

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY  
OFFICE OF OPEN GOVERNMENT



September 5, 2018

***VIA ELECTRONIC MAIL***

Director Andrew Reese  
Statewide Independent Living Council  
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**RE: OOG-002.8.1.18\_ SILC\_AO**

Dear Director Reese:

Office of Open Government (OOG) is issuing this advisory opinion due to the findings of a July 10, 2018, audit of the Statewide Independent Living Council's (SILC) compliance with the "Notice of meetings" and "Record of meetings" directives of the Open Meetings Act (OMA) (D.C. Official Code § 2-571 *et seq.*). The OOG's audit of the SILC's records was necessary after the OOG was contacted by a member of the public who was unable to locate the SILC's July 19, 2018, public meeting notice on the central meeting calendar.

The purpose of the OMA is to provide the public with full and complete information regarding the affairs of government and any official actions taken by government officials (D.C. Official Code § 2-572). For that reason, the OMA requires a public body to take the following actions when the public body conducts a meeting:

- (1) Provide to the public advance notice of its meetings that accurately reflects the date, time, and location of the meeting (D.C. Official Code § 2-576(5));
- (2) Provide the public with a planned or a draft meeting agenda (D.C. Official Code § 2-576(5));
- (3) Provide a statement of intent to close the meeting or portion of the meeting, including the statutory citation for closure and description of the matters to be discussed during closure, if the public body intends to close all or part of a meeting (D.C. Official Code § 2-576(5));
- (4) Publish in the D.C Register a yearly calendar of meetings (D.C. Official Code § 2-576(1)); and
- (5) Timely make publically available open session records of public meetings (D.C. Official Code § 2-578).

The SILC does not dispute its standing as a public body that must adhere to the OMA.

The OOG's audit revealed the SILC violated several provisions of the OMA. First, SILC failed to timely publish draft and final meeting agendas for public meetings, which occurred from March 2014 through May 2018, to its website or the website of the District government. Second, the SILC did not timely notice the public through the D.C. Register of its upcoming meetings. Third, the SILC failed to timely publish in the D.C. Register its 2015 yearly calendar of meetings. Fourth, the SILC did not timely publish its 2018 yearly calendar of meetings in the D.C. Register. Fifth, the SILC failed to timely publish final meeting minutes to its website or the website of the District government. Also problematic for the public, is the SILC's use of three (3) separate websites in connection with the OMA's publication requirements.

The OOG's objectives in issuing this binding advisory opinion are: (1) to apprise the SILC of the areas of its non-compliance with the OMA; (2) to provide the SILC with recommendations to ensure that its future public meetings strictly comply with the OMA's statutory requirements; and (3) to inform the public and instruct public bodies on the application to open meetings of the OMA's "Notice of meetings" and "Record of meetings" provisions.

## **I. BACKGROUND**

### **A. OMA Complaint and OOG Investigation**

On July 10, 2018, OOG Attorney Advisor Johnnie Barton received a complaint from a member of the public (the "complainant") in an electronic communication seeking assistance in locating a public notice for an upcoming SILC meeting. The communication states:

Greetings,

I was reading about the DC sunshine laws, specifically the Open Meetings Act (<https://www.open-dc.gov/open-meetings-act>), but I do not see any future meetings of the Statewide Independent Living Council (SILC listed on this calendar: <https://www.open-dc.gov/public-bodies/statewide-independent-living-council-silc>)

Would you please let me know when these are published?

I want to make sure I do not miss any of these meetings. Under the Rehabilitation Act of 1973, as amended, the public is supposed to be given advance notice of SILC meetings. This is critical now that DC ought to be implementing workforce development legislation.

