

JANUARY 25, 2019



THE OPENGOVIST

OOG BIENNIAL NEWSLETTER



OFFICE OF OPEN GOVERNMENT
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
441 4th Street NW, Washington, DC 20001

Director of Open Government's Message

I am proud to serve as the third Director of Open Government for the District of Columbia and under my tenure I seek to grow the office and set us up for continued success in the future based on the foundation laid by former Directors Traci Hughes and Brian Flowers. I thank them both for holding this space for me to grow the Office of Open Government and I greatly respect and appreciate their service to the District of Columbia. We are a small operation now, but I see great potential in our future. As a longtime District government employee I have witnessed the difference one good leader can make in an organization and I am the leader who can make a difference in this one. Please give me time.

We are taking a new approach to the newsletter. With a small staff of three we are aiming to provide you with good content twice a year. We provide a monthly report to the BEGA Board and we hope you will attend our meetings if you'd like to know more about what we are doing.

In this first issue of the new Bi-Annual Newsletter, *The Opengovist*, we are providing updates of the reports that have gone to the DC Council, advice we have rendered, and insight into our activities. I hope you enjoy the newsletter and our new format.

Sincerely,

Niquelle Allen
Director of Open Government



Legislative Update

Attorney General FOIA Litigation Report. Pursuant to the District of Columbia Freedom of Information Act (“DC FOIA”), the Office of the Attorney General for the District of Columbia (“OAG”) submits a DC FOIA report to the Council of the District of Columbia that contains data pertaining to litigation arising under the DC FOIA for the previous fiscal year. The link to that report is here: Pursuant to the District of Columbia Freedom of Information Act (“DC FOIA”), this report from the Office of the Attorney General for the District of Columbia (“OAG”) to the Council of the District of Columbia contains the following specified data pertaining to litigation arising under the DC FOIA for the previous fiscal year:

OAG FY2018 FOIA Litigation Report:

<https://lims.dccouncil.us/downloads/LIMS/41767/Introduction/RC23-0019-Introduction.pdf>

DC Mayor Submits a FOIA Report to the DC Council. Pursuant to the District of Columbia Freedom of Information Act (“DC FOIA”), the Mayor of the District of Columbia, through the Mayor’s Office of Legal Counsel, submits an annual DC FOIA report to the Council of the District of Columbia that contains data pertaining to the citywide DC FOIA disclosure activity for the previous fiscal year. The link to that report is here:

Mayor’s FY2018 FOIA Report:

<https://lims.dccouncil.us/downloads/LIMS/41910/Introduction/RC23-0034-Introduction.pdf>

Freedom of Information Act

OOG Issues FOIA Advisory Opinion Update Regarding Identification Requirements. On October 30, 2018, the OOG issued an Advisory Opinion regarding the Freedom of Information Act (OOG-0002_8.23.18_FOIA). The OOG advised that FOIA does not support an identification requirement for FOIA requests. An agency should not require a requester to present valid identification to submit a first-party FOIA request. An agency should also not require a requester to present valid identification and to obtain the first-party record. This is not a case of first impression with the OOG. The frequency of this issue arising indicates the need for either legislation or regulations to address the matter. The OOG suggested models for such legislation or regulations in the Advisory Opinion. Read the opinion here: <https://www.open-dc.gov/documents/oog-000282318foia-ao-whether-it-appropriate-ouc-require-requester-present-valid>

OOG Issues FOIA Advisory Opinion Regarding PSC. On January 7, 2019, OOG issued a FOIA Advisory Opinion (OOG-0004_12.11.18_FOIA AO) to the Public Service Commission of the District of Columbia (PSC) concerning the application of D.C. Official Code §2-534(e) to a FOIA request for the PSC’s budgetary and financial records. The PSC sought to withhold records pursuant to the attorney-client, attorney work product, and deliberative process privileges. The PSC is currently in arbitration with the FOIA requester and contended that providing the requested records would reveal its theory of the case. OOG advised that the records related to the PSC’s budget and expenditure of public funds are available to the public without a FOIA request

under D.C. Official Code §§2-536(6) and (6A). However, the PSC's attorney billing records could be redacted under D.C. Official Code §2-534(e), if they revealed privileged information. OOG advised that the dollar amount spent was factual data not subject to the privilege. With respect to deliberative process privilege, OOG advised that the privilege might apply if the records concerning budget formation are pre-decisional and deliberative. The PSC did not offer its responsive records for OOG to review, but OOG offered to conduct such a review if it would assist the PSC in making its determination. Read the opinion here: <https://www.open-dc.gov/documents/oog-0004121118foia-ao-whether-psc-may-withhold-records-requested-under-foia-exempt>

