

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY  
OFFICE OF OPEN GOVERNMENT



October 18, 2017

***VIA ELECTRONIC MAIL***

Mr. Ely Ross  
Director, Mayor's Office on Veteran's Affairs  
1350 Pennsylvania Avenue, NW, Suite 332  
Washington, D.C. 20004  
[ely.ross@dc.gov](mailto:ely.ross@dc.gov)

**RE: #OOG-0006\_10.01.17\_MOVA\_AO**

Dear Mr. Ross:

The foregoing opinion is issued as a consequence of an August 3, 2016,<sup>1</sup> audit conducted by the Office of Open Government (OOG) to monitor the Advisory Board on Veterans Affairs (MOVA) compliance with the mandates of the Opening Meetings Act (OMA) (D.C. Official Code § 2-571 *et seq.*). This binding opinion is intended to inform MOVA of its areas of noncompliance with 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 (D.C. Official Code § 2-572). For that reason, requirements of the OMA include that a public body: (1) maintain detailed records of all public meetings; (2) provide to the public advance notice of meetings to reflect 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); and (3) strictly adhere to the OMA when conducting a public meeting by electronic means ((D.C. Official Code § 2-577(b)).

MOVA's violations of the OMA, as revealed by the compliance audit are: (1) the improper cancellation of its January 5, 2016, July, 5, 2016, and August 2, 2016, meetings; (2) conducting on August 2, 2016, an electronic meeting in violation of the OMA; (3) the failure to record meetings by electronic means; and (4) the failure to timely publish draft and final meeting agendas. The OOG is available to assist MOVA with complying with the OMA's requirements moving forward.

---

<sup>1</sup> Upon advice of counsel issuance of this opinion was stayed due to litigation involving a public body's violations under the OMA.

## **Background**

By electronic correspondence dated August 4, 2016, the OOG notified Tammi Lambert<sup>2</sup> who at that time was serving as MOVA's Acting Director, that the OOG's August 3, 2016 audit of the central meeting calendar at <http://www.open-govdc./public-bodies/meetings> and MOVA's website did not reveal published draft or final public meeting minutes for any meeting held in 2015 or 2016.

In a subsequent electronic correspondence on October 25, 2016, the OOG notified MOVA's Secretary, Steven Dalzell that several MOVA records were missing. After speaking with Mr. Dalzell by telephone on October 28, 2016, that same day OOG Director Traci Hughes sent to him by electronic correspondence an Excel spread sheet of the records that were missing from the central meeting calendar. The relevant portion of the electronic correspondence accompanying the spreadsheet reads:

Good afternoon, Stephen-  
As discussed during our call today, please see the attached spreadsheet of the records our system shows are missing from the central calendar. Please review, and publish all missing records. If you do not have the missing records, or cannot provide responses concerning the dates of notice, please indicate that in your reply letter/memo. Also, please be sure to include mention of all months where meetings did not occur, or were cancelled. If meetings were cancelled, please describe the process for notice of cancellation. For your convenience, I have attached the original compliance letter that was sent to the previous director of the Office of Veterans Affairs. Thank you for your efforts.

On October 31, 2016, by electronic correspondence, Mr. Dalzell responded to the OOG's October 28, 2016, electronic correspondence with copies of the: (1) agenda for the January 2016, meeting; (2) minutes for the February 2016, meeting; and (3) minutes and agenda for the June 2016, meeting. Mr. Dalzell also provided the following written explanation regarding the missing documents: "(1) the January meeting was canceled by the Chairman and Director due to the number of ill board members; (2) the July meeting was canceled by the Director via email to the board on 28 June, due to it falling after the federal holiday; (3) the August in-person meeting was cancelled due to a conflicting city event. A minority of the board members held a conference call to share news on the vacant director's position and updates on committee work (but there was none of either). We were not aware this should have had an agenda posted to the website, so none was created. My notes on the meeting are attached; (4) minutes for the October meeting will be posted when they have been approved."

---

<sup>2</sup>Pursuant to Mayor's Order 2015-128, Tammi Lambert became MOVA's Acting Director on May 7, 2015. On October 12, 2016, Ely S. Ross was appointed Director of MOVA pursuant to Mayor's Order 2016-154. The vast majority of OMA violations which are the subject of this advisory opinion took place while Ms. Lambert was serving as MOVA's Acting Director.