To assist the complainant with the request, that same day, the OOG began an in depth review of the Department of Disability Services (DDS) websites, <https://sites.google.com/a/dc.gov/dcsilc/> and <https://dds.dc.gov/node/855892>, in search of the SILC's July 19, 2018, public meeting notice. In an electronic communication later that day Attorney Barton notified the complainant that the SILC meeting notice was published to the DDS website and not the central meeting calendar. Attorney Barton's response reads as follows:

The SILC is publishing meetings to its website (Department on Disability Services), rather than on the Central Meeting Calendar on Open-dc.gov, where you searched. This is permissible under section 406 (D.C. Official Code § 2-576(2)) of the Open Meetings Act. This provision allows a public body in

addition to “physically posting notice in the office of the public body or a location that is readily accessible to the public, to publish on the website of the public body or the District government.” Please see the Department of Disability Services website “Upcoming Events” section for the Notice of the July 19, 2018 meeting at 12 noon, 250 E Street, SW, Washington, DC, here <https://dds.dc.gov/>. Attached also is the SILC schedule of meeting dates through September 2018. Please feel free to contact me on (202) 741-5373 or via email [johnnie.barton2@dc.gov](mailto:johnnie.barton2@dc.gov), if you have additional questions.

The SILC’s first notice<sup>1</sup> for the July 19, 2018, public meeting provided in the initial paragraph that “meetings will take place as scheduled at the Department on Disability Services Rehabilitation Services Administration (DDS-RSA) at 250 E Street, SW, Washington.” The final paragraph of the same notice states: “[E]ffective May 24, 2018 the Statewide Independent Living Council held its General Meetings at the District of Columbia Center for Independent Living located at 1400 Florida Avenue, NE, Washington, D.C. 20002 . . . .” On July, 10, 2018, the OOG notified the SILC that language in the public notice referring to the two locations of its general meetings appeared contradictory and could lead to confusion about the meeting’s location. The SILC modified the language thereafter to reflect 250 E Street as the site of its general meetings through September 27, 2018. The District of Columbia Center for Independent Living, which was listed in this notice as a facility for the SILC’s meetings is a non-government facility. The OMA does not preclude a public body from meeting in an offsite/non-government facility; however, the location must not be so burdensome as to discourage physical attendance of the public at a public body meeting, which is contrary to D.C. Official Code § 2-575(a)(1). The OOG has no way to determine whether meetings held at this location impeded the public from attending meetings.

## **B. OOG’s Initial OMA Advice and SILC’s Remedial Actions**

Compliance with the OMA’s “Notice of meeting” provisions (D.C. Official Code § 2-576(5)), requires that a public body include with the published meeting notice the planned meeting’s agenda. After a closer examination by the OOG of the SILC’s July 19, 2018, public meeting notice it was apparent that the notice did not contain a planned meeting agenda. Therefore, Attorney Barton, during a July 11, 2018, telephone conference notified Darnise Bush of the DDS that the SILC public notice was deficient because it did not contain the planned meeting agenda which the OMA requires. That same day, in separate electronic communications Dahlia Johnson of the DDS and Ms. Bush each sent electronically to the OOG a copy of the updated meeting notice that included the planned meeting agenda. However, the corrected notice was not published to SILC’s or the District’s website at that time.

Next, during a July 12, 2019, telephone conference, Attorney Barton reminded Ms. Bush that the OMA requires that a public body must provide notice of meetings as early as possible, but no later than forty-eight (48) hours or two (2) business days, whichever is greater, before the meeting occurs (D.C. Official Code § 2-576(1)). Attorney Barton’s advice was to publish the meeting notice to the DDS website or the central meeting calendar no later than 12:00pm EST, on Tuesday, July 17, 2018. He also provided a reminder that without proper and timely public notice the SILC could not lawfully conduct the meeting.<sup>2</sup>

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<sup>1</sup>The correction for the location of the July 19, 2018, meeting was conveyed to the individual who sought the OOG’s

<sup>2</sup>On July 16, 2018, Attorney Barton sent to Ms. Bush an electronic communication to confirm the July 12, 2018, telephone conference.

In a subsequent telephone conversation Attorney Barton reminded Ms. Bush of the option to publish the SILC's meeting notice on the central meeting calendar. On July 16, 2018, Ms. Bush requested the OOG's assistance with publishing the SILC's June 19, 2018, public meeting notice to the central meeting calendar. That same day OOG Application Manager Waddah Kittab timely published the SILC's public meeting notice to the central meeting calendar.

