



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



March 30, 2023

VIA ELECTRONIC MAIL

April R. Randall, Esq.
Senior Legislative Advisor
Office of the Deputy Mayor for Operations and Infrastructure
1350 Pennsylvania Ave., N.W., C-06
Washington, D.C. 20004
april.randall1@dc.gov

RE: Whether the Mayor’s Task Force on Automated Traffic Enforcement Equity and Safety is a public body subject to the Open Meetings Act (#OOG-2023-0002-M)

Dear Ms. Randall:

On March 24, 2023, the Office of Open Government (“OOG”) received your request for an advisory opinion on whether the Mayor’s Task Force on Automated Traffic Enforcement Equity and Safety¹ (“Task Force”) constitutes a public body under the Open Meetings Act (“OMA”).² In response to your request, I am issuing this advisory opinion as Director of Open Government, pursuant to D.C. Official Code § 1-1162.05c.

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 government and the actions of those who represent them.³ To support this policy, the OMA provisions “shall be construed broadly to maximize public access to meetings.”⁴ After researching this matter I find that the Task Force is a “similar entity” to a board or commission within the OMA definition of a public body and that the Task Force’s scope and purpose constitute public business under the OMA. Therefore, the Task Force meetings are subject to the OMA.

This advisory opinion sets forth the rationale for these findings below. It provides a brief background on the Task Force, the OMA’s legislative history, an analysis of the issue, and concludes with recommendations.

¹ The Mayor’s Order 2023-046, establishing the Task Force, dated March 22, 2023, was attached to the advisory opinion request.

² D.C. Official Code § 2-571 *et seq.*

³ D.C. Official Code § 2-572.

⁴ D.C. Official Code § 2-573.

I. BACKGROUND

On March 22, 2023, correspondence concerning the Mayor’s Fiscal Year 2024 Budget Proposal announced the establishment of the Task Force. The Task Force was convened to “research and provide recommendations on the District’s automated traffic enforcement (“ATE”) and other moving violation laws, policies, procedures, and practices, including the fine schedule and financial penalties for late payments, to mitigate against the potentially inequitable effects of the fine, penalty, and enforcement systems on individuals of varying household incomes while also maintaining the effectiveness of the ATE program and other moving violation programs in mitigating threats to public safety.”⁵ Additionally, “the Task Force may decide to review and make recommendations on [w]ays to maximize the efficacy of the ATE program in reducing the frequency and severity of crashes and traffic fatalities;...fine amounts and penalties authorized for ATE violations and other moving violations in the District and options for making them more equitable;...feasibility and advisability of: (a.) [a]n ability-to-pay pilot program for the payment of fines; and (b.) [a] temporary and/or targeted amnesty program for ATE and other moving violation fines and penalties; [p]otential equity concerns related to the sites of existing ATE locations and the standards for siting future ATE locations; [w]ays to clarify, simplify, and streamline the payment processes associated with traffic ticket fines and penalties, including delinquent debt, to lessen administrative burdens on the public; and [p]ossible approaches to incentivize other jurisdictions to collect outstanding fines from the owners of vehicles registered outside the District.”⁶

The Task Force will sunset 60 days after issuing its final report to the City Administrator on September 30, 2024.⁷ You indicated that the Task Force will begin meeting in April 2023.

The Chief Equity Officer and Deputy Mayor for Operations and Infrastructure, or their designee, will serve as co-chairs of the Task Force.⁸ The remaining Task Force members are (1) the City Administrator; (2) the Deputy Mayor for Public Safety and Justice; and the Director or head of (3) the District Department of Transportation; (4) the Department of Motor Vehicles; (5) the Department of Public Works; (6) the Metropolitan Police department; and (7) the Office of Policy and Legislative Affairs or the respective designee of each. The Office of the Deputy Mayor for Operations and Infrastructure and the Office of Racial Equity will provide administrative support to the Task Force.⁹ The Task Force co-chairs may “[i]nvite participation by the Council of the District of Columbia, the Office of the Chief Financial Officer, and non-governmental organizations in Task Force activities, including meetings of the Task Force.”¹⁰

The Task Force’s final report will provide “[r]ecommendations for changes to existing laws, regulations, or policies, and for other administrative reforms, concerning the ATE program

⁵ Mayor’s Order 2023-046, Section II, A., at 1-2. <https://mayor.dc.gov/release/mayor-bowser-presents-fiscal-year-2024-budget-proposal>.

⁶ *Id.*, Section II., B., at 2.

⁷ *Id.*, Section V., at 4.

⁸ *Id.*, Section III, B., at 3.

⁹ *Id.*, Section III, A., at 3.

¹⁰ *Id.*, Section III, C. 2., at 3.

and other moving violation programs, the fines and penalties for ATE violations and fine and penalty payment methods, to make the ATE program and other moving violation programs, and their fines, penalty, and enforcement aspects, more equitable.”¹¹

The FY 2024 budget proposes to “install 342 new automated traffic cameras and add \$13.3M to support DMV’s increased ticket processing and adjudication responsibilities.”¹² The Task Force’s conduct of government business, presenting a final report to the City Administrator, is key to the implementation of this program.

