

FEBRUARY 24, 2020



# THE OPENGOVIST

OOG BIENNIAL NEWSLETTER

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

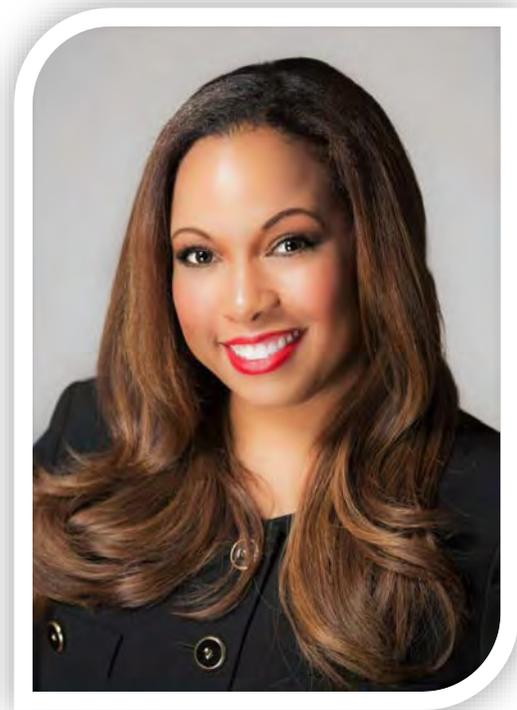
# Director of Open Government's Message

Public education is an important area in the lives of many District of Columbia residents. We have heard from many of you about the importance of increased transparency in the manner in which our educational governmental institutions engage the public in its decision-making process. You have specifically looked to OOG to step in and ensure access to meetings and records. In response, OOG looked into the operations of Local School Advisory Teams ("LSATs") within the District of Columbia Public Schools and found that they are subject to the Open Meetings Act. We made a commitment in FY20 to make sure LSATs are trained on how to become compliant with the OMA when conducting their meetings. We are also engaged with the D.C. Council as they consider whether or not to subject the meetings of the D.C. Public Charter School Governing Boards to the OMA.

In this issue of *The Opengovist* we review our participation in the discussions concerning school transparency, legislative activity concerning open government issues, including Body Worn Cameras, and provide updates on the activities of OOG.

I hope you enjoy this latest edition of the newsletter

Sincerely,  
Niquelle Allen  
Director of Open Government



# Legislative Update

**Body Worn Camera Roundtable.** On October 21, 2019, the DC Council Committee on the Judiciary and Public Safety held a public oversight roundtable titled “Five Years of the Metropolitan Police Department’s (MPD) Body Worn Camera Program: Reflections and Next Steps.” The roundtable featured 28 public witnesses and 3 government witnesses, including the Office of Open Government (OOG). The testimony concerned the success of MPD’s BWC program, which was launched in 2014. As of December 2018, MPD has deployed 3,100 BWCs. Attorney Barton provided testimony on behalf of OOG. His testimony concerned the lack of transparency in the BWC program when viewed through the lens of open government laws. Specifically, the BWC program runs afoul of the spirit and intent of the Freedom of Information Act (FOIA). He testified that BWC footage is essentially unavailable using a FOIA request because it is either overredacted or too expensive. View the hearing record here (OOG on pg.92): [BWC Public Hearing Record](#).

**DC Mayor Submits a Report on BWCs to the Council.** In accordance with the Body-Worn Camera Regulation and Reporting Requirements Act of 2015, Section 3004 of Title III Subtitle A of the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 5-116.33), the Mayor submitted the report entitled "A Report on MPD's Use of Body-Worn Cameras January 1 - June 30, 2019" to the Office of the Secretary of the District of Columbia Council on November 26, 2019. The Report included data on FOIA, as follows:

7. How many Freedom of Information Act requests did MPD receive for body-worn cameras recordings during the reporting period? What was the outcome of each request, including any reasons for denial? What was the cost to the department for complying with each request, including redaction? (D.C. Official Code § 5-116.33(a)(7)).

Between January 1 and June 30, 2019, MPD received 151 FOIA requests. The outcomes of each request are noted in the table below

Disposition	No.
Closed	93
Granted in full (9)	0
Granted in part (10)	23
Denied in full (11)	14
No responsive video found (12)	12
Duplicate request (13)	13
Referred to another agency (14)	2
Withdrawn (15)	29
Open (6/30/2019)	58
<b>Total</b>	<b>151</b>

(9)There were no redactions made to the requested video footage.

(10)Some redactions were made to the requested video footage.

