴ provision because it failed to include in its public meeting notice a “statement of intent to close”, the D.C. Official Code § 2-575(b) citation for meeting closure, and a description of the matters to be discussed. I also find the Board violated the OMA’s “Meetings procedures” provision because the presiding officer did not follow the protocol to begin an emergency meeting.⁵

¹ The Board’s status as public body subject to the OMA has been established and is not at issue. See OOG-0004_1.07.16, issued March 8, 2016.

² See D.C. Official Code § 2-576

³ See D.C. Official Code § 2-575

⁴ D.C. Official Code § 2-576(5) states “Each meeting notice shall include the date, time, location, and planned agenda to be covered at the meeting. If the meeting or any portion of the meeting is to be closed, the notice shall include, if feasible, a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure under § 2-575(b), and a description of the matters to be discussed.”

⁵ See D.C. Official Code § 2-577(d) “When an emergency meeting is convened, the presiding officer shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency, and how public notice was provided.”

The Advisory Opinion provides the Board with my reasoning for these findings. The opinion concludes with directives for the Board’s future compliance with OMA.

I. BACKGROUND

On May 27, 2021, OOG received an anonymous complaint regarding the Board’s May 27, 2021 Emergency Meeting. The Complaint alleged that the Board violated the OMA by not providing the public with notice of the Board’s intent to enter a closed session during its Emergency Board Meeting. On June 15, 2021, the OOG sent a copy of the Complaint to the Board through agency counsel for the District of Columbia Housing Authority (“DCHA”) for a response to OOG by July 15, 2021. On July 13, 2021, counsel for the Board requested an extension to respond to the Complaint. With the complainant’s consent, I granted counsel for the Board an extension until July 22, 2021.⁶ DCHA provided a timely response.

In its response, the Board stated that its May 27, 2021 Emergency Meeting was lawful because the OMA authorizes closed or executive sessions to discuss personnel matters. The May 27, 2021 Emergency Meeting notice states the Board would be meeting to “consider and select an Interim Executive Director and begin a national search for a permanent Executive Director for DCHA.”⁷ The notice does not state that the Board would do this in closed session. The notice does not include a “statement of intent” to close the meeting to discuss the personnel matter nor did the Board’s notice provide a statutory citation for the closure under D.C. Official Code § 2-575(b). DCHA offered that the Board met in closed session to select its interim executive director at this meeting. DCHA also contended in its response that the public was placed on notice of its intent to close its meeting and prior to going into closed session the Board opened the floor for public comment, as provided in its enabling legislation.⁸ While DCHA states there was no OMA violation, it does admit harmless error in the May 27, 2021 notice.⁹ DCHA admits the Board’s meeting notice did not contain a “statement of intent to close,” but believed it was a result of a drafting oversight. DCHA also contends that the meeting was still accessible to the public and recorded therefore maintaining and fulfilling the purpose of OMA.

⁶ See 3 DCMR § 10405.1 “The Director may grant the Public Body one extension of up to five (5) business days in which to respond to the complaint. Any subsequent extensions may only be granted with the agreement of the Complainant.”

⁷ The meeting notice for the emergency meeting held on May 27, 2021, may be viewed here:

https://www.dchousing.org/api/files/board/aqk8yok6_t2wdv3fy676wxvzq1x676.pdf

⁸ See D.C. Official Code § 6–211(w) “The Board shall meet regularly at least 10 times each calendar year. All meetings of the Board shall be conducted in public after publication of notice of the date, time, and location of the meeting, at least one week prior thereto, in the District of Columbia Register. Each meeting shall provide for a period for public comments, which shall not be limited in time, except that the time allowed each individual speaker may be reasonably limited. To allow the Board to meet and entertain any proposed action, there must be a quorum present, which shall consist of 5 Commissioners. The public notice requirement of this subsection shall not preclude the holding of an emergency meeting of the Board if the meeting is deemed by the Chairperson to be necessary. If a proposed action concerns a personnel matter, a claim or contract in negotiation, or some other matter of a sensitive nature, the Board may adjourn its public session to discuss the matter in an executive session, but must return to its public session to vote on the matter.”

⁹ See DCHA’s July 22, 2021, Response “It is the position of DCHA, and the BOC, that if there was a violation of OMA on May 27, 2021, it was not substantive.”

II. DISCUSSION

A. The Board violated OMA’s “Notice of meetings” requirements by failing to notify the public that it would enter a closed session on May 27, 2021, to discuss personnel matters.

