

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

DRAFT MEETING MINUTES – DECEMBER 3, 2020

The District of Columbia Board of Ethics and Government Accountability held a meeting on December 3, 2020 at 12:00 a.m. The meeting was held remotely via WebEx. The Board’s Chairperson Norma Hutcheson participated as well as Board Members Charles Nottingham, Felice Smith, Melissa Tucker, and Darrin Sobin. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting.

Members of the public were welcome to attend, and a recording of the meeting is available at: <https://www.youtube.com/watch?v=MfMaLIZGuzk>

Questions about the meeting may be directed to bega@dc.gov.

I. Call to Order

II. Ascertainment of Quorum

Quorum established.

III. Adoption of the Agenda/Approval of Minutes

Board Member Nottingham joined the meeting as the Board discussed the approval of the minutes. The Board unanimously approved the agenda and the November 5, 2020 Meeting Minutes with no changes.

The Board unanimously approved the proposed 2021 meeting schedule for the first Thursday of each month. At the end of this meeting, the Board unanimously approved changing the meeting start time to 12:00 pm instead of 10:00 am.

IV. Report by the Director of Open Government

Good afternoon Chairperson Hutcheson and Members of the Board. I am Niquelle Allen, the 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 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. Advisory Opinions: OOG has not issued any advisory opinions since the Board's last meeting.
2. Formal FOIA Advice: OOG's Chief Counsel and FOIA Officer, Johnnie Barton, and OGE's General Counsel, Rashee Raj, continue to provide BEGA's pending FOIA requesters with a letter detailing the changes to FOIA requirements and the impact of those changes on FOIA requirements.
3. Informal OMA/FOIA Advice:
OOG continues to experience a high volume of requests for advice and assistance on open government matters since the commencement of the public health emergency on March 16, 2020. The Office has responded to the following number of requests for assistance since the last Board meeting:
 - The Office responded to 25 requests for OMA advice; and
 - The Office responded to 19 requests for FOIA advice; and
 - The Office responded to 6 requests for technical assistance with open-dc.gov.
4. OMA Complaint and Resolution: On November 12, 2020, I along with Attorney Barton held a conference with a complainant concerning a violation of the OMA by a Local School Advisory Team (LSAT). I addressed the matter with the District of Columbia Public Schools' (DCPS) general counsel and recommended the matter for conciliation. However, the complaint was subsequently withdrawn. I will be meeting with DCPS to provide guidance to ensure that all LSATs fully comply with the OMA. We are working with DCPS to schedule additional training sessions to lessen future OMA complaints about LSATs.

B. Training/ Outreach:

1. FOIA and FOIA Appeals Training: On November 17, 2020, I co-facilitated the FOIA & FOIA Appeals Training with the Mayor's Office of Legal Counsel for District of Columbia government FOIA officers. Attorneys Barton and DeBerry attended the remote training as panelists. The trainings provided framework on how to effectively manage the FOIA process and the FOIA Appeals process. I stressed the need for FOIA Officers to continue to fulfill FOIA requests, despite the tolling of FOIA due to the pandemic. The event was well attended by approximately 85 D.C. FOIA officers.
2. Mandatory Cybersecurity Training: On November 16, 2020, Attorney DeBerry completed Cybersecurity training for employees of the District

of Columbia Government. The course is mandatory for all DC Government employees and contractors and includes information about identifying common cyberattacks; cyber-safety best practices; and a “Working Remotely” Training Module.

