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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

As District of Columbia government (the "District") continues to serve the public remotely, the Office of Open Government (OOG) has observed challenges and opportunities in this mode of service delivery. OOG also understands that it is paramount that government operations remain transparent and open to the public even as services continue to be delivered remotely. The good news is OOG has witnessed increased public participation in government meetings as many of those meetings are now held virtually and this has made government meetings more accessible to the public and convenient for them to attend. OOG has continued to work with public bodies to ensure that remote meetings continue to be conducted according to the Open Meetings Act (OMA). However, transitioning to remote operations revealed that the District must invest in digitizing and publishing records online to ensure that government records are accessible to the public. OOG continues to encourage the government to invest in technology to facilitate increased accessibility to its records.

Our latest issue details our efforts to encourage transparency in the District. We also provide updates on activities and news in the area of open governance. I hope you enjoy this issue of *The Opengovist*.

In Service,

Niquelle Allen
Director of Open Government



Legislative Update

D.C. FOIA Tolling Legislation. The FOIA Tolling Emergency Amendment Act of 2020 (A23-0555), was signed by the Mayor on December 22, 2020. It expired May 21, 2021. During the Legislative Session held on December 15, 2020, the Council of the District of Columbia approved on second reading the FOIA Temporary Amendment Act of 2020 (Bill 23-1108). These measures adjust the time that agencies must respond to FOIA requests during the public health emergency. They restart the FOIA response clock as of January 15, 2021, but allow for an extension of FOIA deadlines when the need to conduct an on-site review of records could present a significant risk to health or safety during the COVID-19 pandemic. The January 15, 2021 start date will also ensure that any requests received since March 11, 2020 (the first day of the declared Public Health Emergency) do not immediately come due.

On January 13, 2021, the Mayor signed, the FOIA Temporary Amendment Act of 2020 (DC Act 23-0595). On February 1, 2021, it was submitted for Congressional Review. The projected law date is March 19, 2021. The Act adjusts the time that agencies must respond to FOIA requests during the public health emergency. It restarts the FOIA response clock as of January 15, 2021, but allows for an extension of FOIA deadlines when the need to conduct an on-site review of records could present a significant risk to health or safety during the COVID-19 pandemic. The January 15, 2021 start date will also ensure that any requests received since March 11, 2020 (the first day of the declared Public Health Emergency) do not immediately come due.

On January 22, 2021, the Office of Open Government (OOG) sent a memorandum to D.C. FOIA officers to ensure they are informed of these new deadlines that included suggested form letter for D.C. FOIA officers to send to requesters notifying them of the impact of these changes on their FOIA request. The FOIA Portal that receives online FOIA requests was also adjusted to reflect changes in the FOIA law.

These changes expired on July 25, 2021 because the Mayor did not extend the Public Health emergency past this date.

Freedom of Information Act

DCPS' Compliance with the Proactive Disclosure Provisions of D.C. FOIA. On April 12, 2021, OOG issued An Advisory Opinion regarding the District of Columbia Public Schools' (DCPS) compliance with the proactive disclosure provisions of DC FOIA. (#OOG001.7.29.20_AO). OOG concluded the following: (1) DCPS' Administrative and Policy Documents are public information subject to D.C. FOIA's proactive disclosure provisions; (2) DCPS has not fully complied with D.C. FOIA's proactive disclosure provisions; (3) a D.C. FOIA request is not needed to obtain these documents; and (4) DCPS has not made these documents publicly available as required by the D.C. FOIA. DCPS was not in full compliance with the D.C. FOIA's requirement to make Administrative and Policy Documents publicly available on its website, the Internet or by other electronic means. Additionally, DCPS also violated the D.C. FOIA by not

providing the information without the submission of a D.C. FOIA request. OOG recommend that DCPS develop a plan that includes a realistic deadline to reach full compliance with the D.C. FOIA. OOG also recommended that DCPS inform the Mayor and Council of its challenges and request additional funding to fully comply with the D.C. FOIA.

TPM Case Compliance with the Proactive Disclosure Provisions of D.C. FOIA.

Terris, Pravlik & Millian, LLP (TPM) brought a FOIA case against the District of Columbia asking the Superior Court to order the District to turn over budget materials that are required by D.C. FOIA to be posted online. TPM sought the materials to help it to monitor the District’s compliance with the injunction in *DL v. District of Columbia*, which addresses the delivery of special education and related services to preschool-aged children. The Mayor moved to dismiss the case. The DC Council filed an *amicus curiae* brief supporting TPM. On February 12, 2021, the Court denied the District’s motion to dismiss.