### **C. Notice of the OMA Violation and SILC's Response**

On July 23, 2018, OOG Director Allen, in an electronic communication notified DDS Director Andrew Reese that the SILC was out of compliance with the OMA for failing to properly provide notice of its meetings to the public and failing to timely make publically available records of its past open meetings. The OOG's correspondence to Director Reese states in relevant part:

To assist the OOG in fully evaluating this matter please confirm no later than Friday, July 27, 2018, in writing, if the SILC has held public meetings subsequent to March 24, 2014, and the dates of these meetings. If the SILC has held public meetings after March 24, 2014, the OOG requests that you publish these missing meeting notices, agendas and minutes on the DDS website, the SILC website, or the OOG's central meeting calendar on or before Friday, August 10, 2018. Once the posting is complete, please contact OOG Attorney Advisor Johnnie Barton by phone at (202) 741-5373, or by email at [johnnie.barton2@dc.gov](mailto:johnnie.barton2@dc.gov). Mr. Barton is also available to answer any questions you may have in meeting this request. Please disregard this letter if the SILC has published the requested information prior to your receipt of this letter.

In a July 27, 2018, electronic communication in response to OOG Director Allen's correspondence, DDS Director Reese states the following: (1) the SILC held meetings subsequent to March 27, 2014; (2) the dates of those meetings; and (3) that the "DDS is committed to fully complying with the D.C. Open Meetings Act and will take appropriate action to ensure that all SILC Public Meetings are posted in accordance with the provisions of D.C. Code {sic} 2-571 *et. seq.* . . . . DDS will ensure that any corresponding notice, agendas, and minutes are posted on the agency's website, SILC's or the Office of Open Government's central meeting calendar no later than the August 10, 2018 deadline."

On July 25, 2018, the OOG received an electronic communication from Ms. Darnise Bush. The correspondence which included, as an attachment, documents in partial compliance with the OOG's June 23, 2018, written request states in part:

Per your request, files that include the Statewide Independent Living Council's (SILC) agendas, minutes, membership information etc. are attached. I have also attached the previous 2014 – 2016 State Plan on Independent Living and the current one 2017-2019. The attached information includes several Mayor's Orders and the last agency wide swear in and BEGA session held at DDS for the SILC and the State Rehabilitation Advisory Council. As we discussed previously, the DDS IT department announces most current events on its Intranet Calendar and as several of the current members serve on more than one advocacy committee for

persons with disabilities, word of mouth has also helped us stay connected to the general public. Should you need additional information feel free to contact me.<sup>3</sup>

On August 10, 2018, Attorney Barton received from Lydia Makande, Assistant General Counsel to DDS an electronic communication requesting additional time to comply with the OOG's July 23, 2018, records request. The correspondence states in relevant part the following:

I just wanted to update you regarding the SILC OMA compliance matter. We are currently still pulling all of the past notices, minutes, and agendas for SILC meetings that have been held since March 24, 2014. Due to the large number of files to be posted, we are working to have all documents uploaded to DDS website by the end of next week. I just wanted to let you know as the letter from Director Allen requested that all documents be posted by tomorrow.

In an August 16, 2018, electronic communication to the OOG Attorney Makande states "that the past SILC meeting notices, minutes, and agendas have been posted to the DDS Website." The OOG's has confirmed the SILC's publication of the records to the DDS website.

