

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

DRAFT MINUTES OF MEETING

November 7, 2019

The District of Columbia Board of Ethics and Government Accountability held a meeting on November 7, 2019 at 10:00 a.m., in Room 540 South of the One Judiciary Square Building, 441 4th Street, N.W., Washington, D.C. The Board’s Chairperson Norma Hutcheson was present as well as Board Members Darrin Sobin, Charles Nottingham, and Felice Smith. Senior Attorney Advisor Rochelle Ford was also present.

Members of the public are welcome to attend. Questions about the meeting may be directed to bega@dc.gov.

AGENDA

I. Call to Order

Chairperson Hutcheson called the meeting to order at 10:01 a.m.

II. Ascertainment of Quorum

Chairperson Hutcheson established that a quorum was present.

III. Adoption of the Agenda/Approval of Minutes

The Board voted unanimously to adopt the agenda.

The Board voted unanimously to approve the October 3, 2019 meeting minutes.

IV. Report by the Director of Open Government

Good morning Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, Director of the Office of Open Government (the “OOG”). I am pleased to present this report on the activities of the 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

1. Advisory Opinions:

- a. On November 5, 2019, I issued #OOG-2019-0007-M regarding the DC Public Schools Maury Local School Advisory Team. I found that the public body: (1) failed to provide public notice of its September 10, 2019 meeting; (2) failed to record the meetings by electronic means; and (3) failed to make meeting records publicly available as required. The public body recently became subject to the OMA and admitted it violated the statute. Therefore, per the OOG's regulations I requested the complaint be withdrawn and suggested conciliation, prior to issuing the opinion. However, the complainant declined to withdraw the complaint or participate in conciliation.

2. Informal OMA/FOIA Advice:

Since the last Board meeting, the OOG's responses for informal and technical FOIA and OMA advice and assistance are as follows:

- 5 provisions of FOIA substantive advice;
- 10 OMA substantive responses; and
- 44 responses to OMA requests for technical assistance.

B. OMA/FOIA Audits:

The Office of Open Government has decided to forgo conducting a follow up OMA/FOIA Audit in FY20. We will instead focus on the public bodies and agencies that were found to be out of compliance and bring them into full compliance.

C. Training/ Outreach:

1. On October 17, 2019, the OOG conducted a combined Open Meetings Act and ethics training with the OGE for the D.C. Retirement Board.
2. On October 21, 2019, the OOG conducted Open Meetings Act training for the Maury Elementary School Local Advisory Team.

D. Legislative Update:

On October 21, 2019, the OOG presented testimony at a public hearing before the Council of the District of Columbia's Committee on Judiciary and Public Safety, Chaired by Councilmember Charles Allen. The subject of the public hearing was "Five Years of the Metropolitan Police Department's Body-Worn Camera Program: Reflections and Next Steps". OOG Attorney read my testimony and

participated in the hearing on behalf of OOG. Several public interest groups and government agencies provided testimony. The issue that OOG focused on was the usefulness of the BWC program if the public is not able to receive the footage in a timely manner and that footage is redacted beyond usefulness. We also suggested that the Council provide the executive with financial resources to perform video redaction in-house to reduce the amount of time it takes to turn the video over to FOIA requesters. We also suggested that they utilize the editing services of OCTFME, as opposed to an outside contract. Several panelists suggested that the Council convene an advisory group to suggest policies for MPD to implement concerning BWC use. We concur that would be a valuable exercise, as MPD needs to articulate clear policies respecting the release and use of BWC footage.

E. Administrative Matters

1. FY2021 Budget: The Office of Open Government has submitted several budget enhancement requests geared to staffing the Office of Open Government in a manner that will enable it to fully exercise its statutory function.
 - a. In FY2020, OOG is adding a Supervisory Attorney Advisor position. This position will be funded in FY20 using surplus funds resulting from the agency's position vacancies. We have requested a budget enhancement request in FY21 to cover the difference in salary. I am looking to shape the office from the perspective that the Director of Open Government position is not a legal position, nor is it a requirement to serve in the position. Many of the professionals in the Open Government space are not attorneys and given that my successor may not be, I am looking to shape the office from that perspective to ensure its future success.
 - b. The OOG has also sought to add two additional positions in FY2021 to enable the office to have the capability internally of bringing enforcement actions in Superior Court when necessary. The statute requires that OOG have the capabilities to do so and we currently do not without the assistance of outside counsel, which is generally not cost effective. Those positions are a trial attorney and a paralegal. The trial attorney will be responsible for handling any enforcement action and the paralegal may serve as a fact witness. Further, both of these positions will increase the OOG's capacity to advise on FOIA and OMA issues, issue advisory opinions, as well as facilitating training sessions and interacting with the public.
2. Suite 540 South Expansion and Reconfiguration: I am pleased to report that this suite has been expanded to include new workspaces for employees. The current break room in this suite will also be reconfigured to accommodate two additional employees. The room has been soundproofed and there will be two cubicles added in this location this month.

