

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**



**PERFORMANCE OVERSIGHT HEARING FOR THE
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

**Statement of Traci L. Hughes, Esq.
Director, Office of Open Government
Board of Ethics and Government Accountability**

**February 8, 2018
9:30 A.M.
1350 Pennsylvania Avenue, NW
Room 500
Washington, D.C. 20004**

Good morning, Chairperson Allen, members of the Committee. My name is Traci Hughes, and I am the Director of the Office of Open Government. I appear today in what will be my last performance hearing as the director of the OOG. Without question, serving the government and the public in this role has been my highest honor. I thank the Board of Ethics and Government Accountability (BEGA) for the opportunity to stand up an office that is charged with upholding the fundamentals of our government and our democracy, by working to ensure that our government is open, accountable and accessible to the residents of the District of Columbia.

As this Committee is aware, I am the first director of the OOG, establishing the office, its systems, and mission -- all in an effort to meet the statutory mandate of the Office to ensure compliance with the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA). I believe that I have done an effective job, and perhaps I have been too effective, in making certain that the public gains the proper access to records and meetings of public bodies whose officials are charged with undertaking the business of government. I am proud of what I and my team have accomplished these past five years, and believe that the Office, now more than ever, is a needed resource for our government and the public.

The OOG is intended to function as an independent advocate for transparency, with the sole authority to enforce compliance with the OMA. This mandate has been fulfilled via the issuance of numerous opinions, and an enforcement action against a single public body, out of nearly 175 public bodies operating across our city. I have worked diligently to ensure that all opinions issued by the Office are objective, fair and follow the letter of the law; and, to provide training and guidance so that no public body is left to its own devices to come into compliance, when it was clear the body lacked understanding of the requirements of the OMA and/or needed OOG support to comply. This support also included conducting hundreds of OMA and FOIA trainings for public bodies, government agencies and the public.

It should also be noted that despite the independent status of the OOG, and although not statutorily required to do so, I have informed the members of BEGA on a monthly basis of all ongoing OOG matters, including legislation, regulations and enforcement. The record of BEGA meetings clearly demonstrates that BEGA has in all instances been provided with the opportunity to be fully engaged with OOG since I took this role in 2013.

The Office is now at a critical juncture. In light of the enforcement action against the Mayor's Advisory Commission on Caribbean Community Affairs (MACCCA), and the opinion the OOG issued regarding the failure of the members of the Commission on the Selection and Tenure of Administrative Law Judges (COST) to comply with the OMA, the prudence of OOG retaining its independence is being called into question.

Prior to bringing the enforcement action against MACCCA, and as agreed to by BEGA, the OOG worked for several months to bring that public body into compliance. Only when it became clear that MACCCA was unwilling to comply did the OOG bring suit in Superior Court. As this Committee may be aware, the court ruled that MACCCA did in fact violate the Open Meetings Act by failing to provide proper advance notice and agendas for multiple meetings; and determined that these failures presented a "real and articulable injury to the public interest." The OOG did what it is designed to do: make certain that the public has access to meetings and any meeting-related records.

Regarding the COST opinion, it is important to emphasize that the opinion was not issued *sua sponte*, but instead issued pursuant to two complaints. One was received in writing, and the other was received in person by a concerned individual who wished to remain anonymous. The COST was not singled out or subjected to heightened scrutiny. I drafted the opinion in the same manner as other OOG opinions. I laid out the statutory charge of the COST, the role of the COST in relation to its governing agency (the Office of Administrative Hearings (OAH)), the terms of its members, and a detailed analysis of the records provided of COST meetings. Based upon the records supplied by OAH, those found in the D.C. Register, District Government websites, and, those provided by the Superior Court, I determined that the COST committed numerous violations of the OMA, and had violated the OMA for several years. Additionally, the public records of the term appointments of COST members called into question whether some COST members have been properly seated. This discrepancy speaks to whether official action was taken without a quorum, because quorum is a primary prerequisite for a public body to take formal action.

As a courtesy I provided an advance copy of the opinion to Chief Administrative Law Judge Eugene Adams with the intent of walking him and his staff through the findings and answering any of their questions. This was not required, but was done to avoid blind-siding the OAH, the Administration and the Council...but, more importantly, to improve compliance with the OMA

going forward. Regrettably, the reaction from Judge Adams was less than collegial. Rather than address the factual determinations in the opinion, Judge Adams sought instead to wage a personal attack in an attempt to obstruct the OOG from issuing the COST opinion. I have provided a copy of Judge Adams' letter and OOG's reply to this Committee.

I am concerned that, if unchecked, permitting this type of behavior will render the Office impotent. To date, none of the members of the COST have complied with the requirements set out in the opinion. In fact, Judge Adams has informed the OOG that he does not intend to have any members of the COST attend a training by the OOG, as mandated in the opinion. Curiously, he has chosen to seek training elsewhere when the OOG is the only entity authorized to conduct such trainings when there has been a finding of non-compliance.

Going forward, I firmly believe that the OOG must retain its full independence and remain insulated from intimidation, coercion and bullying of any kind. All attempts to avoid or prevent compliance with the OMA must be resisted. The public deserves no less.

Whoever leads the OOG must have full confidence that his or her review of OMA compliance matters may be made free of outside influence or pressure. That was the intent of this body when it passed the OMA, and when it gave the OOG enforcement authority. I am gratified to note that our Mayor, as a member of this Council, worked to gain passage of the legislation creating the OOG. This was a significant step forward to provide greater transparency for the residents of the District. We cannot afford to take a step backward or lose ground to the achievements of the Office.

The role of the OOG is not to be conciliatory, but instead to ensure compliance so that government operates in a transparent fashion in the best interest of the public.

Thank you for allowing me to share my concerns with the Committee. I welcome any questions you may have.