## **II. DISCUSSION**

### **A. The Establishment and Purpose of SILC**

A prerequisite for states to receive federal grants for vocational services to persons with disabilities, the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 355; 29 U.S.C. § 701 *et seq.*) (Rehabilitation Act), requires each state to establish and maintain a Statewide Independent Living Council. To comply with the Rehabilitation Act, the SILC was established pursuant to Mayor's Order 93-148 (Mayor's Order). The Mayor's Order as set forth in the Rehabilitation Act outlines the SILC's purpose and its functions. SILC's purpose is "to collaborate with the Rehabilitation Services Administration of the District of Columbia Department of Human Resources to assure participation of District citizens with disabilities in the planning and development of vocational rehabilitation and independent living services." SILC's functions are to:

- (1) Develop in conjunction with the Rehabilitation Services the State Plan;
- (2) Monitor, review and evaluate the implementation of the State Plan;
- (3) Coordinate activities with the State Rehabilitation Advisory Council and other councils that address the needs of specific disability populations and issues under federal law;
- (4) Submit to the Commissioner, Rehabilitation Services Administration, U.S. Department of Education, such periodic reports as the Commissioner may reasonably request and keep such records and afford such access to such records, as the Commissioner finds necessary to verify such reports;
- (5) Ensure that all regular scheduled meetings of the Council are open to the public and sufficient advance notice is provided;
- (6) Evaluate and monitor the overall service delivery system of the D.C. Center for Independent Living, Inc.;

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<sup>3</sup>In an electronic communication that same day, Attorney Barton responded, "Thanks for the update. We appreciate the SILC's diligence and efforts to comply with the request."

- (7) Hold public hearings on the State Plan and other independent living issues; and
- (8) Perform other related duties consistent with the purpose of the Title VII of the Rehabilitation Act of 1973 as amended, as the Council deems appropriate.

Pursuant to paragraph IV of the Mayor's Order, the SILC is composed of twenty-five (25) members. A majority of the members must be individuals with disabilities, not employed by any District government agency or center for independent living. The SILC must convene at least four meetings per year.

The Rehabilitation Act and the Mayor's Order mandate that the public receive advance notification of SILC meetings and that all SILC meetings are open to the public. While the Rehabilitation Act and the Mayor's Order predate the OMA, their public notice and open meeting requirements are similar to the OMA's "Notice of meetings" (D.C. Official Code § 2-576) and "Open meetings" (D.C. Official Code § 2-575) provisions.<sup>4</sup> However, there is no requirement under the Rehabilitation Act or Mayor's Order for the SILC to publish with its advance public notification a planned meeting agenda, or make records of its meetings publically available as the OMA requires. For reasons which follow, the lack of these requirements in the Rehabilitation Act and the Mayor's Order do not render the Districts open meetings laws inapplicable to the SILC. A review of case law,<sup>5</sup> the Rehabilitation Act and the District open meetings laws show that the OMA's requirements as applied to the SILC are lawful.

## **B. The Application of the Open Meetings Act to SILC**

The District's open meetings laws consist of the OMA and what is commonly known as the "Sunshine Act." Simply put, the OMA and the Sunshine Act are two District laws that regulate the same subject area, i.e., open meetings of public bodies in the District of Columbia.<sup>6</sup> When two statutes simultaneously relate to the same subject area, judicial rules of statutory construction provide that the two statutes should be construed together.<sup>7</sup> The Sunshine Act is found in section 742 of the Home Rule Act, approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42), which states:

- (a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken, shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.
- (b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions

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<sup>4</sup> Section III, paragraph 5 of Mayor's Order 93-148 requires "that all regularly scheduled meetings of the Council are open to the public and sufficient advance notice is provided." Section 705(c)(1)(C) of the Rehabilitation Act reads: "(1) Duties:-- The Council shall-- (C) meet regularly, and ensure that such meetings of the Council are open to the public and sufficient advance notice of such meetings is provided."

<sup>5</sup>See *Murray v. Motorola, Inc.*, 982 A.2d 764 for an analysis of federal legislation pre-empting the field. *Murray* provides legal justification for the OOG's position that the Rehabilitation Act does not preempt the District's open meetings laws.

<sup>6</sup>Both laws have similar names. Section 742 of the Home Rule Act is entitled "Open Meetings." D.C. Law 18-350 (D.C. Official Code § 2-571 *et seq.*), is entitled the "Open Meetings Amendment Act of 2010."