Next is a discussion of whether the Task Force is a public body that is subject to the requirements of the OMA.

II. DISCUSSION

- A. *The OMA and its legislative history support my finding that the Task Force is a similar entity to a Board and Commission, so it is a public body under the OMA.*

There are two threshold inquiries to determine what triggers the OMA in this instance: (1) is the Task Force a public body, and (2) are the gatherings of the members of the Task Force considered meetings as defined by the Act? To make this determination, it is essential first to consider the legislative history of the OMA.

The OMA defines a “public body” as “any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, or an advisory body that takes official action by the vote of its members convened for such purpose.”¹³ Also, the OMA excludes particular bodies from its requirements, including a “District agency or instrumentality (other than the board which supervises or controls an agency or the board of directors of an instrumentality).”¹⁴

The OMA’s committee report specifically included *a task force* within the meaning of “public body.” It established that mayoral orders, regulations, or statutes create public bodies:

Public body means any council, task force, board, or commission of the District government established pursuant to statute, regulation, or order, including any committee, subcommittee, ad hoc committee, or advisory body thereof, the Council...¹⁵

¹¹ Id., Section IV. B. 1., at 3-4.

¹² See <https://mayor.dc.gov/release/mayor-bowser-presents-fiscal-year-2024-budget-proposal>, under “Transportation Safety and Mobility | New investments in FY 2024”

¹³ D.C. Official Code § 2- 574(3).

¹⁴ D.C. Official Code § 2-574(3)(A).

¹⁵ Report of the Committee of Government Operations and the Environment on Bill 18-716, the Open Meetings Act of 2010, at 4 (Council of the District of Columbia Dec. 2, 2010)).

However, as adopted, the OMA omitted the specific term “task force” from the statute, but included a “similar entity” category within the definition of a public body. Additionally, the OMA, as adopted, excludes the requirement that public bodies be established pursuant to statute, regulation, or order. While the plain meaning of the statute provides instruction for whether a “similar entity” should be subject to the OMA, the legislative history also clarifies the Council of the District of Columbia’s (“D.C. Council”) intent that the statute should cover “any other entity that is created by and exercises authority delegated by the District of Columbia government.”¹⁶ The Task Force falls into the “similar entity” category as supported by the D.C. Council’s intent.

B. The OOG has held that entities similar to the Task Force are public bodies subject to the OMA.

Prior OOG Advisory Opinions support my finding that the Task Force is a public body.¹⁷ In one opinion, the OOG found that a Task Force not established pursuant to statute, regulation, or Mayor's Order was a public body subject to the OMA. OOG found that the Cross-Sector Collaboration Task Force (“CSCTF”), which the Deputy Mayor of Education established, was subject to the OMA. Regarding the CSCTF, the entity was established to recommend school effectiveness and efficiency to the Mayor. Members of the CSCTF included the Deputy Mayor of Education as chair and approximately twenty-five members from Local Education Agencies, District agencies, and public school parents. The CSCTF was to remain in place for two years. In finding that the CSCTF was a public body subject to the OMA, the Director of Open Government stated:

By the DME's admission, the sole purpose of the Task Force is to develop a report for the Mayor with recommendations on how to improve certain aspects of public education including recommending policy to the Mayor to decrease student mobility, and the centralization and automation of the Universal Healthcare Certificate and the residency verification process. The Task Force is to be chaired by the DME, and made up of representatives of District agencies, including District of Columbia Public Schools which oversees 100 campuses and nearly 50-thousand public school students. The recommendations of the task force whether accepted or rejected by Mayor Bowser will most certainly be intended to impact District operations and inform policy. Given the DME's description of the purview of the Task Force, and its potential far-reaching impact on education policy,

¹⁶ *Ib.* at 4-5.

¹⁷ See [https://www.open-dc.gov/sites/default/files/DCPS%20LSAT%20Advisory%20Opinion.pdf#overlay-context=Finding Local School Advisory Teams or LSATs are subject to the OMA as similar entities and because they consider, conduct or advise on public business](https://www.open-dc.gov/sites/default/files/DCPS%20LSAT%20Advisory%20Opinion.pdf#overlay-context=Finding%20Local%20School%20Advisory%20Teams%20or%20LSATs%20are%20subject%20to%20the%20OMA%20as%20similar%20entities%20and%20because%20they%20consider%20conduct%20or%20advise%20on%20public%20business); https://www.open-dc.gov/sites/default/files/7%202015%202016_OOG-0006_OSSE_OPINION%20DEMAND%20LETTER%20%28Executed%20Kang%29.pdf. Finding the Uniform Per Pupil Student Funding Formula Working Group (UPSFF) a public body under the OMA “as the task force has the equivalent impact on the public and educational agencies, as its intended outcomes in the form of recommendations are forwarded to the Executive Office of the Mayor.”

the only plausible determination is that it is an entity similar to a board or commission, and is a public body as contemplated under the Open Meetings Act.¹⁸

Like the CSCTF, the Task Force will consist of high-ranking District government officials, including the City Administrator and the directors or heads of major District government agencies and offices.¹⁹ These officials will issue a report with recommendations to the City Administrator on the ATE program. The impact of its recommendations, like those of the CSCTF, will be far-reaching on the operators of the approximately 298,400 registered motor vehicles in the District of Columbia.²⁰ Thus, as a similar entity, the Task Force is also subject to the OMA.