This concludes the Office of Open Government’s November 7, 2019 report. Thank you.

V. Report by the Director of Government Ethics

A. Update on Status of Office of Government Ethics (OGE) Operations: Recap of previous month’s activities (statistics). These reported statistics do not reflect status changes that we anticipate will occur as a result of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	46
Open - Negotiations	5
Open – Show Cause Hearing	7
Grand Total	58

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	17
Closed – Pending DC Superior Court Case	1
Closed - Pending External Action	2
Stayed - Pending DC Superior Court Case	1
Stayed - OAG False Claims Act Case	3
Stayed - OIG Investigation	6
Stayed - US District Court Case	2
Grand Total	32

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	24
Open	1
Grand Total	25

	Current	Last month	September 2019
Investigations Currently Open:	58	53	27
Investigations Stayed:	12	14	15

Our number of open investigations went up slightly this month despite the fact that we closed a significant number of cases during the same time due to three factors: First, we received a higher-than-usual number of new referrals from the Office of the Inspector during the past month. Second, we received a higher-than-usual number of new complaints from other sources. And third, we completed the process of converting cases that previously had been classified as undocketed matters into preliminary investigations to properly reflect the amount of investigative activity we have conducted to date. We expect that many of those formerly undocketed cases will eventually end up being dismissed, but additional

investigative activity is required to properly evaluate the sufficiency of the evidence related to those allegations.

B. Publication and Reporting Obligations:

We are wrapping up the Quarterly Complaint Report (QCR) for the fourth quarter of FY19 and will published it to our website next week. I had hoped to have that done by the end of October, but was unable to do so due to a conflicting priority which was our October 31 deadline to submit our proposed FY2021 budget to the City Administrator's Office.

C. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

On October 30, Program Support Assistant Dow completed a training webinar on Telephone Skills for Administrative and Front Desk Professionals offered by SkillPath.

2. Conducted by staff:

Since the date of the last meeting, we conducted 5 trainings, excluding our Ethics Day event which was held on October 3 and included virtually all the training programs we offer as well as some additional ones. The 5 trainings included 2 new employee orientations, 1 monthly ethics training, 1 Boards and Commissions training at the D.C. Retirement Board, and 1 ethics training in partnership with the Office of Partnerships and Grants.

In addition, 55 employees completed the online ethics training through PeopleSoft during the month of October.

3. Ethics Day 2019:

Ethics Day was held on October 3, 2019 and I believe it was a successful event as many attendees complimented us on the training programs we provided.

D. Advisory Opinions/Advice:

Informal Advice: approximately 60, which is 1 less than the 60 reported at the last meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

E. Ethics Legislation/Comprehensive Code of Conduct:

Chairman Allen has introduced this year's version of the CCC for the Council's consideration, and CM Brienne Nadeau introduced another bill on March 19, 2019 entitled the "Ethics Reform Amendment Act of 2019." We met with Chairman Mendelson on October 9 at 10:00 am to discuss both bills and we will incorporate his feedback in evaluating the current contents of the CCC with an eye toward potentially recommending some modifications that might improve the legislation's chances of enactment.

F. Rulemaking:

We are considering amending our Rules to allow the parties to submit dispositive motions in connection with our adversarial hearings, and to allow the Board to issue rulings on such motions. However, we do not anticipate submitting a draft version of such changes for the Board's review until sometime next year.

G. Budget:

As of October 31, the Office of Finance and Resource Management (OFRM) estimated that BEGA would end FY19 with a surplus of Local funds in the amount of \$52,511.28.

Regarding our FY2020 budget, we are currently in good shape but after receiving an updated estimate from the private sector IT vendor regarding the total cost to analyze and improve the architecture of our current OCTO-designed FDS and LRR e-filing systems as well as develop and implement needed enhancements for those systems, we have taken a step back from that initiative to re-evaluate our options.