I find the Board violated the OMA’s “Notice of meeting” requirements because it failed to provide the public notice that it would meet on May 27, 2021, in a closed session, to discuss personnel matters.¹⁰ The statute requires that the notice to the public include: (1) a “statement of intent to close”; (2) citations for the reason for closure under D.C. Official Code § 2-575(b); and (3) a description of the matters to be discussed in the closed session. The Board’s notice does not state a closed session would take place to deliberate and vote for an interim executive director. The notice also fails to state specifically that its closed session was being conducted under the § 2-575(b) exemption. The Board’s notice is in violation of the OMA’s notice requirements because it does not adhere to the OMA’s requirements.

In DCHA’s response, it admits the notice did not contain a statement of the Board’s intent to close the meeting; however, it contends it was not feasible to include the notice requirements because the meeting was an emergency. DCHA further contends that if any error was made, it was harmless and not meant to mislead the public. DCHA contends that the omission was merely an oversight by the Board.

OOG understands due to the time sensitivity of the meeting, it is possible there was drafting oversight; however, the meeting notice was still deficient. As far as feasibility, the notice was able to be drafted and contain an agenda, which indicates to this office it was feasible for the Board to include all the notice requirements in D.C. Official Code § 2-576 despite the nature of the meeting. The OMA requires that the public be given proper prior notice of DCHA’s intent to hold a closed meeting. The public also has a great interest in the subject matter of the closed meeting – the selection of an Interim Director and search for a new Director – so the Board should have taken special care to ensure that the OMA was adhered to in this instance.

B. The Board did not violate OMA when it met in closed session to discuss a personnel matter because the meeting was statutorily permissible, and any other matter discussed is closely related to the personnel matter exemption.

Under the OMA, a meeting must be open to the public unless the OMA permits a closed meeting for one of the reasons set forth in D.C. Official Code § 2-575(b). The OMA authorizes a public body to close a meeting to discuss personnel matters. The statute authorizes a closed meeting to discuss “the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials”.¹¹ Note that under the OMA the statutory exceptions are narrowly construed.¹²

¹⁰ See D.C. Official Code § 2-576(5)). During the unlawful closed session, the Board discussed and voted on the appointment of an interim executive director. This would fall under § 2-575(b)(10) personnel matter exemption. The section states: “(10) [T]o discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials, or of public charter school personnel, where the public body is the board of trustees of a public charter school.”

¹¹ See D.C. Official Code § 2-572(b)(10).

¹² *Id.*

The purpose of Board’s emergency meeting was to conduct two acts of business: (1) to select an interim executive director; and (2) to begin a national search in identifying and selecting a permanent executive director.¹³ The closed session to vote for a new interim executive director falls under the D.C. Official Code § 2-575(b)(10) statutory exemption and thus was permissible under OMA. When the Board returned to the open session, Chairman Albert publicly stated on the record that the Board voted to appoint a five-member committee to begin the search for a new permanent executive director.¹⁴ This action was clearly proper under the OMA.

The second action, the selection of the committee to assist DCHA in identifying and selecting a permanent executive director, does not clearly fall under the D.C. Official Code § 2-575(b)(10) permissible statutory exemption. However, this matter is connected to personnel exemption, so it is authorized. OOG has addressed this issue in a previous advisory opinion.¹⁵ OOG found, after reviewing the relevant statute and case precedent, any matter that has a “clear nexus” or is “incidental” to the personnel exemption is authorized.¹⁶ Courts have also held that when a meeting’s primary purpose falls under the personnel exemption any matters “inextricably linked” to the main purpose are also exempt.¹⁷ Here, the connection is clear. When the Board met to vote on a new interim executive director, it also selected or agreed to create a five-member search committee to begin its national search for a permanent executive director. This decision was “immediate and a proper subject of discussion” for its closed session.¹⁸

Therefore, even though the closed meeting was not properly noticed, the Board’s justification for entering into a closed session was sound. The Board did not violate the OMA when it met in closed session because the closed session was justified under D.C. Official Code § 2-575(b)(10).

C. The Board violated the OMA’s “Meeting Procedures” when the chair failed to follow, the protocol to begin an emergency meeting.

Pursuant to D.C. Official Code § 2-577(d), “[w]hen an emergency meeting is convened, the presiding officer shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency, and how public notice was provided.” At the beginning of the emergency meeting, Chairman Albert addressed the purpose of the meeting and the topics covered in the meeting, however, he did not state how the meeting notice was disseminated to the public, nor discuss the nature of the emergency.¹⁹ This was a violation of OMA.