<sup>7</sup>See *George v. Dade*, 769 A.2d 760, 764 (2001), which held: "[W]here two or more statutes relate to the same subject area, we construe them together.

shall be available, upon request, to the public at reasonable cost.

The Sunshine Act is currently effective as part of the regulatory scheme of the District's open meetings laws. Section 409 of the OMA (D.C. Official Code § 2-579(a)(2)) makes this abundantly clear, it states: “. . . . Nothing in this title shall: (2) Restrict the private right of action citizens have under section 742 of the Home Rule Act, approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42).” In addition, the OMA's legislative history makes clear the Council's intent in enacting the OMA, it states: “[I]n order to accomplish the twin aims of providing greater transparency in public official's decision making and preserving high-quality deliberation, the *Committee recommends augmenting the District's open meetings law* to define public notice requirements and establish a right to observe; to create limited exceptions to the open meetings rule; to mandate minimum requirements for invoking exceptions and for record keeping; and to create provisions for enforcement.” Report of the Committee on Government Operations and the Environment on Bill 18-716, the Open Meetings Act of 2010, at 4 (Council of the District of Columbia December 2, 2010). Emphasis added.

The OOG's research did not find language in the legislative history of Rehabilitation Act to support the position that Congress' intent was to exempt the measure from compliance with the District's open meeting laws. In the past Congress has expressly exempted through legislation a District government public body from compliance with the District's open meetings laws. One such example is section 9 of the District of Columbia Judicial Efficiency and Improvement Act of 1986, approved October 28, 1986 (100 Stat. 3233; D.C. Official Code § 1-204.34(c)(1)), where Congress amended D.C. Official Code § 1-204.34(c)(1) to exempt the JNC from “Sunshine Act.” Congress did not include within the Rehabilitation Act a provision to exempt the SILC from the District's open meetings laws. Based on the foregoing, it is clear that the provisions of the OMA and the Sunshine Act are not in conflict with any requirement of the Rehabilitation Act. Therefore, the SILC must adhere to all provisions of the District's open meeting laws.

### **C. Analysis**

#### **1. THE OMA'S “NOTICE OF MEETINGS” PROVISIONS REQUIRE SPECIFIC FORMS OF NOTICE TO THE PUBLIC BEFORE PUBLIC BODIES MAY LAWFULLY CONDUCT MEETINGS.**

- a. The SILC's failure to provide in its meeting notice to the public the planned meeting agenda violates Section 406(5) of the OMA (D.C. Official Code § 2-576(5)).*

D.C. Official Code § 2-576 contains the OMA's “Notice of meeting” provisions. This statutory scheme governs how to schedule, change or cancel a meeting. D.C. Official Code § 2-576 reads:

Before meeting in open or closed session, a public body shall provide advance public notice as follows:

- (1) Notice shall be provided when meetings are scheduled and when the schedule is changed. A public body shall establish an annual schedule of its meetings, if feasible, and shall update the schedule throughout the year. Except for emergency meetings, a public body shall provide notice as early as possible, but not less

than 48 hours or 2 business days, whichever is greater, before a meeting.

(2) Notice shall be provided by posting:

(A) In the office of the public body or a location that is readily accessible to the public; and

(B) On the website of the public body or the District government.

(3) Notwithstanding the notice requirement of paragraph (2) of this subsection, notice of meetings shall be published in the District of Columbia Register as timely as practicable.

(4) When a public body finds it necessary to call an emergency meeting to address an urgent matter, notice shall be provided at the same time notice is provided to members and may be provided pursuant to any method in paragraph (2) of this subsection.

(5) Each meeting notice shall include the date, time, location, and planned agenda to be covered at the meeting. If the meeting or any portion of the meeting is to be closed, the notice shall include, if feasible, a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure under § 2-575(b), and a description of the matters to be discussed.

