

**DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

MINUTES OF MEETING – APRIL 1, 2021

The District of Columbia Board of Ethics and Government Accountability held a meeting on April 1, 2021 at 12:00 p.m. The meeting was held remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Melissa Tucker, and Darrin Sobin. Questions about the meeting may be directed to bega@dc.gov.

Members of the public were welcome to attend, and a recording of the meeting is available at: <https://youtu.be/d3Nv8mgzTag>

I. Call to Order

12:03 pm

II. Ascertainment of Quorum

Quorum established with Board members Hutcheson, Nottingham, and Darrin Sobin. Board member Tucker arrived around 12:30 pm prior to the executive session.

III. Adoption of the Agenda/Approval of Minutes

Board Members unanimously approved the Agenda and March 4, 2021 minutes.

IV. Report by the Director of Open Government

Good afternoon Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, Director of Open Government. I am pleased to present this report on the activities of the Office of Open Government (“OOG”). Since the last Board meeting, the OOG has continued to fulfill its mission of ensuring that all persons receive full and complete information regarding the affairs of the District government and the actions of those who represent them.

A. Open Meetings Act (“OMA”) and Freedom of Information Act (“FOIA”) Advice

OOG has not issued any advisory opinions since the Board’s last meeting. OOG continues to provide formal and informal advice regarding the operation of the Open Meetings Act and FOIA during the public health emergency in writing via e-mail and orally.

1. Formal FOIA Advice: OOG’s legal staff and OGE’s General Counsel, Rashee Raj, continue to provide BEGA’s pending FOIA requesters with a letter detailing the COVID-19 related changes to FOIA requirements and the impact of those changes on FOIA requirements. Currently, all FOIA requests received by BEGA’s FOIA Officer, Sheree DeBerry, on or after January 16, 2021, will be processed under the normal FOIA rules. However, if the request requires BEGA to search for records located in

BEGA's physical office, BEGA's response to the FOIA request will not be due until 45 days after the public health emergency has concluded.

2. Informal OMA/FOIA Advice: OOG continues to experience a high volume of requests for advice and assistance on open government matters. This is due to the pandemic and the January 6, 2021 Insurrection at the U.S. Capitol.

- The Office responded to 16 requests for OMA advice;
- The Office responded to 14 requests for FOIA advice; and
- The Office responded to 12 requests for technical assistance with open-dc.gov, since the last Board meeting.

B. Training/ Outreach:

1. Office of the Attorney General ("OAG") Legal Ethics training: On March 10, 2021, I and OOG's legal staff attended the "March Madness and Legal Ethics Training" presented by the OAG for the District of Columbia. The trainers presented helpful hypotheticals and scenarios regarding ethical conduct.

2. Office of Unified Communications ("OUC"): On March 11, 2021, Attorney Barton conducted an FOIA training for the OUC. Attorney DeBerry attended the March 11th training.

3. Alcoholic Beverage Regulation Administration ("ABRA"): On March 16, 2021, Attorney DeBerry conducted an OMA training for the Alcoholic Beverage Control Board.

4. Open Government Summit: On March 18, 2021, the D.C. Open Government Coalition, along with the Office of Open Government and other Coalition leaders and guests, came together during the annual Sunshine Week. The program included three segments, one of which I participated. I discussed D.C. agencies' compliance with FOIA requests during the pandemic, and MPD's over-redacting of body-worn camera footage prior to release. Sunshine Week was held virtually this year from March 14-20, 2021. Open government related issue forums and events were held during the week all over the country. I would like to thank Board Members Nottingham and Tucker and Director Ford for attending our Sunshine Week program and all other BEGA officials and staff members who attended that I may have missed. We greatly appreciate your support. View the recording here: [2021 DC Open Government Summit TRIMMED-2 \(1\)](#)



5. OAG Due Process Training: On March 19, 2021, I and OOG legal staff attended “Due Process in a Nutshell: I Don’t Like What the Government Did” training presented by the OAG for the District of Columbia. The training covered basic concepts in defending the District from Due Process claims by discussing real-world examples, controlling case law, and practice tips.

