



The Open Govist

Pandemic & Social Justice Special Edition

**BI-ANNUAL NEWSLETTER
DECEMBER 7, 2020**



Body Worn Camera
Advisory Opinion



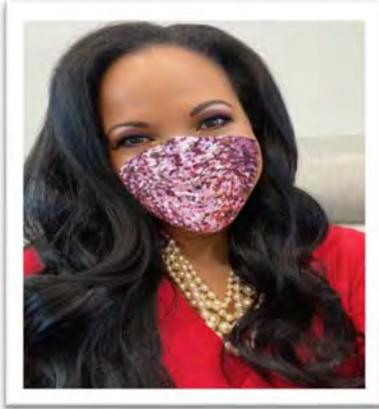
DC GOV
Meetings Go
All Remote



Rights of
Journalists
Covering Protests



Director of Open Government's Message



Niquelle Allen, Esq.
Director of Open Government

Life changed drastically on March 16, 2020, when the United States came to a halt due to the coronavirus pandemic. The Office of Open Government pivoted to remote operations and shifted its focus to ensuring that the government continued to operate in an open and transparent manner while it operated remotely. We looked to balance public health, safety, and welfare, with the public's right to know. We worked with leaders in the legislative and executive branch to make thoughtful changes to the laws and regulations that would facilitate remote operations without compromising transparency.

Then, on May 30, 2020, when the country collectively witnessed George Floyd murdered by police, spontaneous protest erupted in cities all over the U.S. In the days and weeks after that terrible incident, thousands of Americans left their homes to exercise their First Amendment rights and protest law enforcement's use of excessive force. Hundreds of journalists joined them to cover the protests. However, many of them were met with violence and arrest from the government in violation of the U.S. Constitution (Freedom of the Press).

These two major events touched on the core purpose of this office – government transparency. In this Special Edition of the *Open Govist*, the Office of Open Government documents our activities regarding the governments' response to going to remote operations as a result of the pandemic, our endeavors to increase transparency policing, and our response to the mistreatment of the Press. I hope you find the contents informative and useful.



Body Worn Camera (BWC) Advisory Opinion

BWC FOIA Reform is Required

The Office of Open Government (OOG) issued an exhaustive Advisory Opinion that thoroughly researched and analyzed the Metropolitan Police Department's practices concerning the release of its BWC camera footage when that footage is subject to a FOIA request. OOG found that improvements are needed to ensure government transparency.

OOG issued an Advisory Opinion on November 5, 2020, that addressed the Metropolitan Police Department's (MPD) compliance with the D.C. Freedom of Information Act (FOIA) when it releases redacted body worn camera footage to FOIA requesters. *Read it here:* <https://www.open-dc.gov/BWC-FOIA-AdvisoryOpinion-2020>. MPD has a practice of heavily redacting its BWC video footage before releasing the video record to the FOIA requester. The Advisory Opinion evaluated the legality of the practice and whether or not it complies with law and spirit of FOIA. The Advisory Opinion found that the current program ran afoul of FOIA's requirements and MPD needed to make some changes to its BWC program. The Advisory Opinion laid out specific changes that MPD needed to make. It also recommended changes to FOIA law. First, MPD must provide a publicly available fee schedule that provides redaction costs per minute and per individual or object for BWC footage. Second, D.C. FOIA should be amended to require MPD to use redaction technology that provides the least costly commercially available method of redacting BWC recordings, to the extent possible and reasonable.

Third, MPD police officers do not have an expectation of privacy when performing their duties in a public place, so MPD's redaction of police officers' faces, badge numbers, and other information that would identify the police officers does not have a basis in D.C. FOIA. Fourth, D.C. FOIA does not support MPD's redaction of third parties in BWC video footage in every instance. Fifth, D.C. FOIA exempts from disclosure vehicle license plates to protect personal privacy; however, because the Driver's Privacy Protection Act prohibits the release of personal identifiable information associated with vehicle license plates, redacting vehicle license plate information is unnecessary. Sixth, MPD may rely on D.C. FOIA's personal privacy exemption to redact residential addresses, but the exemption does not apply to business addresses. Seventh, the exemptions applicable to BWC video footage applies to audio containing personal private information.





DC Goes Remote: The New Normal

The COVID-19 Pandemic Required DC Boards and Commissions to Have Electronic Meetings

The Office of Open Government was required to quickly train its 500 public bodies on how to conduct remote meetings. With the help of the Mayor's General Counsel and Director of Talent and Appointments we rose to the occasion.

When the District of Columbia government transitioned to fully remote work on March 16, 2020, with the exception of essential workers, OOG played an important role in ensuring that Boards, Commissions, and other public bodies were able to successfully conduct government business remotely as well. OOG consistently engaged with the Mayor's Office of Talent and Appointments and the Mayor's Office of General Counsel to provide consistent advice regarding remote meetings to public bodies and facilitate their ability to continue to conduct public business remotely. The Mayor's Office of Talent and Appointments Director, Steve Walker, and, the Director of Open Government, Niquelle Allen, facilitated weekly trainings for Board and Commission administrators and members on the Open Meetings Act (OMA) as amended by the COVID 19 Response Emergency Amendment Act of 2020.