The OMA mandates advance the notice is given to the public of planned meetings that include a planned meeting agenda of the items a public body intends to consider during a meeting. The SILC's notice of public meetings consistently fails to apprise the public in advance of the public business the SILC would consider during respective meetings. The inclusion of a planned meeting agenda with the meeting notice to the public is mandatory and not optional. As detailed below the SILC's historical non-compliance with D.C. Official Code § 2-576(5) is evident from SILC's notices that were published on the central meeting calendar and those published on the DDS website.

SILC's March 24, 2016, and its July 27, 2016, public meeting notices were published on both the central meeting calendar and the DDS website. However, neither public notice includes the statutory requisite planned or final meeting agenda. The OOG's audit of the DDS website reveals the failure to include a planned meeting agenda holds true for SILC's notice of public meetings for the following dates: July 24, 2014; September 25, 2014; November 20, 2014; March 6, 2014; and March 27, 2014. In addition, Director Reese's July 27, 2018, correspondence confirms the OOG's findings that the SILC held public meetings on the following dates: February 26, 2015; March 26, 2015; May 28, 2015; June 16, 2015; July 23, 2015; September 24, 2015; November 19, 2015; February 4, 2016; March 24, 2016, May 26, 2016; August 4, 2016; September 22, 2016; November 17, 2016; September 28, 2017; November 16, 2017; January 25, 2018; March 22, 2018; May 24, 2018; and July 19, 2018. With the exception of the SILC's July 19, 2018, public meeting, the OOG's audit did not disclose any draft meeting agenda for any other meeting. Therefore, the SILC did not properly notice these meetings to the public and is in violation of OMA's "Notice of meetings" (D.C. Official Code § 2-576(5)) provisions with respect to these meetings.



## 2. PUBLICATION REQUIREMENTS PURSUANT TO D.C. OFFICIAL CODE § 2-576.

- a. *D.C. Official Code § 2-576(1) Requires Public Bodies to Publish in the D.C. Register an Annual Schedule of Public Meetings.*

There are two distinct provisions of the OMA that require a public to body provide notice to the public of its meetings through publication in the D.C. Register. These two requirements are: (1) the annual schedule of meetings (D.C. Official Code § 2-576(1)); and (2) the notice of forthcoming meetings that include the planned meeting agenda (D.C. Official Code § 2-576(3)) discussed *supra*. The SILC's adherence to the OMA requirement to publish in the D.C. Register an annual notice of its meetings was consistent from 2014 through 2017. However, the OOG was not able to locate in the D.C. Register (on the Office of Document and Administrative Issuances website) the SILC's yearly General Meeting Schedule for 2018.<sup>8</sup> The OOG did locate the SILC's General Meeting Schedule for 2018 on the SILC's website at [https://dds.dc.gov/sites/default/files/dc/sites/dds/event\\_content/attachments/SILC%20Scheduled%20Meetings%201918\\_2.pdf](https://dds.dc.gov/sites/default/files/dc/sites/dds/event_content/attachments/SILC%20Scheduled%20Meetings%201918_2.pdf). However, publication of an annual meeting schedule by a public body on its website does not meet the statutory mandate to publish its annual meeting schedule in the D.C. Register.<sup>9</sup>

Additionally, the publication dates for the SILC's General Meeting Schedule for 2015, was published on February 20, 2015. This notification to the public was two months into the calendar meeting year. The failure to timely publish the annual schedule of meetings makes it even more compelling for the public bodies to properly notice the public of upcoming meetings with the planned agenda, pursuant to D.C. Official Code § 2-576(1) and (5).

- b. *D.C. Official Code § 2-576(3) Requires Public Bodies to Publish in the D.C. Register notice of its forthcoming meetings.*

With respect to the OMA's D.C. Register's publication requirement for upcoming public meetings pursuant to D.C. Official Code § 2-576(3) an exhaustive review of the ODAI website by the OOG did not disclose publication of upcoming meetings of the SILC in the D.C. Register beginning in 2014 or thereafter. However, an OOG oral opinion regarding the OMA's D.C. Register notice requirement pursuant to D.C. Official Code § 2-576(3), provides some relief to the SILC and public bodies where there is compliance with the other forms of statutory notice to the public. The oral opinion was reduced to writing on December 13, 2017.<sup>10</sup> The text of the electronic communication which contains the OOG's opinion on this matter reads as follows:

As we know, the notice requirements of meetings are set out in § 2-576. The OOG interprets notice of the yearly calendar dates to be published in the D.C. Register as feasible since the dates are to be voted on and established by a public

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<sup>8</sup>Last checked on August 20, 2018. The SILC provided to the OOG the General Meeting Schedule for 2018, on July 25, 2018.