6. Department of Human Resources (“DCHR”) management trainings: During the week of March 22, 2021, Chief Counsel Barton and I, attended DCHR’s weeklong training conference, “The Managerial Experience: From Challenge to Change”. DCHR offered a variety of informative trainings to assist D.C. agency leaders and managers in the execution of their positions. BEGA leaders and managers participated in the training conference and during the week collectively, we attended the following training courses:

- *Switching Off Presenting Burnout;*
- *Understanding and Unpacking Bias;*
- *Manager Mindfulness and Stress;*
- *Performance Evaluation;*
- *How to Use Conflict as Opportunity;*
- *Disability Employment, and Inclusion: The Time is Now;*
- *Understanding Employee Compensation; and*
- *Prioritizing a Psychological Healthy Workplace.*

7. Advisory Opinion Indexing Project: IT Specialist, Kevon Bridges, conducted a virtual meeting with the BEGA intern, Ms. Jes Hernandez, on March 26, 2021. He

discussed the Advisory Opinion indexing project where the website will make Advisory Opinions searchable by keyword. I also was present at the virtual meeting.

8. Video and Audio FOIA records webinar: On March 30, 2021, OOG Chief Counsel Barton attended a GovQA's webinar "Responding to Video/Audio Public Record Requests in California." The webinar discussed the redaction of audio and video requests and included a demonstration of GovQA's program for redacting these records.

9. Mandatory Zero Vision Training: OOG legal staff completed the "Zero Vision Training" this month. The mandatory training presented insightful information on motor vehicles, bicycles, and pedestrian accidents in the District. The associated fines and penalties were also discussed.

C. Litigation and Legislative Update:

1. Litigation: OOG is monitoring FOIA-related cases in D.C. Superior Court. The agency is not a party to either of the lawsuits. I provide this information for the Board's awareness of litigation that may impact the operation and interpretation of D.C. FOIA law.

a. TPM Lawsuit update: This is an update on the FOIA case filed against the District of Columbia on July 13, 2020, by Terris, Pravlik & Millian, LLP ("TPM"). The FOIA lawsuit alleges that the District of Columbia government failed to produce and post online various budget-related documents as required by FOIA. The Complaint alleges that the Executive Office of the Mayor failed to produce documents related to the Office of the State Superintendent of Education and District of Columbia Public Schools (Civil Action No. 2020 CA 003087 B).

On March 10, 2021, TPM and the District submitted a *Joint Motion Requesting a Scheduling Order and Related Relief*. On March 16, 2021, the Court granted the *Motion* and vacated the March 19, 2021 status conference.

The following schedule was set: April 16, 2021 – Deadline for plaintiff to move for summary judgment, declaratory judgment, and a permanent injunction; April 23, 2021 – Deadline for *amicus curiae*, the Council of the District of Columbia, to file a statement in support of TPM's motion; May 14, 2021 – Deadline for the District of Columbia to file its cross-motion for summary judgment and opposition to TPM's motion. June 11, 2021 – Deadline for TPM to reply in support of its motion and to oppose the District's cross-motion for summary judgment. June 30, 2021 – Deadline for the District to file its reply in support of its cross-motion for summary judgment. If the case is not resolved entirely by the Court's adjudication of the cross-motions, the Court will schedule a status conference to address remaining issues.

b. Stop and frisk FOIA lawsuit: On February 16, 2021, the American Civil Liberties Union ("ACLU") filed suit against the District of Columbia (*ACLU of DC v. District of Columbia, No. 2021 CA 000452 B*) seeking records concerning stop and frisks by the Metropolitan Police Department ("MPD"). MPD is required to retain stop and frisk statistics pursuant to the Near Engagement Archives Result Act (D.C.

Official Code § 5-113.01(a)(4B)). The *Complaint* seeks declaratory and injunctive relief to compel the District to provide the documents.

On March 4, 2021, the ACLU filed *Plaintiff's Consent Motion to Hold Its Motion for Preliminary Injunction in Abeyance Pending Defendant's March 15, 2021 Production*. The MPD has published a portion of data that the ACLU requested and sued MPD to obtain. In *Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction*, MPD stated t it would publish the requested data by March 15, 2021. On March 8, the District notified the Court that on March 5, 2021, the MPD published all police-stop data for January through December 2020. The District notified Plaintiff that the data was publicly available at <https://mpdc.dc.gov/node/1526306>. The District contends that MPD's the publication of the data moots the *Plaintiff's Motion for a Preliminary Injunction* and its *Complaint*. The OOG will continue to monitor these matters.