The training sessions were conducted via WebEx on throughout the months of March and April 2020 and over 2000 individuals were trained and during these training sessions, we reached all of the Administrative Points of Contact and Boards and Commission members.

The Office of Open Government also produced several publications regarding changes to the OMA and the Freedom of Information Act (FOIA) as a result of the COVID 19 pandemic. You can read those publications here: https://www.open-dc.gov/FOIA_COVID19_2021LAW and <https://www.open-dc.gov/news/office-open-government-covid-19-updates>



THE RIGHT TO COVER

Journalists As Front Line Transparency Guarantors

Journalists faced unprecedented challenges in the US in their quest to cover the mass demonstrations in the wake of the murder of George Floyd at the hands of police. The Director of Open Government made a public statement on those challenges at the June 4, 2020 Board of Ethics and Government Accountability Meeting. It is Printed in its entirety below.



**STATEMENT OF THE DIRECTOR OF OPEN GOVERNMENT REGARDING THE TREATMENT OF
THE PRESS DURING THE MASS DEMONSTRATIONS RESULTING FROM THE MURDER OF
GEORGE FLOYD**

JUNE 4, 2020

On May 25, 2020, George Floyd, a 46-year-old African-American male, was murdered by former Minneapolis police officers after they detained him for allegedly passing a counterfeit \$20 bill. This murder was videotaped by several bystanders and that footage was widely circulated. What resulted was mass protests in Minnesota, which have spread throughout the United States and the World. In the United States, people have lawfully expressed their First Amendment rights to call for the arrest of the perpetrators of this crime and for reform in police practices that threaten the safety and well-being of African Americans, especially young men. The media has been present to provide live coverage of these mass demonstrations.

Many have spoken on the numerous civil rights and other Constitutional issues that these events have brought to the forefront, as I am doing today. One of those issues, which I am focusing on with this statement, is the Freedom of the Press. Journalists have faced arrest, physical force, chemical agents, and verbal assaults while exercising their First Amendment rights during the protests. Cameras and other equipment have been destroyed or damaged; and, they have been hit with projectiles, rubber bullets, wooden bullets, fired at them during the course of their coverage. Journalists have met this fate while clearly displaying media credentials and actively reporting. The most visible violation came when CNN reporter Omar Jimenez and his crew members were arrested on live television while reporting. Another visible violation occurred here in DC, in Lafayette Square, where reporters documenting a peaceful assembly were physically assaulted and cleared by police with tear gas and flash bang grenades in advance of Donald Trump's photo shoot in front of the historic St. John's Episcopal Church. During this incident, a police officer was recorded using his shield to attack an Australian cameraman who was part of a team reporting live in front of the White House.

Freedom of the Press is woven into the fabric of our nation and the U.S. Constitution. It is essential for the media to have access to the government to keep it open and accountable to the people it serves. The First Amendment protects the work of journalists as they publicly document government activity. These incidents are blatant violations on the constitutional rights of individual reporters and the public's interest in receiving accurate information and holding the government accountable. The Office of Open Government is here to support journalists in their mission to keep the government accountable and finds the actions of those who attempt to violate the U.S. Constitution disgraceful and unacceptable.



New Office of Open Government Staff Members

OOG Welcomes Two New Staff Members

The Office of Open Government hired two new staff members to assist with ensuring that the Government of the District of Columbia remains open and transparent.

Attorney Sheree DeBerry joined OOG's staff as an Attorney-Advisor. Attorney DeBerry has 13 years of extensive experience with the Freedom of Information Act (FOIA) and the federal Privacy Act (PA). She has contributed to the development of program-wide standard operating procedures and managed complex FOIA requests. Attorney DeBerry also has litigation experience working with well-respected nonprofits fighting for health and women's issues. She holds a Bachelor of Arts degree from Marshall University and a Juris Doctorate degree from the District of Columbia School of Law.



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Kevon Bridges joined OOG as the agency's Information Technology Specialist. He graduated from Gonzaga College High School in 2012 and Mercyhurst University in 2016 with a B.A. in Information Technology. He has valuable experience in the technology industry. He worked with Apple as a technical specialist and served multiple government agencies including, FEMA, USDA, and IRS.



Public Body Spotlight

The **DC Board of Barber and Cosmetology** (Board) was very active during the pandemic and provided resources for business owners and workers impacted by COVID-19. The Board is meeting remotely due to the pandemic and posts its meetings on the Central Meeting Calendar on open-dc.gov. The Board consists of 14 members, appointed by the Mayor: three barbers; three cosmetologists, three specialty cosmetologists; three body artists; and two consumer members. For more information about the Board visit: <https://dcra.dc.gov/barbers-cosmetology>.

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

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(Note that Due to COVID-19 our Physical Office is Closed)