<https://www.dcregs.dc.gov/ContentSearch.aspx?searchText=statewide%20independent%20living%20council&DocType=DCR>

<sup>9</sup> The annual schedule of meetings was not present on the DDS website during the OOG's audit, but was sent to the OOG as an attachment in an electronic correspondence on July 16, 2018.

<sup>10</sup>The OOG's opinion is in a December 14, 2017 electronic email to Karuna Sehasai (EOM), Attorney Barton (OOG), Steven Walker (EOM), Roary Booker (EOM) and Betsy Cavendish (EOM). In this correspondence the OOG states, "There is no written OOG opinion on this matter as we've not been asked to address by way of complaint, or opinion request. However, the OOG has addressed this issue during all OOG trainings."

body at the beginning of a calendar year. These dates and notice, to include the time, date, location and planned agenda items for a meeting, may be modified provided there is 48 hours or two business days' notice to the public via posting on the website of the public body (§ 2-576(2)(B)), and in a location readily accessible to the public (§ 2-576(2)(A)).

The publication deadlines for the D.C. Register are typically 10 days in advance of the next publication, and it is likely unfeasible for public bodies to meet this deadline as agendas containing topics to be discussed, are not formalized that well in advance, and therefore not timely as practicable pursuant to § 2-576(3). The OOG interprets the OMA as contemplating and providing some relief to public bodies by allowing updated meeting schedules (subsequent to the establishment of the yearly calendar meeting dates), notices/agendas to be posted in hard copy, and on the website within the 48 hours or two business-day timeframe.

Therefore, based on the OOG's opinion, if the SILC timely complied with the other statutory notice requirements of D.C. Official Code § 2-576, i.e., publication of its yearly calendar; physical and electronic publication of its upcoming meetings, but was not able to timely meet the requirement to publish its notice of meetings in the D.C. Register, no violation of the OMA would be evident. However, at all times relevant to this opinion the SILC did not publish in the D.C. Register the notice of its upcoming meetings and is therefore in violation section 406(3) of the OMA (D.C. Official Code § 2-576(3)).

### **3. SILC DID NOT TIMELY PUBLISH ITS DRAFT OR FINAL MEETING MINUTES OR DRAFT OR FINAL MEETING AGENDAS.**

D.C. Official Code § 2-578 contains the OMA's "Recording of meetings" provisions. Germane to the determination in this matter are the requirements of D.C. Official Code § 2-578(b) which state:

(b) Copies of records shall be made available for public inspection according to the following schedule; provided, that a record, or a portion of a record, may be withheld under the standard established for closed meetings pursuant to section 405(b):

(1) A copy of the minutes of the meetings shall be available for public inspection as soon as practicable, but no later than 3 business days after the meeting.

(2) A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.

The OOG construes the requirements of D.C. Official Code § 2-578(b)(1) as follows: "[A]s the majority of boards and commissions are unable to post meeting minutes within the (3) business days required under the Open Meetings Act, draft meeting minutes must be posted within three (3) business days upon the conclusion of the meeting, with a notation at the top of the document that full meeting minutes will be posted to the website on the next meeting date of the board or commission."<sup>11</sup> The OOG's findings below reveal the SILC's failure to comply with this requirement.