- (11)The footage pertained to ongoing investigations, juvenile records, or the video was from inside a personal residence.
- (12)Videos were purged in accordance with the Department's retention schedule.
- (13)The requestor made an identical request under a different FOIA reference number that is already in process.
- (14) Sometimes requests are referred to other agencies because the footage pertains to access to information under their purview.
- (15) The Department's FOIA office may have requested additional information from the requester to which the requester did not respond.

Between January 1, 2019 and June 30, 2018, the total costs of BWC redactions associated with FOIA requests was: \$147,435.

Read the full report here: [Mayor's BWC Report November 2019](#).

**Body Worn Camera Legislation.** On December 3, 2019, the DC Councilmembers Charles Allen, Trayon White, Sr., Mary Cheh, Brianne Nadeau, David Grosso, Robert White, Anita Bonds, and Kenyan McDuffie introduced emergency legislation, B23-0567, “Access to Body-Worn Camera Footage Temporary Regulation Amendment Act of 2019.” The emergency bill was unanimously approved the D.C. Council. It would permit parents and relatives of people who die during encounters with the Metropolitan Police Department the right to access BWC footage of the interaction with MPD. Under current law, only the person filmed on the BWC or their legal representative may access the BWC footage. If the person is a minor, their parent or legal guardian may access the BWC footage. But the family of deceased person has no legal right to view BWC footage. This legislation changes that. Read it here: [Access to BWC Footage](#).

## Freedom of Information Act

**OOG Issues FOIA Advisory Opinion Update Regarding DCRA.** On September 26, 2019, OOG issued an opinion letter that updated to the OOG's 2016 Advisory opinion regarding whether the Department of Consumer and Regulatory Affairs (“DCRA”) is in compliance with D.C. FOIA’s mandatory disclosure requirements (D.C. Official Code §§ 2-536(a)(8A) and 2-536(b)). These provisions require that DCRA make publicly available, on the on its website or the Internet, all pending applications for building permits and authorized building permits, including the permit file. We found that while DCRA has made a significant effort to comply with D.C. Official Code §§ 2- 536(a)(8A) and 2-536(b) in FY20, the agency still is noncompliant with these provisions. DC must make investments in the IT infrastructure required to put its records online to come into full compliance with FOIA. Read the original Advisory Opinion [here](#).

**OOG Issues FOIA Advisory Opinion Regarding OAH.** On January 27, 2020, OOG issued an Advisory Opinion (#OOG-003\_9.12.19\_ AO) regarding whether the Office of Administrative Hearings (“OAH”) is in compliance with the D.C. FOIA’s mandatory disclosure requirements (D.C. Official Code §§ 2-536(a)(3) and 2-536(b)). These FOIA provisions require that OAH make publicly available, on its website or the Internet, final opinions, including concurring and dissenting opinions, as well as orders made in adjudication of cases. My findings were: (1) that while OAH has made significant efforts

to comply with D.C. Official Code §§ 2- 536(a)(3) and 2- 536(b) in FY20, the agency still is noncompliant with these provisions; (2) that its non-compliance is not willful and is due to staffing and budget constraints; and (3) that OAH cannot move towards compliance with FOIA until it implements a case management system that makes applicable final orders publicly available on the Internet. Read the Advisory Opinion [here](#).

## Open Meetings Act

**OOG Finds Local School Advisory Teams are Public Bodies Subject to the OMA.** On August 5, 2019, OOG issued a comprehensive Advisory Opinion to the Deputy Mayor of Education, where it concluded that LSATs were public bodies subject to the OMA. Subsequently, OOG resolved two OMA complaints concerning the Maury LSAT's conduct of its public meeting. Read the Advisory Opinion that recognized LSATs as public bodies subject to the OMA [here](#).

**OOG Resolves First OMA Complaint Regarding the Maury Local School Advisory Team.** August 29, 2019, OOG issued an Advisory Opinion (#OOG-2019-004-M), regarding the Maury Elementary LSATs' compliance with the OMA. The Advisory Opinion found that the public body was in violation of the OMA's "Recording of meetings" provisions for: (1) failing to make "a copy of the full record publicly available no later than 7 business days after the meeting;" and, (2) failing to record the meeting by electronic means. The Maury LSAT was also found in violation of the District's Freedom of Information Act for failing to make publicly available the detailed minutes of its April 23, 2019, meeting as required by D.C. Official Code § 2- 536(a)(7). Read the Advisory Opinion [here](#).