By electronic correspondence on November 3, 2016, the OOG requested from MOVA copies of the following documents and responses to the following questions to determine if MOVA was in compliance with the OMA: (1) the cancellation date of the January meeting, and how the cancellation was indicated to the public and to the members; (2) the email indicating cancellation of the July 5, 2016, meeting date and how cancellation was indicated to the public; (3) the October draft meeting minutes; (4) audio recordings for all meetings, both open and closed sessions; and if there are no audio recordings a written explanation as to why. In response to the OOG's November 3, 2016, electronic correspondence, that same day Mr. Dalzell forwarded three emails to address the cancelled January 2016, July 2016 and August 2016, meetings.<sup>3</sup>

## **Discussion**

### **MOVA IS A PUBLIC BODY SUBJECT TO THE OMA.**

MOVA was established by Mayor's Order 2001-92 (Mayor's Order)<sup>4</sup> as amended by Mayor's Order 2002-142<sup>5</sup> to "serve as an advisory body to the Mayor, the Mayor's Office of Boards and Commissions, the Office of Veterans Affairs, the Department of Employment Services, the Department of Health, the Department of Human Services and other District government departments, agencies and offices on all matters pertaining to veterans in the District of Columbia." MOVA consists of 21 voting members and 3 *ex-officio* non-voting members.

Paragraph 6 of the Mayor's Order requires MOVA to maintain records that must be available to the public, open to the public any meeting at which it adopts a report or recommendation, maintain an audio transcript and written minutes of all public meetings, and publish and submit a report of its activities and recommendations to the Mayor, appropriate District government officials and the public. In effect, the Mayor's Order requires MOVA to adhere to similar statutory requirements for record keeping and opening its meetings to the public that OMA contains. These similar requirements are found in the OMA's "Open meetings" (D.C. Official Code § 2-575) and the "Record of meetings" (D.C. Official Code § 2-578) provisions. However, the OMA, which became effective March 31, 2011, supersedes the Mayor's Order as the controlling law that public bodies must abide by in the conduct of their meetings.

As stated below, paragraphs 2 and 3 of the Mayor's Order state that MOVA is an entity<sup>6</sup> whose purpose and functions are advisory. Paragraph 2, entitled "Purpose" provides that:

". . . . serve as an **advisory body to the Mayor**, the Mayor's Office of Boards and Commissions, the Mayor's Office of Boards and Commissions, the Office of Veterans Affairs, the Department of Employment Services, the Department of Health, the Department of Human Services, and other District government departments, agencies and offices on all matters pertaining to veterans in the District of Columbia. (Emphasis added).

---

<sup>3</sup> The November 3, 2016, email response from Mr. Dalzell also states he would post draft meeting minutes of Tuesday's meeting later that day and would ensure the approved minutes for the October meeting were posted. An explanation was also provided for the lack of audio recordings.

<sup>4</sup> Paragraph 2 of Mayor's Order.

<sup>5</sup> Mayor's Order 2002-142 increases MOVA's members from 7 to 21.

<sup>6</sup> MOVA does not dispute that it is a public body subject to the OMA.

Paragraph 3 which is entitled “Functions” states:

- a) Promote, via its **advice and recommendations**, advocacy support, as appropriate, and information services to veterans, their dependents, and their survivors concerning federal and District laws and regulations affecting benefits and claims . . . .”
- b) **Advise the Mayor and District government agencies** on systematic issues affecting the coordination and delivery of services to veterans in the District . . . .”
- d) **Provide advice and guidance to the Mayor and District agencies** on veteran-related issues including but not limited to proposed legislation, rules, regulations and budgets. (Emphasis added)

In addition, the OMA definition of public body and its legislative history make clear that MOVA is a public body subject to the OMA. D.C. Official Code § 2-574 defines “public body” as “. . . .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 . . . .”<sup>7</sup> MOVA takes official action by vote.<sup>8</sup> So there is no ambiguity as to what entities are public bodies, the OMA legislative history cited below includes within the definition of public body, any board established pursuant to order.

*The public body would include any council, board, or commission of the District government established pursuant to statute, regulation, or order...” Report on the Committee on Government Operations and the Environment on Bill 18-716, the Open Meetings Act of 2010, at p. 4 (Council of the District of Columbia December 2, 2010) (hereinafter OMA Comm. Rpt.)*

Based on the foregoing legal analysis, it is abundantly clear that MOVA is an advisory body created by a Mayor’s Order, and that takes official action by vote, meets the statutory criteria of a public body which is subject to the OMA.

