

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON EXECUTIVE ADMINISTRATION AND LABOR**



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**COUNCIL OF THE DISTRICT OF COLUMBIA**

**PUBLIC HEARINGS**

**AGENCY PERFORMANCE OVERSIGHT HEARING**

**FISCAL YEAR 2023-2024**

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

**Tuesday, January 30, 2024  
1:00 p.m.  
Zoom Meeting Platform  
1350 Pennsylvania Ave., N.W., Washington, D.C. 20004**

Good afternoon, Chairperson Bonds, members of the Committee on Executive Administration and Labor (the “Committee”), and staff. I am Niquelle Allen, Director of Open Government, and it is a pleasure to come before you today to discuss the Office of Open Government’s (OOG) performance in FY23 and FY24, to date. OOG is an office within the Board of Ethics and Government Accountability (BEGA) with the statutory charge to ensure agency and public body compliance with the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA).

## **I. Introduction**

Public records and government meetings provide valuable insights into how District government officials make decisions and spend tax dollars. The OMA and FOIA contribute to an effective and accountable District government by discouraging corruption by putting government operations out in open view. To that end, OOG’s mission is to ensure that government operations, at every level, are open and accessible to the public.

OOG enforces the OMA and provides advice on the District’s implementation of FOIA. As Director of Open Government, BEGA’s enabling legislation requires that I issue advisory opinions regarding compliance with the Open Meetings Act; provide training for members of public bodies and their staff on the OMA; and issue rules to implement the OMA. I may also bring a lawsuit in D.C. Superior Court to enforce the OMA, if necessary. Our enabling legislation also permits OOG to issue advisory opinions and to render advice on the implementation of FOIA. OOG is also responsible for training the District’s FOIA Officers on D.C. FOIA law and regulations in coordination with the Executive Office of the Mayor (EOM). We also train Advisory Neighborhood Commissioners (ANCs) on FOIA, twice a year, with the Office of ANCs. OOG assists the public with their submissions of FOIA requests to ensure the FOIA process remains fair and available to all persons. In short, OOG advances government transparency by providing fair, objective, and clear guidance and training on the application of the OMA and FOIA laws and regulations.

## **II. FY 23 and FY 24 to Date Performance Highlights**

OOG oversees OMA compliance of more than 250 boards, commissions, and public bodies; and advises 90 Independent and Mayoral agencies, the Executive Office of the Mayor, and the Council of the District of Columbia regarding compliance with FOIA. Our overall goal in each fiscal year is to ensure that OOG provides fair and objective advice, and that the information we provide is accurate and current. OOG’s performance in FY23 provided a vehicle for greater understanding of the application of the OMA and FOIA laws and regulations. I will now provide a summary of OOG’s activities and programs to highlight our operations in FY23 to date.

## **A. Advisory and Compliance Activity**

### **1. Informal OMA and FOIA Advice:**

OOG provides informal advice to public bodies and members of the public regarding the OMA and FOIA. OOG's tracking and reporting cycles for this activity corresponds with BEGA's monthly report to its Board. From FY23 to date, OOG responded to one hundred and twenty-four (124) requests for OMA advice; two (2) requests for general parliamentary-law advice (related to the OMA regulations); and one hundred and fifteen (115) requests for D.C. FOIA advice. OOG also maintains the District of Columbia's central meeting calendar. Every public body may use this calendar to provide the public with notice of their meetings and other pertinent information. OOG responded to two hundred and twenty-three (223) requests for technical assistance with open-dc.gov from FY23 to date.

### **2. Resolution of OMA Complaints and Issuance of FOIA Advisory Opinions**

OOG also responds to formal complaints about public bodies' compliance with the OMA. In FY23 to date, OOG received six (6) OMA complaints against public bodies, dismissing three (3) complaints that were outside the scope of the OMA and resolving one (1) complaint through an advisory opinion from the Director of Open Government. The resolution of the two (2) remaining OMA complaints are currently pending. OOG also advises District agencies on the application of D.C. FOIA by issuing advisory opinions. OOG issued four (4) advisory opinions regarding D.C. FOIA in FY23 to date.