**OOG Resolves Second Complaint Regarding the Maury Local School Advisory Team.** On November 5, 2019, OOG issued an Advisory Opinion (#OOG-2019-0007-M) regarding the DC Public Schools' Maury LSAT . The Advisory Opinion found that the public body: (1) failed to provide public notice of its September 10, 2019 meeting; (2) failed to record the meetings by electronic means; and (3) failed to make meeting records publicly available as required. The public body recently became subject to the OMA and admitted it violated the statute. Therefore, per the OOG's regulations we attempted to first resolve the matter via conciliation, prior to issuing the opinion. However, the complainant declined to participate in conciliation. An issue the Advisory Opinion brought to light is that LSATs are not able, without the intervention of DCPS (or some other government agency), publish in the D.C. Register. So, in order to comply with the notice provisions of the OMA, OOG opined that LSATs may publish meeting notices on the Central Meeting Calendar to comply with this provision. Read the Advisory Opinion [here](#).

## DC Government Website Audit Results:

OOG completed the comprehensive FOIA/OMA audit and the audit results were released to the public on September 30, 2019 via open-dc.gov. The FOIA audit of 74 DC.GOV

agency websites revealed that agencies under the Mayor's Authority were largely compliant with the mandatory disclosure requirements of FOIA. The FOIA pages on DC government websites now include a link to "certain records" which takes you to the [dc.gov/opengovernment](https://dc.gov/opengovernment) webpage. That page contains much of the information that DC FOIA law requires agencies to make available to the public on the Internet. The websites of some independent agencies were found to not contain the required information. Also, some agencies have satellite websites for its larger offices, such as the Office of the Chief Financial Officer's Office of Tax and Revenue, and it may be confusing to the user where to locate the FOIA information. In the case where there is a large satellite office, we recommend a FOIA tab with a link to agency's FOIA page. The OOG will reach out to those agencies and offer assistance with compliance with the mandatory disclosure requirements. With respect to the OMA portion of the audit, we reviewed 187 public bodies' websites and our own website, [open-dc.gov](https://open-dc.gov), to determine whether the minutes of the meetings were posted, as FOIA law requires. We also checked for notices and agendas, as the OMA requires. The public bodies reviewed were also largely compliant. We found 30 public bodies with OMA and FOIA compliance issues. Read the Audit Result [here](#).

## Announcements:

**OOG General Counsel:** The Office of Open Government is proud to announce that Johnnie Barton will serve as OOG's first General Counsel. Mr. Barton will function under the title "Chief Counsel of Open Government" to avoid confusion with the current General Counsel for the Office of Government Ethics. Mr. Barton will serve as the head of the OOG legal department, which we hope will grow in the coming years. Congratulations to Chief Counsel Barton!

**Help Wanted:** OOG is looking for talented individuals to fill two vacancies. We are seeking a talented Attorney-Advisor and IT Specialist to join the Office of Open Government staff. We should be posting information regarding how to join our office on our website soon.

# Curtain Call

**Featured Public Body Profile.** The featured public body is the State Board of Education (“SBOE”). SBOE is responsible for advising the State Superintendent of Education on educational matters, including: state standards; state policies, including those governing special, academic, vocational, charter and other schools; state objectives; and state regulations proposed by the Mayor or the State Superintendent of Education. There are nine members on the DC State Board of Education who are directly elected by voters within the District. Board members’ terms are four years and are staggered so no more than five board members are selected in any one election. SBOE meets regularly each month and posts notice of its meetings on the Central Meeting Calendar on open-dc.gov. You can find more information about SBOE on their website here: <https://sboe.dc.gov/> There meetings are also listed here: <https://sboe.dc.gov/https://sboe.dc.gov/page/sboe-meeting-information>.

## Upcoming Trainings

OOG is conducting OMA training for new members of public bodies on February 26, 2020. The Office of Government Ethics will be providing ethics training at that training session as well.

OOG provides OMA and FOIA trainings upon request. Please contact us at [open.govoffice@dc.gov](mailto:open.govoffice@dc.gov) to schedule a training session. Training sessions may be held at OOG’s offices, located at 441 4<sup>th</sup> Street, NW, Suite 540 South, Washington, DC 20001, at your office location, or electronically via WebEx.

## End·Note | 'en(d), nōt/|



## **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](mailto:open.govoffice@dc.gov) for assistance.**



## **OOG Staff Contact Information**

**Niquelle M. Allen, Esq.** (202) 481-3406. [Niquelle.Allen@dc.gov](mailto:Niquelle.Allen@dc.gov)  
*Director*

**Johnnie I. Barton, Esq.** (202) 741-5373. [Johnnie.Barton2@dc.gov](mailto:Johnnie.Barton2@dc.gov)  
*Chief Counsel*

ONE JUDICIARY SQUARE,  
4TH STREET, NW, SUITE 540 SOUTH , WASHINGTON, DC 20001

[open.govoffice@dc.gov](mailto:open.govoffice@dc.gov)

(202) 481-3411

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