On October 31, 2019, Director Allen and I jointly submitted the agency's draft FY2021 budget to the City Administrator's Office. Copies of those documents were uploaded to the DropBox and I am ready to answer any questions you may have on that subject.

H. Staffing:

Attorney Ford and I are still working with the Board to schedule interviews with top candidates for our vacant General Counsel position. We hope to complete that process over the next two weeks to ensure that crucial position is filled by the end of the year. Resumes and other application materials from those top candidates who may warrant an interview during this final phase of the process have been uploaded to the DropBox for your review.

I. Litigation:

Status of pending cases.

- Gerren Price –2019 CA 005346 P(MPA). Mr. Price’s appeal was required to be filed by August 13, 2019, but the Superior Court’s online docket search indicates he did not file it until August 15, 2019. This matter is set for a scheduling hearing on November 15 and Brad Seamons from the OAG will be representing us at that hearing.
- A. Blaine vs. BEGA, OEA Matter No. J-0030-19. This is an employment matter involving a separated employee. We are still waiting for a decision from the Administrative Judge on our motion to dismiss.

J. Lobbyist/Financial Disclosure Matters:

We sent out the semi-annual FDS filing notification to all Councilmembers on October 15, 2019 via email and hard copy. So far, we have received three semi-annual filings. We plan to send out a one-week reminder tomorrow (Friday November 8) to all Councilmembers who still need to file, and we will also send out a one-day reminder on Thursday, November 14th, 2019.

Regarding our enforcement efforts, Stan Kosick is currently reviewing emails to/from all OGE staff who worked on FDS matters the past two years and comparing them with our non-filer lists so that we will not send fine notifications to anyone who reached out to us for help with technical problems related to the new e-filing system. We expect that project to be completed in time for us complete the triaging process before the Board’s meeting in December, which will allow us to continue helping those who experienced technical problems with the system, while sending fine notifications to the remaining non-filers from both 2018 and 2019.

K. Non-Confidential Investigations:

1. 18-0006-P, *In re*: Jack Evans – This formal investigation involves allegations that Councilmember Evans violated the Council Code of Conduct. We are working with our partner agencies to ensure that any investigative actions we undertake will not interfere with the related law enforcement investigation.
2. 19-0008-F, *In re*: Dr. Marla Wyche-Hall. We have received responses to two requests for information related to the allegations in this case, but the process server was unable to serve two other entities with subpoenas for documents that are relevant to the case.

VI. Opportunity for Public Comment

Alan Roth provided public comments. Mr. Roth explained that he had recently filed a complaint alleging that Councilmember Evans violated the District's statutory code of conduct when he participated in D.C. Council votes earlier this year related to his own alleged misconduct investigation, discipline, or procedures. Mr. Roth stated that he did not believe that his complaint involved the same common nucleus of operative facts as the matter that BEGA has stayed regarding Councilmember Evans. Finally, Mr. Roth also stated that he had contacted OGE Director Wolfingbarger but did not receive a return telephone call. Mr. Roth also expressed concerns over BEGA's complaint intake process in light of recent reports.

Director Wolfingbarger requested that the Board authorize him to discuss Mr. Roth's complaint pursuant to 3 DCMR §5302.8, which request the Board approved. Director Wolfingbarger acknowledged that the OGE received Mr. Roth's complaint on October 31, 2019, created a new matter in its CMTS case management system related to that complaint, and converted the matter into a Formal Investigation following discussion at the OGE staff meeting on November 4, 2019, in accordance with OGE's updated intake process. Director Wolfingbarger apologized for not responding to Mr. Roth's voice mail message – which arrived when his attention was focused on complying with an October 31, 2019 deadline to submit BEGA's draft FY 2021 budget paperwork to the Office of the City Administrator – and Mr. Roth accepted Director Wolfingbarger's apology.

VII. Executive Session (nonpublic)

The Board voted unanimously to deliberate in Executive Session (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b), to consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body pursuant to D.C. Official Code § 2-575(b)(4)(A), to discuss personnel matters including the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials pursuant to D.C. Official Code § 2-575(b)(10), to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13), and to discuss contract negotiation strategies pursuant to D.C. Official Code § 2-575(b)(2).

VIII. Resumption of Public Meeting

The Board approved a negotiated disposition in the following matter:

1.18-0018-P, *In re*: T. Wube

IX. Adjournment

BEGA's next meeting is December 5, 2019 at 10:00 a.m.