**THE OMA’S “NOTICE OF MEETINGS” PROVISIONS PROVIDE THE STATUTORY REQUIREMENTS THAT A PUBLIC BODY MUST FOLLOW TO CANCEL A PUBLIC MEETING.**

At issue are the methods used by MOVA to provide notice to the public when cancelling its January 2016, July 2016 and August 2016, public meetings. This is significant because under the OMA a public meeting cancellation constitutes a change in schedule that must

---

<sup>7</sup> MOVA meets to consider, conduct and advise on public business . . . .”

<sup>8</sup> Ibid. Paragraph 4 of Mayor’s Order and paragraph 4 of Mayor’s Order 2002-142, indicates that MOVA has voting and non-voting members. Hence, MOVA takes official action by vote of the members authorized to do so.

be properly noticed to the public. The OMA's "Notice of meeting" provisions found in D.C. Official Code § 2-576 governs how to schedule, change or cancel a meeting. The relevant provisions of D.C. Official Code § 2-576 state:

Before meeting in open or closed session, a public body shall provide advance public notice<sup>9</sup> as follows:

(1) *Notice shall be provided when meetings are scheduled and when the schedule is changed.* A public body shall establish an annual schedule of its meetings, if feasible, and shall update the schedule throughout the year. Except for emergency meetings, a public body shall provide notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting.

(2) Notice shall be provided by posting:

(A) In the office of the public body or a location that is readily accessible to the public; and

(B) On the website of the public body or the District government.  
(Emphasis added).

Proper cancellation of a meeting under D.C. Official Code § 2-576 requires notice to the public of at least 48 hours or 2 business days, whichever is greater before the meeting is to occur. Additionally, the OMA requires posting of the notice of the cancellation as follows: (1) in the office of the public body or a location that is readily accessible to the public; and, (2) on the website of the public body or the District government. As discussed below, MOVA did not follow the OMA statutory scheme to properly provide notice to the public of multiple meeting cancellations.

### **MOVA'S METHODS TO CANCEL ITS MEETINGS DID NOT COMPORT WITH THE OMA STATUARY REQUIREMENTS BY PROVIDING PROPER NOTICE TO THE PUBLIC.**

The facts concerning the cancellation of MOVA's January, July and August 2016, meetings are documented and are not in dispute. A legal analysis of MOVA's cancellation of each meeting in light of the OMA public notice requirements follows.

*The Electronic correspondence cancelling the January 5, 2016, meeting sent only to the members of MOVA, on the day of the meeting did not constitute proper notice to the public.*

The January 5, 2016, notice of meeting cancellation was by electronic correspondence sent only to MOVA members. The electronic correspondence was sent at 1:41 p.m. on January 5, 2016, the day of the meeting. For the reasons which follow this notice was improper and violates the statutory requirements of D.C. Official Code § 2-576.

Pursuant to D.C. Official Code § 2-576(1), when a public body cancels a meeting, the change in schedule requires not less than 48 hours or 2 business day notice, whichever is greater, before the meeting occurs. MOVA's notice of cancellation was improper notice

---

<sup>9</sup> While it is clear that members of public bodies must have notice of meeting schedules, D.C. Code § 2-576 emphasizes advance notice to the public of a public body's meeting schedules.

since it was: (1) sent electronically only to MOVA members on the date the meeting was to occur; and, (2) not timely posted in MOVA's office or a location that was readily accessible to the public, on the MOVA's website or the central meeting calendar. It is obvious that members of a public body must receive advance notice of a change in its meeting schedule. However, D.C. Official Code § 2-576 and OMA's legislative history make abundantly clear that the statutory notice requirements are for the benefit of the public. The OMA's Committee Report states:

To ensure that the public is aware of meetings, the committee print would create specific notice requirements. The bill would require a public body to provide annual notice of planned meetings, and notice at the time a meeting is scheduled or changed, but not less than 2 business days or 24 hours prior to the meeting . . . .  
OMA Comm. Rpt. at 5.

