



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



August 26, 2022

**VIA ELECTRONIC MAIL**

[REDACTED] Watkins  
[REDACTED]  
Washington, DC [REDACTED]  
[REDACTED]

**RE: Dismissal of Complaint Alleging Violation of the Open Meetings Act by the  
Alcoholic Beverage Control Board (#OOG-2022-0004-M)**

Dear Mr. Watkins:

This correspondence responds to your complaint #OOG-2022-0004-M (“Complaint”) submitted to the Board of Ethics and Government Accountability, Office of Open Government (“OOG”) on February 2, 2022. The Complaint alleges that the Alcoholic Beverage Control Board (“ABC Board”) violated the Open Meetings Act (“OMA”) by not allowing the owner of an establishment under its investigation to attend, in-person, its January 26, 2022, public body meeting. The meeting was held via video conference. In response to the Complaint, I am issuing this advisory opinion pursuant to 3 DCMR § 10400 *et seq.*

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 the government and the actions of those that represent them.”<sup>1</sup> However, the public’s right to “full and complete information” is not absolute. Under certain circumstances, public bodies may lawfully: (1) limit the public’s right to information by having closed sessions of public meetings; and (2) conduct electronic (“virtual”) public meetings that only provide for remote access.<sup>2</sup>

After reviewing the Complaint, ABRA’s response to the Complaint, the ABC Board’s January 26, 2022 public meeting records, relevant Mayor’s Orders, the OMA, and its regulations, I find that: (1) the OMA does not require a public body to provide access to its offices when conducting a virtual meeting; (2) the ABC Board’s January 26, 2022 public meeting notice contains the required notice of intent to enter into a closed session (to discuss an ongoing investigation);<sup>3</sup> and (3) the ABC Board’s discussion, of its investigation in closed session, was lawful. Because the ABC Board’s actions were legal, I must dismiss the Complaint.<sup>4</sup> The analysis below supports my findings.

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<sup>1</sup> See D.C. Official Code § 2-572.

<sup>2</sup> See D.C. Official Code §§ 2-575(a)(4); 2-577(a).

<sup>3</sup> The public meeting notice states 405(b) of the OMA as the authority to enter the closed session to discuss an ongoing investigation. The full citation is 405(b)(14) of the OMA or D.C. Official Code § 2-575(b)(14). While the meeting notice fails to provide the complete citation, the oversight has no bearing on this determination. However, the ABC Board must include the full OMA citation for entering closed sessions in all future public meeting notices.

<sup>4</sup> 3 DCMR § 10403.1 provides that “[T]he Director may dismiss a complaint on one or more of the following grounds...the action complained of does not violate the Open Meetings Act.”

## **BACKGROUND**

Before the COVID-19 pandemic, most meetings were in a public body's office with its members and the public in attendance. On March 11, 2020, due to the spread of COVID-19, the Mayor of the District of Columbia, Muriel Bowser, declared a public health emergency in the District of Columbia.<sup>5</sup> To mitigate the spread and exposure of COVID-19, the Council of the District of Columbia ("Council") amended the OMA to waive the requirement for public bodies to meet in person or at all.<sup>6</sup> This amendment to the OMA expired on June 15, 2020 and public bodies were again required to hold public meetings. However, Mayor Bowser closed District of Columbia government facilities, so public bodies were required to hold electronic meetings (or "virtual meetings") under the OMA.<sup>7</sup> To ensure public access to these virtual meetings, an amendment to the OMA's definition of "open meeting" was necessary. The Council amended the OMA definition of "open meeting" to include virtual meetings. The amendment requires public bodies to make reasonable accommodations for the public to view the meeting as it occurs and provides safeguards where technology fails, and the public cannot view the meeting in real-time.<sup>8</sup>

On February 2, 2022, OOG received your Complaint alleging the ABC Board violated the OMA by failing to allow Eric Flannery ("Respondent"), the owner of an establishment licensed by the ABC Board, to attend the January 26, 2022, virtual public meeting, including the closed session, in person at the ABC Board's office. The Complaint alleges "this is a closed meeting that violates D.C. Official Code § 2-575(a)(1)."<sup>9</sup>

On March 15, 2022,<sup>10</sup> OOG sent the Complaint to the Alcohol Beverage Regulation Administration ("ABRA") for a response. ABRA is an independent agency that provides the ABC Board with "professional, technical, and administrative assistance."<sup>11</sup> On April 14, 2022, ABRA provided OOG with a timely written response where it maintains that the ABC Board meeting was lawfully conducted in adherence with the OMA. ABRA asserts that the January 26, 2022 ABC Board meeting was a virtual meeting under the provision of the OMA enacted during the COVID-19 pandemic to permit public bodies to continue to hold meetings even though District of Columbia government facilities were closed. ABRA states that the ABC Board complied with the OMA by taking reasonable steps for the public, including the Respondent, to view or hear the open session in real-time, online. Further, ABRA states that on January 26, 2022, Respondent's licensed

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<sup>5</sup> See the Mayor's 2020-045 Order here:

[https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release\\_content/attachments/MO.DeclarationofPublicEmergency03.11.20.pdf](https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/MO.DeclarationofPublicEmergency03.11.20.pdf).

<sup>6</sup> See section 502(a) of the "COVID-19 Response Emergency Amendment Act of 2020," effective March 17, 2020 (D.C. Act 23-0247) here: <https://lims.dccouncil.us/Legislation/B23-0718>.

<sup>7</sup> See D.C. Official Code § 2-577.

<sup>8</sup> Under D.C. Official Code § 2-575(a)(4), meetings are open if "the public body takes steps reasonably calculated to allow the public to view or hear the meeting while it is taking place, or, if doing so is not technologically feasible, as soon thereafter as reasonably practicable."

