

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



October 3, 2018

VIA ELECTRONIC MAIL

Ms. ***** Barber

*****@aol.com

RE: #OOG-0004_9.29.18 Resolution of Complaint_COST

Dear Ms. Barber:

The Director of the Office of Open Government (OOG), pursuant to the authority set forth in § 503(a)(2) of the District of Columbia Administrative Procedure Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-593(a)(2), and 3 DCMR § 10400 *et seq.*), assessed your Open Meetings Act (OMA) complaint, submitted to OOG on Saturday, September 29, 2018. In your complaint, you requested that the OOG investigate the Office of Administrative Hearings (OAH) and the Commission on the Selection and Tenure of Administrative Law Judges (COST) for violations of the OMA, which allegedly occurred on April 19, 2016, July 8, 2018, July 13, 2016, and August 2, 2016.

Your OMA complaint makes the following allegations: (1) that COST improperly conducted a public meeting (removal hearing) without a quorum of properly appointed members; (2) that COST conducted a prehearing conference without providing proper public notice; (3) that COST convened a subsequent conference without proper protocol of the Open meetings Act; and (4) that COST made rulings without a quorum. You also alleged violations of the District of Columbia Freedom of Information Act (FOIA) in your OMA complaint. You allege that COST refused to provide to you notes of *exparte* conversations and emails in violation of DC FOIA. You also allege that OAH charged you a cost-prohibitive fee to access e-mails that your requested under FOIA. The relief you requested is as follows:

“Obtain a court order vacating the August 2, 2016 removal order given the multiple violations of the Open Meetings Act. Obtain the emails between Shawn Nolen and Yvonne Williams where Nolen drafted my removal order in 2016. I also made a prior complaint about a month ago. No one confirmed receipt of the complaint.”

Your complaint does not raise issues within the Director’s authority under the OMA, so your complaint is dismissed (3 DCMR § 10402.1(a)). An explanation of the reasons for this dismissal follows.

1. *The Public Has No Private Right of Action Under the Open Meetings Act.*

The Director cannot grant relief you seek, “a court order vacating the August 2, 2016 removal order,” because it is outside of the Director’s authority under the OMA. Your request that the Director “obtain a court order” to nullify the decision resulting from a public body’s hearing is, in essence, a demand that the OOG provide to you with a private right of action under the OMA. The OMA states clearly that the OMA shall not “be construed to create or imply a private cause of action” for alleged violations of its provisions (D.C. Official Code § 2-579(a)(1)). Thus, even if the allegations you raise have merit, the OOG does not have the authority to grant the relief you seek. The D.C. Superior Court has the authority to void actions of public bodies and under circumstances where “the court finds that the balance of equities compels the action or the court finds that the violation was not harmless” (D.C. Official Code § 2-579(d)).

2. *The OMA Does Not Confer The OOG With Statutory Authority To Compel A Public Body To Produce Documents Requested Under FOIA.*

The OOG’s enforcement authority extends only to OMA violations committed by District of Columbia public bodies. D.C. Official Code § 2-537, confers exclusive jurisdiction over District of Columbia FOIA disputes to the Mayor or to the D.C. Superior Court. Therefore, the OOG Director lacks authority to compel the COST to produce the records you request. Any disputes you have regarding FOIA requests must be brought before the Mayor of the District of Columbia or the D.C. Superior Court for a ruling. Please direct your FOIA complaint to Mayor’s Office of Legal Counsel, FOIA Appeal, 1350 Pennsylvania Ave, NW, Suite 407, Washington, DC 20004, or to foia.appeals@dc.gov. Please refer to the D.C. Superior Court rules concerning procedures for filing a civil action, if you seek relief in D.C. Superior Court.

3. *The OOG’s Records Are Accurate And Do Not Reflect Receipt of Your Complaint Allegedly Submitted to the Office in August 2018.*

The regulations found at 3 DCMR § 10401 *et seq.*, require that the OOG issue a response to complaints. The OOG strictly adheres to these provisions. Your September 29, 2018, complaint states that you “also made a complaint about a month ago. No one confirmed receipt of the complaint.” The OOG’s receives an electronic acknowledgement upon its receipt of an OMA Complaint. The OOG’s records reflect that it has received electronically from you, in addition to the instant OMA complaint, complaints on February 6, 2018 and May 24, 2018¹.

For the reasons stated herein, your complaint is dismissed.

¹The OOG’s responses to these complaints are styled as: [OOG-0002_2.6.18](#) Resolution of Complaint_COST; and [OOG-0006_5.24.18](#) Resolution of Complaint_COST. You may view these complaints by clicking on the linked case numbers.

Sincerely,



NIQUELLE M. ALLEN, ESQ.

Director, Office of Open Government

Board of Ethics and Government Accountability

cc: Vanessa Natale, Esq.
General Counsel
Office of Administrative Hearings
vanessa.natale@dc.gov