### **3. Public Body Meeting Monitoring**

OOG's legal staff attends remote public meetings on a weekly basis to ensure compliance with the OMA. During their weekly monitoring, they also inspect public body websites and OOG's Central Meeting Calendar for public meeting notices and records. OOG's attorneys also provide legal advice on OMA compliance and take corrective action, if necessary, as a result of this monitoring. In FY23, OOG's legal staff monitored two hundred and sixty-two (262) public body meetings, which resulted in sixty-three (63) total corrective measures taken by OOG's attorneys. In FY24 to date, In FY23, OOG's legal staff monitored forty-four (44) public body meetings, which resulted in six (6) total corrective measures taken by OOG's attorneys.

In FY23, the most Frequent OMA violations were (1) Failure to post meeting agenda (2) Failure to include OMA regulatory statement; and (3) Incomplete meeting notice. In FY24, to date, the most frequent OMA violation is the Failure to post meeting agenda.

## **B. Training and Outreach**

OOG is ensuring government transparency by conducting training sessions on the OMA and FOIA. In FY23, OOG conducted twenty-two (22) FOIA trainings; thirteen (13) OMA trainings; and one dual FOIA/OMA training. In FY24 to date, OOG conducted one FOIA training

and four (4) OMA trainings and two (2) dual FOIA/OMA trainings. OOG offered its annual FOIA Officers training series in FY23, which included a series of five training courses tailored for both new and seasoned FOIA Officers. OOG also participated as featured speakers in the D.C. Open Government Coalition’s series of community conversations called “Digging into DC,” offered at D.C. Public Libraries. OOG provided in-person training to members of the public on D.C. FOIA. OOG continued to publish its newsletter, the OpenGovist. OOG released four (4) issues in FY23, which provided updates on the activities of OOG, including the advisory opinions issued and other open government topics of interest.

### **C. Government Transparency Advocacy**

As Director, I continue to make significant outreach efforts to further the cause of government transparency. In FY24, I provided written comments on the Addressing Crime Trends (ACT) Now Amendment Act of 2023 (Bill 25-0555) where I stressed that DC police officers’ faces, and badge numbers should not be redacted under the D.C. FOIA privacy exemption; that the Judiciary Committee should reject the categorical exclusion for police disciplinary records; and that body-worn camera footage should not be used to draft police reports -- but where it is used, the police officer should note it on the report.

### **III. Fiscal Year 2024 Priorities**

In FY24, OOG will continue its outreach to the government and to the public, to further the goals of openness and transparency. To advance the OOG’s mission, the office is focusing on three primary initiatives in FY24: (1) completing a comprehensive training manual on the OMA; (2) continue monitoring public body compliance with the OMA and FOIA by continuing to attend meetings and audit websites for required information; and (3) increase public outreach through OOG’s provision of increased in-person and virtual training opportunities.

### **IV. Recommendations for Changes to the OMA and FOIA**

The Committee should consider the following changes to the Open Meetings Act and Freedom of Information Act to make the District’s operations more transparent, accessible, and open to the public.

#### **1. Public Bodies & Remote Access**

The pandemic-era changes to the OMA that allowed public bodies to permit the public to attend open meetings to the public via streaming and/or teleconference should be permanently adopted. The Committee should consider the permanent enactment of D.C. Official Code §§ 2575(a)(4), 2577(a)(1), which are currently temporary and set to expire on April 28, 2024.

#### **2. Information Technology and Transparency Commission**

The DC Open Government Coalition provided a recommendation during BEGA’s FY23 Performance Hearing to create an Information Technology and Transparency Commission, which

we encourage the Committee to adopt. D.C. FOIA was enacted in 1976 and is inadequate to regulate the volume and scope of requests that the District's agencies and offices now receive (11522 in FY22 compared to 6008 in FY12, according to the annual District-wide FOIA reports at [os.dc.gov/page/annual-reports](https://os.dc.gov/page/annual-reports)). While the Council has passed amendments, including the Freedom of Information Amendment Act of 2000, the law needs further modernization and improved drafting.