Open Meetings Act

OOG Resolves a Statewide Independent Living Council OMA Complaint. On September 5, 2018, the OOG issued an Open Meetings Act (OMA) Advisory Opinion (OOG-002.8.1.18_SILC_AO) finding that the Statewide Independent Living Council was in violation of the OMA for: (1) failing to timely publish to its website or the website of the District government draft and final meeting agendas for public meetings that occurred from March 2014 through May 2018; (2) failing to timely notice the public through the D.C. Register of its upcoming meetings; (3) failing to timely publish in the D.C. Register its 2015 yearly calendar of meetings; (4) failing to publish in the D.C. Register its 2018 yearly calendar of meetings; and (5) failing to timely publish final meeting minutes to its website or the website of the District government. The issuance of the opinion was as a result of a member of the public contacting the OOG for assistance in locating the July 19, 2018, SILC public meeting notice. Read the opinion here: <https://www.open-dc.gov/sites/default/files/SILC%20Advisory%20Opinion%2009052018.pdf>

FOIA Website Audit:

The OOG completed a preliminary FOIA Audit in December 2018, as reported to the Board of Ethics and Government Accountability in an open meeting. District agencies are required to make certain information available online under D.C. Official Code §2-536. The OOG, through the audit process, reviewed the webpages of 95 public bodies, which included DC agencies, DC independent agencies, and the Office of Attorney General, and DC Council. The audit reviewed the website's FOIA page to determine if six(6) categories of the required records were available on the webpage. These categories included employee information, administrative manuals, agency publications, agency policies, agency decisions, and financial information. Of the 95 websites reviewed, 23 were compliant with all categories. OOG will contact the entities reviewed and inform them of the preliminary results this month and make recommendations for corrective action where appropriate. The audit process will continue through the end of the fiscal year.

Announcements:

OOG Director News: Director Niquelle Allen served as an instructor for the National Association of Attorneys General, National Attorneys General Training and Research Institute's National Ethics Summit on December 11-13, 2018 in Phoenix, AZ. Director Allen is a former Assistant Attorney General for the District of Columbia and presented an hour-long course titled "Managing the Freedom of Information Process." The presentation focused on the challenges of meeting FOIA requirements and processing FOIA requests in the digital age. The District of Columbia Attorney General and the Office of the Attorney General's Ethics Attorney also presented at the Ethics Summit.

IT Specialist News: On Friday December 14, 2018, the OOG bade farewell to its IT and Applications Engineer, Waddah M. Kittab. We wish him the very best in his new career endeavor as the Senior IT Specialist for the DC Auditor. Congratulations! Our IT Specialist position was posted on December 18, 2018 on www.dchr.dc.gov and is set to run through January 18, 2019.

Partnership with the DC Bar: The OOG in connection with the District of Columbia Bar video production team has completed a series of short videos, which it published on OOG's YouTube channel. The full project consists of nine (9) short films concerning the District of Columbia Freedom of Information and information concerning the Office of Open Government. OOG also published and released a short introduction video on the open-dc.gov webpage. The project was completed in November 2018.

View the full project video here: https://www.youtube.com/watch?v=0I_Xp1SkyNI and

View the OOG Intro video here: <https://www.youtube.com/watch?v=zXGii0Ub7xM>

Curtain Call

Featured Public Body Profile. The featured public body is the Historic Preservation Review Board (HPRB). HPRB is the government body that designates historic property and advises the Mayor on historic preservation matters in the District of Columbia. As the State Review Board, HPRB also helps to implement federal historic preservation programs in the District. HPRB's nine members are District residents appointed by the Mayor, subject to approval by the Council of the District of Columbia. HPRB meets monthly except in August. If necessary, monthly meetings may extend to a second day. The Historic Preservation Office (HPO) manages the preparation for HPRB meetings, handles all submissions and correspondence, and answers any questions about the HPRB process. You can find more information about HPRB's meetings on their website here: <https://planning.dc.gov/node/1175830>. To find out general information about HPRB visit: <https://planning.dc.gov/page/historic-preservation-review-board>

Upcoming Trainings

OOG provides OMA and FOIA training courses upon request. Please contact us at open.govoffice@dc.gov to schedule a training session. Training sessions may be held at OOG's offices, located at 441 4th Street, NW, Suite 540 South, Washington, DC 20001, at your office location, or electronically via WebEx.

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Got Questions? We have Answers.

OOG provides advice to agencies, public bodies and the public on compliance with FOIA and the OMA. Please contact us at (202) 481-3411 or email open.govoffice@dc.gov for assistance.



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