3. 3. OMA Basics Training #1: On November 18, 2020, Attorney DeBerry facilitated a webinar for D.C. Public Charter School Boards of Trustees and Staff (“Trustees”). The training covered the Open Meetings Act and emphasized the provisions specifically applicable to these entities. This training session is part of a training series the Office of Open Government is providing for Trustees to get them up to speed with the OMA. They are required to comply with the OMA as of October 1, 2020. We are offering a series of three webinars to facilitate their compliance with the OMA.
4. Open Government Coalition Meeting: On November 18, 2020, I attended the Open Government Coalition’s Board meeting. At the meeting I provided the Board with updates on the activities of the Office of Open Government and we discussed opportunities to partner with the organization on issues of importance to District government transparency. I spent considerable time discussing FOIA issues, including the production of body worn camera footage and FOIA tolling due to the pandemic.
5. DC Public Charter School Board Teleconference: On November 23, 2020, I along with Attorney Barton held a conference with the DCPCSB General Counsel to discuss whether entities seeking charters as public charter schools are subject to the OMA. Since these applicants are not deemed public charter schools nor have governing boards it was determined that they are not subject to the OMA.
6. FOIA Training: On November 25, 2020, Attorney Barton conducted a FOIA training for a new member of the Office of Unified Communications FOIA staff.
7. OMA Basics Training #2: On December 2, 2020, Attorney Barton facilitated an Open Meetings Act webinar for the D.C. Public Charter School Boards of Trustees and their points of contacts. The training covered the Open Meetings Act and emphasized the provisions specifically applicable to D.C. Public Charter School Boards of Trustees. This training session is also part of the training series the Office of Open Government is providing to get the Trustees up to speed with the OMA. The last training session in the series will occur next week and will be an interactive Q&A session.

8. Monitoring Public body meetings: OOG continues to play an important role in ensuring that Boards, Commissions, and other public bodies successfully conduct government business remotely. OOG is currently responsible for remotely overseeing that approximately 292 public bodies comply with the OMA. This figure includes approximately 105 Local School Advisory Teams. OOG continues to ensure the public's right of access to public meetings by monitoring public body compliance with the OMA as amended by the "Coronavirus Support Congressional Review Emergency Amendment of 2020." We are monitoring public meeting notices to ensure they provide remote meeting access information for the public to observe these meetings. We are also attending meetings remotely to observe meetings as participants.

C. Litigation and Legislative Update:

1. D.C. FOIA Tolling Legislation: During the Legislative Session held on December 1, 2020, the Council of the District of Columbia unanimously enacted emergency legislation to adjust the time period that agencies have to respond to FOIA requests during the public health emergency. The FOIA Tolling Emergency Amendment Act of 2020 (Bill 23-1017) passed on first reading. The temporary legislation, the FOIA Temporary Amendment Act of 2020 (Bill 21-1108), to end the blanket tolling of FOIA requests, also passed. These measures restart the FOIA response clock as of January 15, 2021 but allow for an extension of FOIA deadlines when the need to conduct an on-site review of records could present a significant risk to health or safety during the COVID-19 pandemic. The January 15, 2020 start date will also ensure that any requests received since March 11, 2020 (the first day of the declared Public Health Emergency) do not immediately come due. OOG will make sure D.C. FOIA Officers are informed of these new deadlines by sending out a notice.
2. Terris, Plavlik, & Millian, LLP v. DC (2020 CA 003087B): The Office continues to follow this FOIA case in DC Superior Court. At issue in this case are budget requests from the Office of the State Superintendent (OSSE) and District of Columbia Public Schools (DCPS) that were delivered to the Executive Office of the Mayor (EOM). The FOIA request for the records was denied under the deliberative process exception to FOIA. On October 30, 2020, the D.C. Council filed an amicus curiae brief in support of the Plaintiff. The Council took issue with the Defendant's argument that under the separation of powers doctrine, the D.C. Council cannot legislatively require the production of documents related to the formulation of the budget, prepared by OSSE and DCPS. The Council contends that it does have such authority and "there is no support for the notion that the Mayor enjoys exclusive authority over the District's finances." They further argue that the allocation of the District's resources is a legislative function. Defendant filed a reply to the Council's brief on November 13, 2020. In the reply, the Defendant asserts that separation of powers dictates that these records that are subject deliberative process privilege

are also subject to executive privilege because the documents concern the Mayor's process concerning formulation of the budget submission. Judge Pasichow has not issued her ruling on the motion.