*The electronic correspondence cancelling the June 28, 2016, meeting was sent to the members of MOVA more than 48 hours or 2 business days before the meeting. However, it did not constitute proper notice to the public.*

By electronic correspondence, on Tuesday, June 28, 2016, members of MOVA were sent the notice of cancellation of the July 5, 2016 meeting.<sup>10</sup> Although this notice was sent to the MOVA members more than 48 hours or 2 business days, before the meeting, it was not timely posted in MOVA's offices or a location that was readily accessible to the public, on MOVA's website or the central meeting calendar. Therefore, the July 5, 2016, meeting cancellation constitutes a violation of the OMA. As of October 3, 2017, neither the central meeting calendar nor MOVA's website reflect cancellation of the July 5, 2016, meeting.<sup>11</sup>

*The telephone notification of cancellation of the August 2, 2016, meeting to members of MOVA did not constitute proper notice to the public of a meeting cancellation and the intent to conduct, on that same day, a meeting by electronic means.*

MOVA staff placed telephone calls to notify its members that the August 2, 2016, in-person meeting had been cancelled. However, the exact dates the telephonic cancellation notices were given are unclear.<sup>12</sup> What is certain is that timely notification to the public did not occur as the OMA requires. As with the July 5, 2016, meeting cancellation, notice was posted on MOVA's Facebook page. The reasons stated for the cancellation notices for the January 2016, and July 2016, are improper and in violation of the OMA are applicable to the August 2, 2016, meeting cancellation and need not be repeated.

---

<sup>10</sup> On July 1, 2016, Mr. Dalzell also posted notice of the cancellation of the July 5, 2016, meeting on MOVA's Facebook page. While this was well intended, even if timely, this posting would not comply with the OMA notice posting requirements of D.C. Official Code § 2-576(2)(A)(B).

<sup>11</sup> See <http://www.open-dc.gov/meeting/mayors-advisory-board-veterans-affairs-meeting-0>; and [http://ova.dc.gov/events?field\\_date\\_time\\_rep\\_value\[value\]\[date\]=2016-01-01&field\\_date\\_time\\_rep\\_value2\[value\]\[date\]=2017-01-01&keys=&type=All&field\\_topic\\_tid=All&field\\_audience\\_tid=All&field\\_ward\\_tid=All&field\\_police\\_service\\_area\\_tid=All&sort\\_by=field\\_date\\_time\\_rep\\_value&sort\\_order=ASC&page=1](http://ova.dc.gov/events?field_date_time_rep_value[value][date]=2016-01-01&field_date_time_rep_value2[value][date]=2017-01-01&keys=&type=All&field_topic_tid=All&field_audience_tid=All&field_ward_tid=All&field_police_service_area_tid=All&sort_by=field_date_time_rep_value&sort_order=ASC&page=1)

<sup>12</sup> Mr. Dalzell's November 3, 2016 electronic correspondence to the OOG states: "Third email, with cancellation of the in-person meeting. Often the OVA Director's staff would make phone calls to everyone to make sure they got the message."

While the August 2, 2016, in-person meeting was cancelled, that same day MOVA held a telephone conference call in which 7 of its voting members were participants. It is clear that the OMA authorizes public bodies to hold meetings by telephone conference, video conference or other electronic means. D.C. Official Code § 2-577<sup>13</sup> states:

- (a) A meeting may be held by video conference, telephone conference, or other electronic means; provided, that:
  - (1) Reasonable arrangements are made to accommodate the public's right to attend the meeting;
  - (2) The meeting is recorded; and
  - (3) All votes are taken by roll call.
- (b) All provisions of this subchapter shall apply to electronic meetings.

However, D.C. Official Code § 2-577(b) also requires that public bodies conducting meetings by electronic means strictly adhere to the entire OMA. Particularly relevant to the electronic meeting held by MOVA, along with D.C. Official Code § 2-577, are the OMA “Notice of meeting” requirements (D.C. Official Code § 2-576) that were previously discussed, and the “Record of meetings” provisions (D.C. Official Code § 2-578). In conducting the August 2, 2016, meeting, MOVA’s violations of the OMA are as follows: (1) failure to provide advance notice to the public of the electronic meeting (D.C. Official Code § 2-576); (2) failure to make reasonable arrangements to accommodate the public’s rights to attend the meeting (D.C. Official Code § 2-577(1))<sup>14</sup>; and, (3) failure to record the electronic meeting (D.C. Code §§ 2-577; 2-578(a)).<sup>15</sup> D.C. Official Code § 2-578 requires a public body to record all meetings, whether the meeting is open or closed. The OOG’s November 3, 2016, electronic correspondence requested audio recordings of MOVA’s meetings or an explanation if no audio recordings were available. Mr. Dalzell’s November 3, 2016, electronic communication to the OOG provides the following explanation for not complying with the request to provide audio recordings:

We may need some help on the audio recordings. Our initial meeting room was equipped with recording devices, and the OVA staff ensured the recordings were transferred to the online site. Since we moved to other rooms, several of us have tried to record meetings on our smartphones, but haven’t been able to work out the techniques to download them to a computer and then upload to the site. If you have a tech specialist who could help us with that process, I think we can learn to do it and figure how to load them into the archives. As that still isn’t the optimal solution, I’m sure the board would welcome your help getting our meeting room set up for recording by city personnel.