Public bodies should call emergency meetings sparingly. Ordinarily, an emergency involves an unexpected situation or sudden occurrence of a serious nature, such as an event that threatens public health and safety. Every unexpected or sudden event does not constitute an emergency. The requirement set forth in D.C. Official Code § 2-577(d) is present to ensure that public bodies are meeting in an emergency meeting due to a true emergency and not to circumvent the notice and other requirements of the OMA. The absence of this statement from the Board calls into question whether

¹³ See “Board’s May 27, 2021, Emergency Meeting Notice”. You may access the document here:

https://www.dchousing.org/api/files/board/aqk8yok6_t2wdv3fy676wxvzqg1x676.pdf

¹⁴ An overview of the closed session by Chairman Neil Albert begins at the 1:22:50 mark. A link to the May 27, 2021 Emergency Meeting is here: [BOC Emergency Public Board Meeting - May 27, 2021 - YouTube](#)

¹⁵ See # OOG-0003_3.11.18 Resolution of Complaint_BEGA. You may access it here: [Office of Government Operations \(open-dc.gov\)](#)

¹⁶ *Id. See also Meyer v. Bd. of Regents of Univ. of Neb.*, 510 N.W.2d 450, 455 (1993)

¹⁷ See [Berge v. Heilmann](#), 409 Ill. App. 3d 1144, 377 Ill. Dec. 743, 2 N.E.3d 659 (2011)

¹⁸ *Meyer*, 510 N.W.2d at 455.

¹⁹ The introduction into the emergency meeting by Chairman Neil Albert begins at the 3:00 mark. A link to the May 27, 2021 Emergency Meeting is here: [BOC Emergency Public Board Meeting - May 27, 2021 - YouTube](#)

this circumstance was appropriate for an emergency meeting. It may have been more appropriate for the Board to call a special meeting.²⁰

Since an emergency meeting is called as a result of unforeseen events that require a public body to take immediate action, the OMA permits relaxed public notice requirements. The Board is required to provide the public with notice “at the same time it provides notice to members.”²¹ As such, public bodies usually provide some form of notice on their websites, as DCHA did properly. It is necessary that the Board’s Chairperson state for the record that this occurred to preserve the integrity of the proceeding. The failure to do so in this instance unnecessarily calls into question whether the Board followed the OMA’s emergency meeting notice procedures because that statement is not in the meeting record.

Thus, D.C. Official Code § 2-577(d) requires a clear statement of the nature of the emergency to justify an emergency meeting. It also requires a statement regarding the notice given to the public regarding the emergency. These statements give the public confidence that the meeting is being held to address a true emergency and not to circumvent the OMA. It also evidences adherence to the OMA’s emergency meeting procedures. The Board’s Chairperson failed to meet this requirement, so the Board violated the OMA.

III. CONCLUSION AND DIRECTIVES

A. Conclusion

Based on the foregoing analysis and OOG’s investigation, I find that the Board’s May 27, 2021, Emergency Meeting notice violated the OMA because: (1) it failed to state that the Board would enter a closed session; and (2) the meeting notice did not state the reason for closure under D.C. Official Code § 2-575(b). The Board’s May 27, 2021, Emergency Meeting did not comply with D.C. Official Code § 2-577(d) because: (1) Chairman Albert did not state how the emergency meeting notice was circulated to the public; and (2) Chairman Albert failed to state the nature of the emergency in the beginning of the meeting. Finally, the Board’s primary reason for its closed session was statutorily permissible under OMA’s “personnel exemption” and due to the tangential nature of its secondary action, the Board did not violate the OMA when it met in closed session to form a committee to search for its new executive director.

B. Directives

The Board must take the following actions to ensure future compliance with the OMA:

- (1) Include all statutory requirements in its meeting notices;
- (2) Complete OMA training with OOG within 180 business days from the date of this Advisory Opinion;
- (3) If the Board must convene an emergency meeting under D.C. Official Code § 2-576(5), prior to the completion of the required OMA training, DCHA or the Board must contact the Director of

²⁰ A public body may call a special meeting when a matter comes up that is urgent and must be addressed before the next regular meeting. These meetings must be held in adherence to the provisions of the OMA.

²¹ D.C. Official Code §2-576(4).

Open Government and/or OOG's Chief Counsel for legal advice prior to convening and conducting the meeting. Contact Director Niquelle Allen at 202-557-0087 or niquelle.allen@dc.gov and/or contact Chief Counsel Johnnie Barton at 202-741-5373 or johnnie.barton2@dc.gov.

If you have any questions regarding this Advisory Opinion or require assistance with your meetings, do not hesitate to contact me or the OOG's legal staff.

Sincerely,

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