D. Administrative Matters:

1. Attorney-Advisor and Trial Attorney Vacancies: During the week of December 9, 2020, the OOG will conduct interviews of candidates to fill the Attorney-Advisor vacancy. The position vacancy closed on November 16, 2020. The Trial Attorney position is still in the classification process with the D.C. Department of Human Resources (DCHR). Once the position is classified, DCHR will list the position vacancy. We anticipate commencing the process of hiring the OMA Trial Attorney in January.
2. Budget Formulation Process: As Director Ford will discuss in her report, BEGA has engaged with the Executive Office of the Mayor to formulate its FY22 Budget. The Office of Open Government requested a budget enhancement to fund a paralegal specialist position. The enhancement request is identical to the request BEGA sought in FY21.

This concludes the Office of Open Government's December 3, 2020 report.

V. **Report by the Director of Government Ethics**

Good afternoon Chairperson Hutcheson and Members of the Board. My name is Rochelle Ford and 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 Office of Government Ethics (OGE) Operations: First I will provide a recap of the previous month's activities. Given the COVID-19 emergency, OGE's staff has continued to investigate pending matters as is feasible given the stay at home orders. 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	56
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	56

OPEN "UNDOCKETED MATTERS"	
Grand Total	1

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	30
Closed - Pending DC Superior Court Case	0
Stayed - OAG False Claims Act Case	4
Stayed - OIG Investigation	9
Stayed - US District Court Case	0
Grand Total	43

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

	Current	Last month	August
Investigations Currently Open:	56	50	48
Investigations Stayed:	12	13	13

Investigations initiated and closed: The numbers of open investigations reflect 11 investigations opened since the Board last met. OGE's investigative teams resolved 5 matters since the Board last met.

B. Trainings/Outreach:

1. Professional Development Trainings Attended by staff:

During the month of November, several OGE employees completed mandatory training from the D.C. Office of the Chief Technology Officer on Cybersecurity and Working Remotely. All OGE employees will complete the training by the end of the year.

Auditor Tujuba completed the following trainings offered by DCHR:

- Administrative Support Projecting a Positive Professional Image
- Choosing the Right Interpersonal Communication Method to Make Your Point
- Conquering the Challenges of Public Speaking
- Making an Impact with Non-verbal Communication
- The Art and Science of Communication

General Counsel Raj attended the second half of a virtual conference titled “Women Lawyers in Leadership.”

On December 1, 2020, the Council of Government Ethics Lawyers (COGEL) kicked off its annual conference remotely. Attorney Cooks and Director Ford attended the virtual plenary session. The conference features virtual on demand session and 2 additional plenary session throughout the month.

2. Conducted by staff:

Since the last Board meeting, OGE conducted online Ethics Training in November attended by 130 employees. OGE attorneys gave 5 ethics trainings on the following topics: Social media and Ethics Training for DOES on November 9; Monthly Ethics Training on November 12; two New Employee Orientations; and an Ethics Counselor Brown Bag Discussion on December 1. The December Brown Bag was on the timely seasonal topic of Gifts and Donations. OGE plans to continue these informal sessions in 2021, as they have been met with great enthusiasm from ethics counselors & GCs.

Investigators Ron Cook and Ralph Bradley participated as panelists for DCHRs Sexual Harassment Officer (SHO) Brown Bag on Conducting Investigation in a Remote Setting on November 5, 2020. The training was provided to SHOs because some employees expressed concerns around not having much experience conducting investigations in a remote setting. OGE Investigators shared knowledge and insight to successfully conducting remote investigations.

3. Training Planning

OGE staff met virtually with Gottlieb Simon to discuss plans to provide ethics training to ANC Commissioners. These will be provided virtually.

OGE staff also met with Office of the Attorney General attorneys to discuss creating a series of ongoing specialized trainings for ANC Commissioners that would function as a “virtual academy” throughout the year.

C. Advisory Opinions/Advice:

Informal Advice: approximately 39 which is 33 less than the 72 reported at the November 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. Budget

On November 18, Director Allen, GC Raj and I met with Chris Murray from the City Administrator's Office to discuss our FY22 proposed Budget and enhancement requests. OGE and OOG again requested funds to relocate to new space given that our current space is inadequate for the office's needed.

E. OGE Administrative Matters

Office Status: OGE's staff continues to work remotely, although some staff members go into the office on an ad hoc basis to handle mail and other matters onsite as needed.