C. *The Task Force will meet to discuss, recommend, and prepare a report for the City Administrator on the ATE program. Such gatherings by public bodies constitute meetings under the OMA.*

Also relevant to this determination is whether the Task Force, when meeting, will “consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless of whether held in person, by telephone, electronically, or by other means of communication.”²¹

In this instance, the purpose and scope of the Task Force are clear. It is to make recommendations, including legislative changes to the District’s ATE program. Its members are tasked with making recommendations to the City Administrator impacting policy and legislation. These recommendations will be the product of its meetings. The Mayor’s Order creating the Task Force states its purpose, to prepare and submit a report to the City Administrator with:

(1.) Recommendations for changes to existing laws, regulations, or policies, and for other administrative reforms, concerning the ATE program and other moving violation programs, the fines and penalties for ATE violations and other moving violations, and fine and penalty payment methods, to make the ATE program and other moving violation programs, and their fines, penalty, and enforcement aspects, more equitable; (2.) Any other recommendations of the Task Force; and (3.) Identification of the resources needed for the implementation of each recommendation.²²

¹⁸ See DME advisory opinion, at 4, here <https://www.open-dc.gov/sites/default/files/DME%20Cross-Sector%20Collaboration%20Task%20Force%20OOG%20OPINION%20%2810.7.15%29%28OOG-0002%28Niles%29.pdf>.

¹⁹ Mayor’s Order 2023-046, Section III, A., at 3.

²⁰ These figures were taken from the Department of Motor Vehicles website. The data is for FY2021 and is here https://dmv.dc.gov/sites/default/files/dc/sites/dmv/page_content/attachments/Historical%20Registration%20Data%20FY2010-FY2021.pdf. Last accessed on 3.28.23.

²¹ D.C. Official Code § 2-574(1).

²² Mayor’s Order 2023-046, Section IV, B., at 3-4.

This most certainly is public business under the OMA. Its purpose is to make recommendations concerning public business related to the ATE program.

The Task Force will meet to consider, conduct or advise on the affairs of the government that relate to the ATE program. When a public body meets to consider, conduct or advise on public business, the OMA provides the public with the right of advance notice so they may attend open sessions of public body meetings and access to meeting records.²³ Given the OMA's "Public policy,"²⁴ the description of the purview of the Task Force, and the potentially far-reaching impact of its recommendations on the District's ATE program, I conclude that the Task Force is an entity similar to a board or commission, and is a public body as contemplated under the OMA. Therefore, its meetings are subject to the OMA.

III. CONCLUSION

A. The Task Force is a Public Body Subject to the OMA

I find that the Task Force falls within the "similar entity" category of the OMA's definition of a public body, and its scope and purpose constitute public business under the OMA. The OMA's legislative history also clarifies the D.C. Council's intent that the statute should cover "any other entity that is created by and exercises authority delegated by the District of Columbia government."²⁵ The Task Force unambiguously falls into the "similar entity" category as supported by the D.C. Council's intent. Therefore, the Task Force is a public body, and its meetings are subject to the OMA.

B. Recommendations

It is still unclear whether personnel within the Office of the Deputy Mayor for Operations and Infrastructure and the Office of Racial Equity that will provide administrative support to the Task Force have received OMA training. Therefore, in conjunction with the Mayor's Office of Talent and Appointments, I recommend that the person or persons who will serve as the administrative point of contact for the Task Force within that office receive OMA training at the earliest date. I recommend that the Task Force members get OMA training before or during their first meeting. Please contact the Office of Open Government Chief Counsel, Johnnie Barton, to discuss my findings and work with him and OOG's staff to schedule OMA training.

Sincerely,

/s/

Niquelle M. Allen
Director of Open Government

²³ D.C. Official Code §§ 2-575; 2-576; 2-578.

²⁴ D.C. Official Code § 2-572.

²⁵ Report of the Committee of Government Operations and the Environment on Bill 18-716, the Open Meetings Act of 2010, at 4 (Council of the District of Columbia Dec. 2, 2010)).

Board of Ethics and Government Accountability

cc:

Eugene A. Adams
Director Mayor's Office of Legal Counsel

Betsy Cavendish
General Counsel, Mayor's Office of General Co