

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



April 3, 2017

VIA ELECTRONIC MAIL

Ms. Michelle M. Garcia, Director
Office of Victim Services and Justice Grants
441 4th Street, NW, Suite 727 North
Washington, D. C. 20001
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RE: OOG-0002_11.23.16_AO

Dear Director Garcia:

On November 23, 2016,¹ the Office of Open Government (OOG) was asked to advise the Office of Victim Services and Justice Grants (OVSJG) on whether the Victim Assistance Network and Reentry Action Network; the Sexual Assault Response Team (SART); the High Risk Domestic Violence Team; and the Domestic Violence Fatality Review Board are public bodies that must comply with the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA). As discussed in our November 28, 2016 meeting, the Office of Open Government (OOG) agreed to memorialize in writing the OOG's determination regarding whether the aforementioned groups are considered public bodies which must comply with the Open Meetings Act (OMA), and the required FOIA protocols to which the OVSJG must adhere.

In the 11/23/16 email to Director Hughes, Deputy Director, Dr. Cortney Fisher, described the role of the OVSJG² in relation to the aforementioned groups as providing staff support to, or coordinating meetings of "*networks of organizations*" or public bodies that are "*comprised of community and agency-based organizations.*" This opinion will address each in turn, and as described by Dr. Fisher.

The OOG, pursuant to the authority set forth in section 503(c)() of the District of Columbia Administrative Procedure Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code

¹ Director Traci Hughes, and Attorney Advisory Johnnie Barton met with the Dr. Cortney Fisher and staff of the OVSJG on November 28, 2016, to brief OVSJG staff on whether the OVSJG and the many multi-disciplinary meetings of public bodies and groups must comport to the requirements of the OMA and FOIA.

² Id.

§2-593(c), may issue advisory opinions on implementation of Subchapter II, the Freedom of Information Act (D.C. Official Code § 2-531 *et seq.*) (FOIA); and issue binding advisory opinions regarding compliance with the Open Meetings Act (OMA) (D.C. Official Code § 2-571 *et seq.*), pursuant to sections 409(g) and 503(a)(2) (D.C. Official Code §§2-579(g);2-593(a)(2)) and 3 DCMR § 10408.1. The OOG does not have the authority to compel agencies to provide requested records under FOIA.

DISCUSSION

THE VICTIM ASSISTANCE NETWORK (VAN), REENTRY ACTION NETWORK (RAN)

“We provide staff support to two “networks” of organizations. One is the Victim Assistance Network that is comprised of victim-serving organizations – agency and community-based – in the District and the other is a Reentry Action Network that is comprised of organizations and agencies providing service to reentering citizens in the District. Both have leadership that is community-based and that leadership sets the agenda, runs the meetings, and determines the schedule for the meetings. We (OVSJG) provide meeting space, take minutes, and do other administrative work. Both meetings have a membership structure but are also open to the public. The work of the meetings is generally the discussion of issues of concerns for the communities.

Are these meetings subject to the Open Meetings Act? And, should we prepare our Minutes to be FOIA’d? (sic)”

The VAN is described³ as a “[C]ollaboration” of victim service providers in the District of Columbia. VAN members cross disciplines and have expertise regarding victim services, including mental health and medical providers, legal service providers, advocates, and prevention specialists. “Members serve domestic violence, sexual assault, child victims and youth, and human trafficking victims—any victim of crime in DC.” The VAN members are made up of numerous government, not-for-profit and non-government organizations that ensure residents are able to access an efficient and streamlined system of victim services. The governance of the VAN is self contained, as its Leadership Council (Council) is comprised of existing VAN members. Leadership of the VAN and the Council are community based. Prospective members apply for membership by submitting to the Council. Neither the VAN nor the Council is tied to a Mayor's Order or enabling statute.

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 vote of its members convened for such purpose.” D.C. Official Code § 2-574(3). The OMA includes within the definition of a public body those entities whose establishment was pursuant to statute or Mayor's Order. However, the OMA also looks to the nature of the meeting, and whether the public body is gathering to “consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating,

³ <http://ovsjg.dc.gov/service/victim-assistance-network>.(Last reviewed 3/31/2017).

recommending, and voting, regardless whether held in person, by telephone, electronically, or by other means of communication." Id. at § 2-574(1).