2. Legislation: In August 2020, the District of Columbia Council established the Police Reform Commission to advise the D.C. Council on comprehensive police reform. The Commissions' research, community input, and recommendations will inform the legislation that the D.C. Council Committee on the Judiciary plans to introduce to effectuate police reform. The final meeting of the Commission was March 22, 2021. At that meeting the Commission agreed with the OOG's findings in our November 5, 2020 Advisory Opinion on the Metropolitan Police Department's (MPD) compliance with FOIA regarding its release of Body Worn Camera footage to FOIA requesters. We found that the over redaction of those videos led to costly FOIA bills presented to requesters when seeking this information. The Committee agreed with our assessment that MPD should release video footage with less redaction.

D. Administrative Matters:

1. Attorney-Advisor and Trial Attorney Vacancies:

From March 8 - March 19, 2021, OOG conducted interviews for its vacant Attorney positions. We have selected candidates to fill these vacancies and plan to extend offers to the most qualified candidates for the Trial Attorney and Attorney-Advisor positions.

This concludes the Office of Open Government's April 1, 2021 report.

V. Report by the Director of Government Ethics

Good afternoon Chairperson Hutcheson and Members of the Board. My name is Rochelle Ford, I am the Director of Government Ethics. I am pleased to present this report on the activities of the Office of Government Ethics (OGE).

- A. Update on Status of OGE Operations: The information reported today regarding OGE's cases will not reflect any status changes that may will occur as a result of actions taken by the Board during today's meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	54
Open - Negotiations	1
Open - Show Cause Hearing	0
Grand Total	55

OPEN "UNDOCKETED MATTERS"	
Grand Total	0

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	27
Closed - Pending DC Superior Court Case	0
Stayed - OAG False Claims Act Case	3
Stayed - OIG Investigation	9
Stayed - US District Court Case	0
Grand Total	41

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	0
Grand Total	24

	Current	Last month	February
Investigations Currently	55	53	53
Investigations Stayed	12	12	12

The number of open preliminary investigations includes 7 new matters opened since the Board last met. The investigative team resolved 0 preliminary investigations since the Board last met.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

During the month of March, Auditor Tujuba completed the following trainings offered by DCHR:

- Classifying and Collecting Data
- Business Analysis Overview
- Quality and Security of Big Data Operations
- Classifying and Collecting Data
- Excel Office 365 Windows Creating & Editing Macros

Director Ford and Attorney Cooks virtually attended the Open Government

Summit co-sponsored by OOG and the Open Government Coalition and SCCE's Creating Effective Compliance Training Program: A Workshop. The training provided excellent content on how to improve our agency training efforts, which are a priority of OGE.

The Creating Effective Training Program Workshop agenda has been uploaded for the Board's review.

All of OGE's attorneys attended DCHR's "The Managerial Experience: From Challenge to Change" during the week of March 22-26. DCHR launched a weeklong virtual training week to support, train, and provide professional development training for District Managers and staff who manage significant agency projects. Virtual trainings were offered on an interactive and easy to use platform on topics relating to managing staff during the pandemic, addressing critical incidents, coaching, stress management, performance management, and hiring and recruiting,

Upcoming Trainings:

Although the pandemic has prevented us from enjoying some of the benefits of working together daily, we are using this time to continue to work to improve of skill set and processes. On April 12-13th, OGE's investigative team will participate in a training program that discusses establishing and documenting best practices in compliance investigations as well as investigative techniques.

The Compliance Investigation Workshops Agenda has been uploaded for the Board's Review.

2. Conducted by staff:

Since the last Board meeting, OGE attorneys conducted 3 total ethics trainings. Including a Monthly Ethics Training, an ethics training for ABRA, and a virtual brown bag ethics forum on the topic of FDS Information and Compliance. We were not able to retrieve the number of attendees to the online training from PeopleSoft before the start of today's meeting.