On July 23, 2021, Judge Pasichow issued a 16-page decision granting TPM’s motion for summary judgment. The judge stated, among other things, that “the Court is not persuaded by the District’s argument that disclosure will ‘chill full, candid’ conversation.” The court also pointed out that the executive and legislative branches of government share authority over the budget. Accordingly, the court ordered, the District must produce the budget-related documents to TPM and publish them on its website. The District was required to comply on or before August 5, 2021.

The case is *Terris, Pravlik & Millian, LLP v. District of Columbia*, No. 2020 CA 003087 B, in DC Superior Court. Read additional reporting on the case [here](#) and [here](#).

Annual FOIA Report from the Secretary of D.C. Pursuant to D.C. Official Code § 2-538(a) & (c) the Council received the annual FOIA reports (report of the public –record-disclosure activities) of each District of Columbia public body. Read FOIA Public Record Activity Report from the Mayor of the District of Columbia here: [FOIA Activity Report](#)

Open Meetings Act

OMA Complaints Resolved. OOG receives complaints regarding violations of the OMA and investigates and resolves those OMA complaints. OOG has recently resolved several OMA complaints; read about them here:

[Board of Professional Counseling](#)

[Advisory Neighborhood Commissioner](#)

[Office of Administrative Hearings](#)

OMA Training for Public Charter School Board of Trustees. Public Charter School Boards of Trustees' meetings are subject to the Open Meetings Act. OOG facilitated three training sessions for members of those public body members and their staff members.

The sessions were held in December 2020 and designed provide instruction and answer questions on the OMA for these public bodies. The first training session, facilitated by the Office of Open Government's Chief Counsel, Johnnie Barton, gives detailed instruction of the Open Meetings Act and Open Meetings Regulations. The second training session, facilitated by the Director of Open Government, Niquelle Allen, provided instruction of the Open Meetings Act and Open Meetings Regulations along with Q&A. Both may be viewed here: <https://www.open-dc.gov/documents/oma-training-public-charter-schools-boards-trustees>

Special Report: January 6 Attack on U.S. Capitol

Judges' Order Granting Media Access to Capitol Cases. On May 14, 2021, Chief Judge Beryl A. Howell issued an Order in the United States District Court for the District of Columbia in *In re: Media Access to Video Exhibits in Pre-Trial Hearings During the Covid-19 Pandemic*. The Order allows media organizations to obtain video evidence in proceedings against individuals involved in the January 6, 2021 insurrection on the U.S. Capitol. Chief Judge Howell's order is in response to a motion submitted by CNN and 14 other news outlets that requested an efficient approach for public access to video exhibits. The news outlets requested body camera and surveillance video seen by judges but not viewed by the public.

The ruling from Chief Judge Howell, will facilitate a pathway for federal prosecutors to make public video exhibits originating from the U.S. Capitol riots but the release of videos will not be automatic. Defendants will have the opportunity to object to the release of the video evidence if they believe the release will be prejudicial to their case. The ultimate decision to release will be resolved on a case-by-case basis. The presiding judge on each case will make the determination as to release of video exhibits capturing the brutal attack on the U.S. Capitol. If a judge approves the release of video exhibits, media organizations will be able to obtain videos from the U.S. Attorney's Office for the District of Columbia.

National Security Archive Uses Federal FOIA to Track Capitol Riot Documents. The National Security Archive is an organization founded by journalists that is housed at George Washington University. They have undertaken a massive effort to chronicle the government's response to the January 6, 2021 Capitol Riot/Attack. Read the results of their research here:

<https://nsarchive.gwu.edu/briefing-book-sourcebook/foia/2021-01-13/capitol-riot-documents-you-should-read-part-1>

<https://nsarchive.gwu.edu/briefing-book/foia/2021-03-03/capitol-riot-documents-you-should-read-part-2>

<https://nsarchive.gwu.edu/briefing-book/foia/2021-05-04/capitol-riot-documents-you-should-read-part-3>

OOG News

Open Government Summit. On March 18, 2021, the D.C. Open Government Coalition, along with the Office of Open Government and other Coalition leaders and guests, came together during the annual Sunshine Week. The program included three segments, one of which the Director of Open Government participated. Director Allen discussed D.C. agencies' compliance with FOIA requests during the pandemic, and MPD's over-redacting of body-worn camera footage prior to release. Sunshine Week was held virtually this year from March 14- 20, 2021. Open government related issue forums and events were held during the week all over the country. View the recording here: <https://vimeo.com/529182223>.