Similarly, the OMA currently includes several policy gaps and ambiguities, and needs experienced hands to revise it.

So, to advise on reviewing, redrafting, and updating the District's open-government laws in a meaningful, expert way, the Committee should create and fund a Commission to assemble parties such as OOG, the Office of the Secretary and its sub-units, the Mayor's Office of Legal Counsel, the Office of the Chief Technology Officer, the Open Government Advisory Group, journalists, and the DC Open Government Coalition.

### 3. Advisory Neighborhood Commissions' Accountability

The Committee should also revise the OMA to bring ANC meetings under the scope of the OMA. OOG receives requests from individual ANCs for OMA and parliamentary procedure training. We also receive complaints from members of the public regarding ANC meeting compliance with the OMA. There seems to be a general thought in the District that ANCs are subject to the OMA. I believe that more people have been attending DC government meetings in general since they have become available online; so, there is a general assumption that these meetings are subject to the OMA like all other government meetings. ANC meetings should be subject to the OMA and OOG should have the authority to regulate ANC meetings. With the advances in technology, we have all learned to record meetings and hold virtual meetings using a telephone or other handheld devices. What once may have seemed difficult for an ANC is something we now do every day – virtual meetings. Bringing them under the OOG's regulatory authority over meetings would allow OOG to provide them with training, support, and other resources they need to be more effective leaders, and to hold more open and transparent meetings.

### 4. Enforcement by OOG

While litigation remains OOG's last resort for use in cases where public bodies resist conciliation and other communicative remedies, OOG recommends legislation to accomplish the following: increase the maximum civil fine for an OMA violation; enable recovery of fines for any category of OMA violation, not just improper closure; and enable recovery of the costs and fees of litigation.

Under existing law, the monetary penalty for an OMA violation is limited in three critical ways: (1) it is limited to “a civil fine of not more than \$250,” which has not been updated since then-Councilmember Cheh proposed it in 2010; (2) that fine only applies to improper closure (not advance-notice or recordkeeping violations); (3) the court must find “a pattern or practice of willfully participating in one or more [improper] closed meetings,” implying that OOG cannot seek a fine unless it has waited and observed multiple (if not several) violations taking place, in order to establish the evidence of “a pattern or practice.” See generally D.C. Official Code § 2579(e).

For the OMA’s enforcement provisions to work early, effectively, and comprehensively, OOG recommends increasing the maximum fine to \$1000 per violation and extending it to cover any violation of OMA (assuming, of course, it is serious or deliberate enough to warrant a fine).

Similarly, OOG recommends amending the enforcement section of the OMA to permit the court to award the costs and fees of litigation.

## **V. Conclusion**

I assumed the role of the Director of Open Government in July 2018 and was reappointed in July 2023. In my six years as Director, I have facilitated OOG’s growth from a legal staff of one to a full legal staff with a General Counsel (Chief Counsel), three attorneys, and a paralegal; I have established OOG as a reliable resource for expert information and assistance; and I have worked with the Executive Office of the Mayor (through the Department of General Services) and the D.C. Council to successfully relocate the agency to a new facility. While OOG has made great strides during my tenure as Director from an organizational standpoint, I believe there is much work for us to do in order to maintain the public’s confidence in government by ensuring it is operating in a manner that is transparent. In FY23, there was an even greater need for education and training regarding the OMA and FOIA laws and regulations than when I first joined BEGA in 2018. Meeting this need has always been OOG’s focus. However, a shift toward compliance may become necessary in the future if the government fails to respect its obligation to maintain the public’s trust. Through our public body monitoring and education activities, OOG aims to ensure public bodies and government agencies are well positioned and equipped to comply with the law.

Thank you, Chairperson Bonds 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.