---

<sup>13</sup> For an in depth legal analysis of the OMA requirements for conducting meetings by electronic means see OOG-0007- OMA Complaint Resolving Whether the Cross-Sector Collaboration Task Force Failed to Timely Included On Its Agenda Conference Call Call-In Numbers for the Public to Attend Electronic Meetings. <http://www.open-dc.gov/documents/oog-0007-oma-complaint-resolving-whether-cross-sector-collaboration-task-force-failed>

<sup>14</sup> The OOG has opined that timely notice of an electronic meeting which contains a dial in number and access code are reasonable accommodations for the public to attend the meeting. Ibid, at 4.

<sup>15</sup> The OOG’s November 3, 2016 electronic correspondence requested audio recordings for all meetings, both open and closed. While no quorum was present, the OMA requires MOVA to go on the record to state that no quorum was present for the electronic meeting. MOVA provided the OOG notes that were taken during this meeting

The OOG appreciates MOVA's explanation for not providing the audio recordings and will assist MOVA with retrieving the recordings. However, the OOG must find MOVA in violation of the OMA, because the recordings are not available for public inspection as the Act requires.

*MOVA's failure to record meeting minutes.*

As was stated in the August 3, 2016, correspondence to MOVA, the OOG's audit revealed that MOVA failed to publish any draft or final meeting minutes for any meetings in 2015 or 2016, a period of more than a year. This practice is inapposite of the OMA's "Recording of meetings"<sup>16</sup> provisions (D.C. Official Code §2-578), which require:

- (1) A copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but not later than 3 business days after the meeting.
- (2) A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but not later than 7 business days after the meeting.

The OOG notes that MOVA's cooperation under its new Director with publishing the 2015 and 2016 missing minutes<sup>17</sup>. However, as of October 3, 2017, the final meeting minutes for the October 4, 2016 meeting minutes have not yet been posted other than in "draft" form.

### **Recommendations**

To ensure all future MOVA meetings fully comply with the provisions of the OMA, the OOG makes the following recommendations for immediate implementation by MOVA: (1) timely publish all notices, draft and final meeting agendas, and draft and final open session meetings minutes, including the July 5, 2016, meeting minutes currently in draft form; (2) strictly adhere to the statutory scheme for conducting meetings by electronic means, including making reasonable accommodations for the public to attend the meeting; (3) follow the statutory notice protocol of providing notice not less than 48 hours or 2 business days, whichever is greater before the meeting occurs, to cancel or change the particulars of a meeting; and (4) for MOVA's Executive Director, and all members to attend an open meetings training within 90 days of the issuance of this binding advisory opinion.

### **Conclusion**

The OOG cannot turn a blind eye to MOVA's failure to timely publish draft and final meeting minutes for almost two years; or the improper notice of meeting cancellations; and the holding of an electronic meeting in violation of the OMA. While inexcusable, the vast majority of these violations did occur under the previous Acting Director.

---

<sup>16</sup> See OOG Advisory Opinion to DCHD. <http://www.open-dc.gov/documents/oma-advisory-opinion-posting-meeting-minutes-transcripts-electronic-recordings>

<sup>17</sup> The OOG notes that most of the posted missing meeting minutes are final minutes.



Violations of this magnitude prevent the public from its entitlement to full and complete information regarding the affairs of government and those who represent them. To prevent these violations from occurring, the OMA requires proper notice of when meetings occur or a change in schedule occurs, and the timely publishing of meeting records. The OOG does acknowledge the cooperation and diligence shown thus far by MOVA's current Director Ely Ross and Secretary, Stephen Dalzell in response to these violations.

Sincerely,



---

TRACI L. HUGHES, ESQ.  
Director, Office of Open Government  
Board of Ethics and Government Accountability