The OVSJG is clear that the mission of the VAN is to “facilitate a network of victim service providers.” Its members are not tasked with making recommendations to the executive impacting policy or legislation; nor does the VAN consider, conduct or advise on public business. Therefore, the VAN, in its current structure and charge, is not a public body as contemplated by the OMA, and does not fall under the requirements of the OMA.

Similarly, the RAN⁴, as described by the OVSJG, in its current structure and charge, is not a public body as contemplated by the OMA, and does not fall under the requirements of the OMA.

Regarding FOIA compliance, all records created and/or maintained by the OVSJG are subject to FOIA.⁵ All such records, including meeting minutes of the VAN and RAN, are considered public records that may only be withheld according to strictly construed exemptions.⁶

SEXUAL ASSAULT RESPONSE TEAM (SART)

“We coordinate a statutorily created Sexual Assault Response Team. The SART is comprised of community and agency-based organizations who are involved in the District’s response to sexual assault. The leadership of the meeting is voted on by the membership. Every other month is a case review meeting. These meetings are not open to the public.

In the absence of statutory language exempting the meetings from the Open Meetings Act and FOIA, to what extent do we need to post the meetings and prepare to release documents. NOTE: Much of the case review information is confidential and shared by the agencies participating only because there is a release from the subject of the review.”

Although the SART is specifically exempted from the requirements of the OMA, pursuant to D.C. Official Code § 4-561.12(g), it is a public body that remains subject to FOIA. As noted previously, all records created and/or maintained by the OVSJG are subject to potential disclosure, but may potentially be withheld under D.C. Official Code § 2-534.

The OOG takes note that the OVSJG, in the interest of transparency, has listed the SART on Central Calendar maintained by the Office of Open Government.⁷

⁴ The Reentry Action Network is distinguished from the Commission on Re-Entry and Returning Citizens Affairs, it is a statutorily created public body whose members gather to “consider, conduct and advise” the Mayor, the Council and the Director of the Office on Returning Citizen Affairs on policies and legislation impacting the reintegration of citizens into the general population. D.C. Official Code § 24-1303.

⁵ It is the public policy of District of Columbia that all persons are entitled to full and complete information regarding government, and the official actions of public officials and employees. D.C. Official Code § 2-531.

⁶ *Barry v. Washington Post*, 529 A.2d 319, 321 (1987).

⁷ Meeting details are not provided. The OOG encourages the OVSJG to include a brief description of the charge of the SART.

HIGH RISK DOMESTIC VIOLENCE TEAM (HRDVT)

“Similar to the SART above, we coordinate a High Risk Domestic Violence Team. This is not a team that is statutorily created, but it is comprised of community and agency-based organizations who are involved in the District’s response to domestic violence that is assessed to be at a high risk of lethality. The leadership of the meeting is a community-based organization and we provide staff support and meeting space. Policy issues related to high risk domestic violence cases will be discussed, but there will also be a case review process with information that is confidential.

What is our responsibility under the Open Meetings Act and FOIA for this type of meeting?”

The OOG draws no distinction between the HRDVT, the VAN or RAN. The HRDVT in its current structure and charge, is not a public body as contemplated by the OMA, and does not fall under the requirements of the OMA. Additionally, records of the OVSJG regarding the HRVDT are subject to FOIA, but will likely be exempt from disclosure under D.C. Official Code § 2-534.

DOMESTIC VIOLENCE FATALITY REVIEW BOARD (DVFRB)

“[W]e coordinate the Domestic Violence Fatality Review Board. The DVFRB is a statutorily created Board and is, by statute, exempted from the Open Meetings Act. However, we are wondering as to our responsibilities under FOIA. We understand that anything can be FOIA’d (sic) but that not everything is disclosable (sic), but we are looking for guidance about what is disclosable (sic). Much of the information shared at the meetings, before the meetings, and compiled into a report is not publically available information.

Do we, as the coordinator of the Board have a duty to disclose information provided to us by another agency or organization for the purpose of conducting the statutory duties of the Board? Or is the duty to disclose on the originating organization?”