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<sup>11</sup> See OMA Advisory Opinion-Posting of Meeting Minutes, Transcripts, Electronic Recordings at [https://www.opencdc.gov/sites/default/files/12.12.13%20OOG%20Opinion\\_HPTF\\_Meeting%20Record\\_Minutes%20Audio%20Video%20Transcripts.pdf](https://www.opencdc.gov/sites/default/files/12.12.13%20OOG%20Opinion_HPTF_Meeting%20Record_Minutes%20Audio%20Video%20Transcripts.pdf)

The SILC held bi-monthly meetings during the period of the OOG's audit. This means the SILC's approval of final meeting's minutes would occur two months after the meeting where the minutes were taken. During the two-month interval between meetings the SILC did not publish draft meeting minutes pursuant to D.C. Official Code § 2-578(b)(1). Since March of 2014 through May 2018, the SILC's draft meeting minutes were not timely published in compliance with D.C. Official Code § 2-578(b)(1). Furthermore, the SILC did not timely publish to its website or the central meeting calendar, after the Board's approval, their final meeting minutes.

A public body must incorporate any modifications to the planned meeting agenda into a final meeting agenda which it must publish. In the instant case at the time of the OOG's audit, the SILC did not timely post final agendas of its meetings for the dates in question. This constitutes a violation under the OMA.

### **III. RECOMMENDATIONS**

The SILC has three publically accessible websites that provides or purports to provide public meeting information, these are found at: (1) <https://sites.google.com/a/dc.gov/dcsilc> (SILC website); (2) <https://dds.dc.gov/node/1349466> (DDS website); and (3) <https://www.open-dc.gov/public-bodies/statewide-independent-living-council> (Central meeting calendar). The plurality of the active websites was the genesis of this advisory opinion and is confusing, and may lead may lead to an unnecessary duplication of efforts by the SILC. One problem the OOG noted is with the SILC website. On the DDS website there is a link to the SILC<sup>12</sup> website. Once on the SILC website among the series of tabs is one labeled "Documents." Under the "Documents" tab is a tab labeled "Meeting Minutes." However, the "Meeting Minutes" folder does not contain any SILC meeting minutes. The OOG recommends that SILC considering removing the link from the DDS website to SILC website as it seems not to be in use and is misleading to the public as to the location of SILC's meeting minutes. Therefore, the OOG recommends that the SILC select one website to publish documents for compliance purposes with the OMA.

The OOG also recommends that the SILC strictly adhere to the OMA by timely publishing its notice of meetings with draft agenda, and draft and final meeting minutes on the website it selects for such purposes.

Finally, the OOG recommends that SILC publish in the D.C. Register all of its yearly calendar of meetings prior to the start of the calendar year during which the meetings will occur. Additionally, that SILC timely publish in the D.C. Register the notices of its upcoming meetings taking into account the OOG's opinion and interpretation of D.C. Official Code § 2-576(1).

### **IV. CONCLUSION**

The OOG's audit reflects the SILC's violations of the OMA as follows: (1) the failure to timely provide a draft agenda for public meetings from March 2014 through September 2018; (2) failure to notice the public through the D.C. Register of upcoming meetings; (3) the failure to timely publish its 2015 yearly calendar of meetings in the D.C. Register; (4) the failure to timely publish its 2018 yearly calendar of meetings in the D.C. Register and (5) its failure to timely post draft and final meeting minutes to its website or the website of the District government. Also concerning is the SILC's past practice of purportedly publishing or publishing notices of

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<sup>12</sup> The link is title "DC SILC website" and was last accessed on August 24, 2018.

meetings and records of meetings to three different websites, all which are currently active. This multiple publishing to three different is confusing when searching for the SILC's meeting notices and meeting records.

The OOG thanks the Department of Disability Services (DDS) Director Andrew Reese, the DDS Office of General Counsel and the SILC for their cooperation in rectifying this matter. The OOG's findings show no intent on the SILC's part to evade or willfully disregard the OMA. However, SILC's violations of the OMA underscore the need for timely training of public bodies and their points of contacts.

Sincerely,

  
NIQUELLE M. ALLEN, ESQ.

Director, Office of Open Government  
Board of Ethics and Government Accountability

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