<sup>9</sup> D.C. Official Code § 2-575(a)(1) states, "(a) Except as provided in subsection (b) of this section, a meeting shall be open to the public. A meeting shall be deemed open to the public if: (1) The public is permitted to be physically present."

<sup>10</sup> On March 7, 2022, my legal staff met remotely with ABRA's general counsel and chief of staff to discuss the Complaint.

<sup>11</sup> D.C. Official Code § 25-202.

establishment was on the ABC Board's Supplemental Investigative Agenda and the OMA permits the ABC Board to discuss ongoing investigations during closed sessions of public meetings.<sup>12</sup>

As discussed below, I find that the ABC Board's conduct of its January 26, 2022 public meeting did not violate the OMA because the ABC Board held a proper closed session of its public meeting, and the OMA does not require in-person meetings during the public health emergency.

## **ANALYSIS**

### **I. The Open Meetings Act permits public bodies to meet in closed session to discuss matters exempted from public meetings.**

The OMA permits public bodies to convene a closed meeting during an open meeting to discuss statutorily exempted matters, including investigations.<sup>13</sup> The Complaint alleges that Respondent was unable to attend the closed portion of the ABC Board's meeting when Respondent's establishment was being discussed by the ABC Board.

Public bodies are required to provide the public with advance notice prior to a public body meeting in a closed session of an open meeting.<sup>14</sup> This advance notice to the public is necessary, "to ensure public entitlement to as full and complete information regarding the affairs of government and those who represent them."<sup>15</sup> The OMA requires that a public body provide advance notice to the public "before meeting in open or closed session."<sup>16</sup>

As the OMA requires, the ABC Board's January 26, 2022 public meeting notice cites the authority and reason to discuss its investigation in a closed session. The OMA's closed meeting exceptions, D.C. Official Code § 2-575(b)(1)-(16A), do not provide the public the right to attend closed sessions of public meetings. Therefore, since the ABC Board provided proper notice of the closed session of its public meeting and the meeting was closed for a statutorily permissible reason, the ABC Board did not violate the OMA when it met in closed session to discuss the ABC Board's Supplemental Investigative Agenda.

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<sup>12</sup> See page 16 of ABRA's Investigative Supplemental Agenda here:

[https://abra.dc.gov/sites/default/files/dc/sites/abra/page\\_content/attachments/ABC%20Dispositions%20-%202001-26-22.pdf](https://abra.dc.gov/sites/default/files/dc/sites/abra/page_content/attachments/ABC%20Dispositions%20-%202001-26-22.pdf). D.C. Official Code § 2-575(b)(14) states, "[A] meeting, or portion of a meeting, may be closed for the following reasons: (14) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation."

<sup>13</sup> D.C. Official Code § 2-575(b)(1)-(16A).

<sup>14</sup> D.C. Official Code § 2-575(c).

<sup>15</sup> D.C. Official Code § 2-572.

<sup>16</sup> D.C. Official Code § 2-576. See also OOG's 2016 Advisory Opinion regarding closed meetings: [#OOG-0004.1.07.16.AO](#)

**II. The Covid-19 Amendments to the OMA permit public bodies to meet remotely and the public does not have a right to attend the meeting in real-time or in person.**

The ABC Board complied with the OMA because it provided the required public meeting notice and access instructions to view its open session in real-time. The OMA requires that meetings be open to the public.<sup>17</sup> However, the OMA's criteria for when a meeting is considered open was altered due to the Covid-19 pandemic.<sup>18</sup> Public bodies may lawfully conduct virtual meetings by providing the public remote access to open sessions and providing meeting recordings to the public within a reasonable time after the meeting.<sup>19</sup> There is no requirement to permit physical or real-time public attendance.

The Complaint states that the ABC Board did not allow the Respondent to enter its physical offices on January 26, 2022, to attend its public meeting. The ABC Board's January 26, 2022 public meeting notice, posted on its website, includes public access instructions to view the open session of the virtual meeting in real time. So, access to ABC Board's offices was not only unnecessary - providing public access to their physical facilities is not required to comply with the OMA.

In summary, by providing the public access to the open session of its January 26, 2022 public meeting, the ABC Board complied with the OMA by taking actions "reasonably calculated" for the public to view or hear the session in real-time, pursuant to D.C. Official Code §§ 2-575(a)(4); (2-577(a). Since it was a virtual meeting, the ABC Board was not required to provide the public with access to its physical office.

**CONCLUSION AND DISMISSAL**

Pursuant to 3 DCMR § 10403.1(b), I am dismissing this Complaint because the actions complained of do not violate the OMA. The ABC Board properly conducted its January 26, 2022 meeting in adherence to the OMA. My findings are limited to the facts and circumstances of this Complaint. Attached is a copy of your Complaint.<sup>20</sup>

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<sup>17</sup> D.C. Official Code § 2-575(a) states, "[E]xcept as provided in subsection (b) of this section, a meeting shall be open to the public."

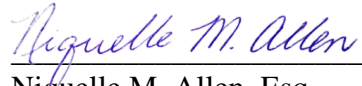
<sup>18</sup> Act 23-0181, which expires on January 23, 2022, temporarily amends the OMA only require real-time public viewing of remote meetings when it is "technologically feasible."

[https://lims.dccouncil.us/downloads/LIMS/47885/Signed\\_Act/B24-0384-Signed\\_Act.pdf](https://lims.dccouncil.us/downloads/LIMS/47885/Signed_Act/B24-0384-Signed_Act.pdf)

<sup>19</sup> *Id.*

<sup>20</sup> 3 DCMR § 10403.2.

Sincerely,



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