Meetings with Public Ethics-related nonprofits: This year the District was ranked 3rd for Ethics Enforcement in the Coalition for Integrity's SWAMP index. GC Raj and I met with the authors of the Report to discuss their methodology and findings.

Attorney King and I met with Kedric Payne of the Campaign Legal Center to discuss their work for ethics commissions and agencies across the country. They advise on and advocate for strengthening ethics laws at the local, state, and national level.

F. Financial Disclosure and Lobbyist Registration Programs:

Lobbying Registration and Reporting (LRR) System – Although September 30, 2020 marked the end of the 3rd Quarter for Lobbyist Reporting and reports were due October 15, OGE received 8 activity reports in November. Auditor Tujuba completed Lobbyist Activity Report for third quarter of CY2020, findings pending discussion with the Lobbyist team.

Financial Disclosure – 12 DC Council members completed their Fall 2020 Financial Disclosures and two Councilmembers were a day late with their filing. Councilmember Pinto was exempted from filing as she did not join DC Council until July 2020. Although OCTO was not able to complete the upgrade to the E-file system to allow Councilmembers to file their Fall FDS electronically this November, OCTO is currently completing its security scan and expects to have the upgrade in production by the end of December 2020. (email in DropBox)

OGE prepared a Lists of Filers and Non-Filers for 2020 and has submitted it to the DC Register for publication.

The FDS team also sent fine notices to the 151 non-filers on October 27. The notice resulted in 10 additional FDS filings with this office. One of the 10 filers also complied by filing the 2018 Financial Disclosure. Auditor Tujuba had a productive virtual meeting with the OCFO-OPRS to initiate collection of these fines from current District employees.

Four FDS filers have requested that the Board waive

Pursuant to D.C. Official Code § 1-1162.32(c), the Ethics Board may waive the penalty imposed for untimely filing of a Lobbyist Activity Report for “good cause shown.”

- In re M. Stinson 21-00001
- In re R. Woodland 21-00002
- In re A. Landre 21-00003
- In re D. Gaston 21-00004

With some discussion, the Board unanimously approved the requests above.

Thank you. This concludes the Office of Government Ethics’ December 3, 2020 report.

VI. Acknowledgement of Public Comments

1. Written Comments: The Board did not receive any written comments prior to the commencement of the meeting.

2. Public Comments from Dorothy Brizill: Ms. Brizill filed an OMA complaint with the Office of Open Government regarding the D.C. Board of Elections’ (BOE) pending audit on November 20, 2020 alleging that BOE failed to provide adequate access to its audit of the November 3, 2020 election results. OOG investigated the matter and provided a final response to Ms. Brizill’s OMA complaint via e-mail on December 2, 2020. Those responses and the original complaint are in DropBox (e-mails). OOG opined that the audit complained of is not subject to the OMA, so the OOG does not have any authority over BOE’s audit of the November 3, 2020 election results and dismissed Ms. Brizill’s OMA complaint. In response, Ms. Brizill made it known to OOG that she intended to file a similar complaint with the Board and requested through OOG that she be permitted to provide oral testimony to the Board. Chairperson Hutcheson granted her request. Ms. Brizill recited the details of her complaint to the Board and asserted to the Board that it has authority over the BOE matter due to the Board’s general authority over government transparency issues. Director Allen advised the Board that their authority is limited to what is provided in its enabling legislation. Board members requested that OOG assist Ms. Brizill with resolving her issues with BOE under the Board’s general authority over government transparency matters and report back to the Board on the status of the matter. Director Allen agreed to do so.

Board Member Darrin Sobin left the meeting at 1:03 pm during the discussion of this comment and rejoined during the Executive Session at 1:25 pm.

VII. Executive Session (non public)

VIII. Resumption of Public Meeting

Board Member Melissa Tucker left the meeting during the executive session and rejoined when the Board resumed the public meeting.

IX. Adjournment

The Board will meet again on January 7, 2021. The Board unanimously approved the proposed 2021 meeting schedule for the first Thursday of each month but to change the meeting start times to 12:00 pm instead of 10:00 am.

UNAPPROVED