

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY  
OFFICE OF OPEN GOVERNMENT



September 19, 2019

**VIA ELECTRONIC MAIL**

Ms. [REDACTED] Barber  
[REDACTED] NW  
Washington, DC 20006  
[REDACTED]@aol.com

RE: Resolution of Complaint Concerning the Commission on Selection and Tenure of  
Administrative Law Judges of the Office of Administrative Hearings  
Complaint #OOG-2019-0006-M

Dear Ms. Barber:

The Director of Open Government (“OOG”), pursuant to 3 DCMR § 10400 *et seq.*, assessed your Open Meetings Act (“OMA”) complaint, submitted to the OOG on August 16, 2019. In your complaint you requested that the OOG investigate the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (“COST”), for violations of the OMA, which alleged occurred on April 8, 2016 and during July 2016.

Your OMA complaint makes the following allegations: (1) that on April 8, 2016, COST violated the OMA by conducting a meeting through text messages; and (2) that COST failed to notify the public of several of its July 2016 meetings. You request that the Director “[R]escind actions of the COST members done in April and July 2016;” and “[S]anction COST members and have them removed.”

The OOG will not address the complaint allegations that COST violated the OMA during July 2016 and on April 8, 2016. This is because the OOG addressed and dismissed your previous allegations that COST violated the OMA on specific dates in July 2016. Additionally, the April 8, 2016, complaint is time barred by the OOG’s regulations. Finally, the relief you seek is not within the Director’s authority under the OMA. Therefore, your complaint is dismissed. An explanation of the reasons for the dismissal follows.

I. *The Director Previously Addressed and Dismissed Your Allegations that COST Violated the OMA During July 2016. The April 8, 2016 Complaint Allegation is Dismissed Because it is Time Barred by the OOG's Regulations.*

**A. Dismissal of the Complaint Allegation that COST Violated the OMA During July 2016.**

The instant complaint alleges that, “[T]here was also no notice of several July {sic} meeting of COST members.” The OOG’s records reveal that the Director previously dismissed your four complaints<sup>1</sup> that collectively alleged that COST violated the OMA on July 8, 2016, July 12, 2016 and July 13, 2016.<sup>2</sup> Copies of these dismissals were emailed to you on January 12, 2018, February 16, 2018, May 29, 2018 and October 3, 2018. These dismissals make clear there was either no violation of the OMA or the Director could not grant the relief sought. Hence, the Director has previously addressed and dismissed your complaints that COST violated the OMA in July 2016<sup>3</sup> and will not reconsider the allegations herein.

**B. Dismissal of the Complaint Allegation that COST Violated the OMA on April 8, 2016.**

In reference to the April 8, 2016 allegation, you advise in the complaint that, “I only learned of this violation yesterday.” According to the date you submitted the complaint to the OOG, you purport to have learned of this alleged violation on August 15, 2019. The OOG’s regulations found at 3 DCMR § 10400.2<sup>4</sup> address the time for filing OMA complaints. This provision requires submission of a complaint to the Director “within 60 days following the date that the Complainant knew or should have known of the alleged violation.”

Construing the time frame for considering whether COST violated the OMA on April 8, 2016, in the light most favorable to you, I find: (1) that you knew or should have known of the alleged April 6, 2018 violation during the course of filing the four previous OMA complaints that alleged COST violated the OMA during 2016; (2) that your September 29, 2018 complaint specifically alleged COST violated the OMA in April 2016; (3) therefore, that you should have filed a complaint alleging Cost violated the OMA on April 8, 2016, no later than November 29, 2018 (within 60 days after filing the September 29, 2018 complaint); and (4) that since you did not file your complaint by November 29, 2018, the allegation that COST violated the OMA on April 8, 2019, is time barred.

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<sup>1</sup> You may review each Resolution of Complaint here [https://www.open-dc.gov/sites/default/files/OOG-0013\\_11.14.17%20Resolution%20of%20Complaint\\_COST%20%282%29.pdf](https://www.open-dc.gov/sites/default/files/OOG-0013_11.14.17%20Resolution%20of%20Complaint_COST%20%282%29.pdf); [https://www.open-dc.gov/sites/default/files/%23%20OOG-0002\\_2.6.18%20Redacted%20Resolution%20of%20Complaint\\_Barber.pdf](https://www.open-dc.gov/sites/default/files/%23%20OOG-0002_2.6.18%20Redacted%20Resolution%20of%20Complaint_Barber.pdf); [https://www.open-dc.gov/sites/default/files/%23%20OOG-0006\\_5.24.18%20redacted%20Resolution%20of%20Complaint\\_COST.doc2\\_.pdf](https://www.open-dc.gov/sites/default/files/%23%20OOG-0006_5.24.18%20redacted%20Resolution%20of%20Complaint_COST.doc2_.pdf); [https://www.open-dc.gov/sites/default/files/OOG-0004\\_9.29.18%20Resolution%20of%20Complaint\\_COST\\_0.pdf](https://www.open-dc.gov/sites/default/files/OOG-0004_9.29.18%20Resolution%20of%20Complaint_COST_0.pdf)

<sup>2</sup> Each of the complainant’s four previous complaints mentions July 13, 2016 as one date of an alleged violation.

<sup>3</sup> A complaint alleging these violations is also time barred.

<sup>4</sup> The full text of 3 DCMR § 10400.2 states, “[A] Complainant shall submit to the Director within sixty (60) days following the date that the Complainant knew or reasonably should have known of the alleged violation. A complaint may refer to one or more open meetings.”

Given the publicity, the OOG opinions issued, and the history of recent litigation regrading alleged violations by COST, there is no scenario under which I would not dismiss the April 8, 2016 allegation this complaint raised against COST, regardless of the complainant. This standard would apply to any public body alleged to have violated the OMA under similar circumstances.

II. *The Director Does Not Have Authority to Rescind a Public Body's Actions or to Sanction or Remove its Members.*

The relief you requested in the complaint is as follows:

Rescind actions of COST members done in April and July 2016. Many COST members were not properly appointed. Sanction COST members and remove them because they committed multiple violations of the Open Meetings Act repeatedly over a course of years.

The Director cannot provide the relief you seek. The OMA and its regulations do not provide the Director with authority to rescind meeting actions or sanction and remove members of a public body.

For the reasons stated herein, and pursuant to the OOG's regulations, the matter is dismissed, and a copy of your complaint is being returned to you.<sup>5</sup>

Sincerely,



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NIQUELLE M. ALLEN, ESQ.  
Director of Open Government  
Board of Ethics and Government Accountability

Enclosure: Copy of #OOG-2019-0006-M

cc: Vanessa Natalie, Esq.,  
General Counsel, Office of Administrative Hearings  
[vanessa.natale@dc.gov](mailto:vanessa.natale@dc.gov)

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<sup>5</sup> 3 DCMR 10403.2 provides, "[T]he Director shall return a dismissed complaint to the Complainant with an explanation of the reason(s) for dismissal."