Unlike the VAN, RAN, and HRDVT, the DVFRB is statutorily created pursuant to Section 16-1052 of the D.C. Official Code. Pursuant to section 16-1056 of the D.C. Official Code, the body is excluded from the OMA.⁸ Records of proceedings are to be withheld under D.C. Official Code

⁸ The legislative history of Section 16-1056) of the District of Columbia Official Code, makes it abundantly clear that the Board’s records are confidential and its proceedings closed to the public. It states: “Section 16-1056 states that information obtained or created by the Board is confidential and not subject to civil discovery or the Freedom of Information Act, and delineates procedures for the disclosure of information by the Board. It also states that Board meetings are closed to the public and stipulates that disclosure of information in violation of the act shall result in a fine of not more than \$1,000.” (Report of the Committee on the Judiciary on Bill 14-212, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act of 2002, at p.6 (Council of the District of Columbia October 29, 2002).

§ 2-534. Specifically, the OVSJG may rely upon D.C. Official Code 2-534(a)(6)(A)(B) to withhold from release under FOIA records provided by another agency when the information is specifically exempted from disclosure by statute...there is no discretion on the issue, or there are particular criteria for non-release of such records.

JUVENILE JUSTICE ADVISORY GROUP (JJAG)

Although not raised in the written questions posed by Dr. Fisher, the question was asked during the November 28, 2016, meeting whether the JJAG is subject to the OMA. The JJAG is public body governed by Mayor's Order 2009-13, and is required to abide by the OMA.

The OOG takes note that the JJAG is listed on Central Calendar maintained by the Office of Open Government, but does not include any meeting dates on the Central Calendar, and the meetings are not conspicuously placed on the OVSJG website.⁹ The OMA's "Notice of Meeting" provisions found in D.C. Official Code § 2-576, governs the advance public notice required to hold a public meeting. Before a meeting in open or closed session, a public body shall provide advance public notice, by meeting specific criteria.

The "Notice of Meeting" provisions require: (1) public notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting; (2) posting in the office of the public body or a location that is readily accessible to the public; and either on the website of the public body or the District Government; (3) publication of the notice of meeting in the District of Columbia Register ; and (4) the notice must contain the date, time, location, and planned meeting agenda. D.C. Official Code § 2-576.

CONCLUSION

For purposes of complying with the OMA and FOIA, the OOG draws no distinction between the VAN, RAN and HRDVT. The members of these entities are not tasked with making recommendations to the executive impacting policy or legislation; nor do these entities consider, conduct or advise on public business. Therefore, the VAN, RAN and HRDVT in their current structure and charge, are not public bodies as contemplated by the OMA, and do not fall under the requirements of the OMA.

Regarding FOIA compliance, all records created and/or maintained by the OVSJG are subject to FOIA. All such records, including meeting minutes of the VAN and RAN, are considered public records that may only be withheld according to strictly construed exemptions. Additionally, records of the OVSJG regarding the HRVDT are subject to FOIA, but will likely be exempt from disclosure under D.C. Official Code § 2-534.

Unlike the VAN, RAN, and HRDVT, the Board is a statutorily created entity which meets the legal criteria of a public body. However, the legislative history makes clear that Board meetings

⁹ The OVSJG includes the JJAG under its *Services* tab, <https://ovsjg.dc.gov/service/juvenile-justice-advisory-group>. (Last visited 4/3/2017). There are no meeting dates listed. It is unclear if the JJAG has in fact convened in 2017, or will convene in 2017.

are not to be open to the public and its records expressly exempt from FOIA. Specifically, the OVSJG may rely upon D.C. Official Code 2-534(a)(6)(A)(B) to withhold from release under FOIA records provided by another agency when the information is specifically exempted from disclosure by statute...there is no discretion on the issue, or there are particular criteria for non-release of such records.

While the SART is specifically exempted from the requirements of the OMA, pursuant to D.C. Official Code § 4-561.12 (g), it is a public body that remains subject to FOIA. Records of proceedings are to be withheld under D.C. Official Code § 2-534. As noted previously, all records created and/or maintained by the OVSJG are subject to potential disclosure, but may potentially be withheld under D.C. Official Code § 2-534.

Although not raised in the written questions posed by Dr. Fisher, the question was asked during the November 28, 2016 meeting whether the JJAG is subject to the OMA. The JJAG is public body governed by Mayor's Order 2009-13, and is required to abide by the OMA. A review of the Public Body Central Meeting Calendar which the OOG maintains does not reveal the publishing of any meeting dates for JJAG. Prior to JJAG meeting it must comply with the OMA Notice of Meeting provisions found at D.C. Official Code § 2-576.

Sincerely,



TRACI L.HUGHES, ESQ.
Director, Office of Open Government
Board of Ethics and Government Accountability