Welcome Aboard!!! On May 24, 2021, OOG welcomed two new attorneys to our legal staff. Ms. Zita Orji is OOG's new Trial Attorney and Mr. Nicholas Weil is OOG's new Attorney Advisor. Both attorneys bring a wealth of legal experience to OOG and will be instrumental in ensuring that the District of Columbia government operates in a manner that is open and transparent. Attorney Zita Orji is from Birmingham, AL and attended the University of Alabama at Tuscaloosa where she attained a bachelor's degree. She received the Juris Doctorate from Tulane Law School in New Orleans, LA. Ms. Orji spent most of legal career as counsel for a non-profit organization and specialized in civil litigation.

Attorney Nicholas Weil has worked in private practice and at all levels of government. Most recently, he was a litigator and researcher-writer who contracted with client firms across the United States. Mr. Weil began his legal career as a clerk for Justice Steven Levinson of the Supreme Court of Hawaii. He also worked as a codification lawyer for the U.S. House of Representatives, helping to edit and publish the U.S. Code. After returning to graduate school, Mr. Weil entered private practice as a litigator (mostly appellate). Mr. Weil has a Juris Doctor from Washington University, where he was editor-in-chief of the Washington University Journal of Law & Policy and parliamentarian for student government; a Master of Arts degree in Forensic Linguistics from Hofstra University, and a Bachelor of Arts degree in Linguistics from Harvard University.

BEGA Names Ashley Cooks as Acting Ethics Director. Ashley Cooks became the Acting Director of the Office of Government Ethics in May 2021 after previously serving as the Supervisory Attorney Advisor and as the agency's Interim General Counsel. Ms. Cooks began working at BEGA in 2015 as an Attorney Advisor. Ms. Cooks began her legal career as a law clerk for the Senior Judges of the D.C. Court of Appeals and has also served at the United States Attorney's Office (Civil Division) and the District of Columbia Council. Read more about Acting Director Cooks here:

<https://bega.dc.gov/biography/acting-director-government-ethics-ashley-cooks>

American Society of Access Professionals (“ASAP”) National Training Conference 2021. On May 25-27, 2021, OOG’s legal staff and Director attended ASAP’s National Training Conference. The conference was held virtually this year due to COVID-19. Director Allen was a featured instructor during the National Training Conference and instructed on “Innovations in District of Columbia FOIA law” along with her co-presenter, Michael Morisy, from the FOIA advocacy organization MuckRock.

“Digging Into D.C.” School Open Records Training. On July 20, 2021, the D.C. Open Government Coalition (D.C. OGC), the D.C. Library Association, and OOG sponsored a free training session for members of the public about the best ways to get public information from DC's public and charter schools. Speakers included: Speakers include:

- Sandra Moscoso, parent activist and D.C. OGC board member
- Fritz Mulhauser, open government expert and D.C. OGC board member
- Niquelle Allen, Director of the D.C. Office of Open Government
- Miranda Spivack, journalist and open government expert, D.C. OGC board member, moderator
- Karen Janka (she/her) - D.C. Library Association, cohost

Curtain Call

Featured Public Body Profile. The D.C. Commission on the Arts and Humanities was created as an outgrowth of the U.S. Congress act that created the National Foundation on the Arts and Humanities. The D.C. Commission on the Arts and Humanities provides grants, professional opportunities, education enrichment, and other programs and services to individuals and nonprofit organizations in all communities within the District of Columbia. The members of the D.C. Commission on the Arts and Humanities are District residents appointed by the Mayor, with the advice and consent of the Council of the District of Columbia, who have a displayed interest or ability in the arts and humanities or have been active in the furtherance of the arts and humanities in the District of Columbia. Commissioners are appointed to three-year terms and serve without compensation. To learn more, visit their website: <https://dcarts.dc.gov/> and <https://dcarts.dc.gov/page/commissioner-meetings>

Upcoming Trainings

On August 16, 2021, and August 19, 2021, OOG will be training District of Columbia Advisory Neighborhood Commissioners (ANCs) on FOIA. This biannual training is co-sponsored with the Office of ANCs and will be held virtually.

OOG provides OMA and FOIA trainings upon request. Please contact us at open.govoffice@dc.gov to schedule a training session. *All trainings will be conducted remotely due to the COVID-19 pandemic until further notice.*



CONTACT INFORMATION FOR THE OFFICE OF OPEN GOVERNMENT

OOG provides advice to agencies, members of public bodies, and the public on the Open Meetings Act and the Freedom of Information Act. For assistance, please reach us via telephone at 202-481-3411 or via email at opengovoffice@dc.gov

OOG OPERATING STATUS: OOG is teleworking until further notice.

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