This month's Brown Bag Ethics Forum was held **Monday, March 29, 2021 from 1:00 - 2:00 p.m.** This Forum featured a discussion about the Financial Disclosure Statements filing requirement and program. The discussion was led by Attorney Advisor Asia Stewart Mitchel and OGE's auditor also discussed his process for auditing public and confidential filings. The forum also focused on the FDS filing form, confidential and public filer designations, communicating with filers, recording keeping, and best practices, and answered ethics counselor's FDS questions.

A copy of the presentation has been uploaded for the Board's review.

C. Advisory Opinions/Advice:

1. Informal Advice: approximately 46, which is 4 less than the 50 reported at the March meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

OGE has not issued any advisory opinions since the last meeting.

D. Legislation Updates:

2021 FDS Deadline change: On March 16, 2021, D.C. Act 23-570 became effective. Under the Act, BEGA has authority to extend the deadline to file financial disclosure forms during a public health crisis.

The IRS has extended the tax filing deadline for one month this year. After consulting with CM Nadeau and the Board's chair, BEGA intends to also extend the District's FDS filing deadline accordingly to allow District employees and public officials to complete their tax filings before their financial disclosures are due. As you recall, BEGA extended the FDS filing deadline to reflect the IRS's extension of the tax filing deadline in 2020 due to the public health crisis.

OGE has already informally notified ethics counselors at our monthly Ethics Forum and will issue a notice and change its website next week. We will still inform filers of their obligation to file on April 15, 2021, however, this year's financial disclosure filings will be due on June 15, 2021 of this year.

A copy of the Act and related correspondence have been uploaded for the Board's review.

E. OGE Administrative Matters:

OGE is still seeking an Attorney Advisor. We reposted the position more broadly and it will close on April 7th. OGE also plans to expedite the review and interview process to bring another attorney on Board soon.

The Board has also moved forward with the interview process for the Senior Attorney Advisor Position.

Reporting: -- As discussed at the last Board meeting, OGE has posted quarterly reports for FY20.

F. Financial Disclosure/Lobbyist Matters:

Lobbying Registration and Reporting (LRR) System – OGE received 57 Registrations (New, Renew, Termination) in March 2021. No new activity reports were

filed in March 2021. The LRR Team initiated updates to the Lobbyist website. Phase I removed dead links and Phase II will update the face of the Lobbyist page, making it more user-friendly with buttons instead of links.

Auditor Tujuba completed the CY2021 lobbyist registration audit and will be discussing the results with the LRR Team to determine the list of late registrants for enforcement.

The Auditor has also initiated a process to better track online Lobbyist payments and more efficiently reconcile payments received with the Office of the Chief Financial Officer's monthly report.

Financial Disclosure –The 2021 Financial Disclosure Season is underway. The FDS continues preparation for the 2021 Financial Disclosure season to begin with filer notification on April 15, 2021. Staff have been collecting and reviewing data from agencies regarding designated public and confidential filers. OGE's auditor is completing his audit of a sample Confidential Filers for 2019 FDS for completeness or in response to a flag from an agency ethics counselor.

As mentioned earlier, Attorney Stewart-Mitchell led a virtual brown bag ethics forum on the topic of financial disclosure. That presentation discussed best practices in designating filers, record keeping, and communicating with filers. The presentation also explained the revisions to the 2021 FDS filing form. OGE has revised the FDS form and moved forward with plans to launch a pilot e-filing program for confidential filers.

Revised FDS Form -- The new form has been uploaded for the Board's review.

The program discussed the revisions to the financial disclosure form that OGE intends to use this year. The revisions have been made primarily to clarify the questions and the instructions based on feedback that we have received and has filers confirm that they have complied with their obligation to receive ethics training.

Pilot Program – See Pilot Program Filer Notice upload for Board's review.

As mentioned during the last meeting, OGE has developed a Pilot Program for Confidential Filers. To date, 6 agencies with a total of 101 employees have signed on to test the electronic filing for confidential filers. Program Specialist Kosick has been in contact with different agencies who have expressed interest in participating in the Pilot Program.

Thank you. This concludes the Office of Government Ethics' April 1, 2021 report.

VI. Acknowledge of Public Comment – if received

Attendee Ruben Legaspi made a request to speak to the Board. He was unable to do so because he did not provide public comment in advance, making his request untimely.

VII. Executive Session (non public)

VIII. Resumption of Public Meeting

No matters to report out.

IX. Adjournment

The Board will meet again on May 6, 2021.