

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

DRAFT MEETING MINUTES – AUGUST 4, 2022

The District of Columbia Board of Ethics and Government Accountability held a meeting on August 4, 2022, 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, Felice Smith, Darren Sobin and Melissa Tucker. These draft minutes must be approved by the Board. Full meeting minutes will be posted after the next Board meeting. Questions about the meeting may be directed to beqa@dc.gov.

Members of the public were welcome to attend, and a recording of the meeting will be made available on open-dc.gov and BEGA’s YouTube channel.

I. Call to Order

The meeting was called to order at 12:01 pm.

II. Ascertainment of Quorum

Chairperson Hutcheson and Board Members Felice Smith and Melissa Tucker were present at the start of the meeting. Together the three Members constitute a quorum for the meeting.

III. Adoption of the Agenda/Approval of Minutes

The Board unanimously approved a motion to adopt the agenda for the meeting subject to the removal of agenda items VII and VIII.

The Board unanimously approved the draft minutes of the July 14, 2022, meeting. Chairperson Hutcheson noted that Board Member Charles Nottingham joined the meeting.

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, 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

On August 1, 2022, I issued advisory opinion, #OOG-2022-003_AO. The advisory opinion made the following findings and conclusions regarding the Department of Consumer and Regulatory Affairs’ (“DCRA”) implementation of FOIA: (1) under

D.C. FOIA the Dupont East Civic Action Association (“DECAA”) is within the “other-use” category of requesters; (2) DCRA may only assess reasonable standard charges for document search and duplication for “other-use” requesters; (3) DCRA’s assessment of document review fees to DECAA violates D.C FOIA’s allowable cost provisions; and (4) DECAA qualifies for a fee waiver under the public interest exception because disclosure of the information is likely to contribute significantly to public understanding of operations or activities of DCRA and is not primarily in the commercial interest of DECAA.

2. Informal OMA/FOIA Advice

Since the last Board meeting, OOG responded informally, via e-mail or telephone, to requests for assistance as follows:

OOG responded to twelve (12) requests for OMA advice;
OOG responded to four (4) requests for FOIA advice; and
OOG responded to twenty-nine (29) requests for technical assistance with open-dc.gov.

B. Remote Meeting Monitoring

To ensure compliance with the OMA OOG attorneys: attend remote public meetings; and inspect public body websites and the OOG’s central meeting calendar for public meeting notices and public meeting records. We provide legal advice on OMA compliance and take corrective action, if necessary.

During July 2022, OOG attended nineteen (19) remote public body meetings. As a result of the monitoring, 15 instances of written corrective measures were taken, including notification:

1. That the end of public meeting agendas must state, “This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.” 3 DCMR § 10409.2.
2. That the OMA requires public bodies to provide the reason and D.C. Code citation for entering closed sessions. D.C. Official Code § 2-576(5).
3. That public meetings notices and meeting records are missing from the public body’s website or the central meeting calendar. The OMA also requires timely posting of these items. D.C. Official Code §§ 2-576; 2-578.

C. Training/ Outreach

1. American Society of Access Professionals (“ASAP”), 15th Annual Training Conference

On July 19-21, 2022, ASAP held its 15th Annual National Training Conference in Arlington, Virginia. Attorney DeBerry, Attorney Orji and Attorney Weil attended the training. The OOG staff participated in the following sessions/panel discussions:

Update on ASAP Certification **Session 1.02** – A panel of FOIA professionals who lead combined FOIA/Privacy/Records Management/Information Governance programs; **Session 1.04** – Basic/Refresher Track – The Privacy Act of 1974: Scope, Disclosure and Requirements; **Session 1.05** – What to Expect in FOIA Litigation; **Session 1.07** – Basic/Refresher Track – Privacy Act: Individual Access to Records; **Session 1.08** – What’s New in FOIA Case Law?; **Session 1.10** – Advanced Track – Skills for Success; **Session 1.11** – Defining a Federal Record; **Session 2.01** – Innovations in State Laws; **Session 2.02** – The Role of the Office of Information Policy; **Session 2.03** – The Requesters; **Session 2.04** – Intermediate/Advanced Track – FOIA Exemptions 6 and 7(C): The Privacy Interest; **Session 2.07** – FOIA Exemption 4: It’s Proprietary; **Session 2.08** – Intermediate/Advanced Track– FOIA/Privacy Sister Statutes: FOIA and Privacy Act Interface; **Session 2.12** – Other/Specialty/Niche Track-Privacy Privacy Roots: SORNs and PIAs; **Session 3.01** – Presidential Records Act of 1978; **Session 3.06** – Exemption 5: It’s a Privilege; **Session 3.08** – Federal Agency Breakout sessions

2. Civil Justice Review of Supreme Court’s 2020-2021 Term

On July 23, 2022, Chief Counsel Barton attended a seminar with the Law and Economics Center, Antonin Scalia School of Law. The "focus of the review was on the most important civil justice-related developments that occurred this past term that are so critical to the everyday operation of the courts, to our understanding of the jurisdictional reach of the courts, and to the health of the economy overall."

3. Office of Attorney General (“OAG”) Ethics Training

On July 27, 2022, Chief Counsel Barton, and Attorney Orji attended the OAG’s Attorney Ethics training session. Hamilton Fox, III, Esq., Disciplinary Counsel for District of Columbia was the presenter.

4. Open Government Advisory Group (“OGAG”) Meeting

On July 27, 2022, Attorney DeBerry attended the OGAG meeting. The meeting was convened to discuss FOIA recommendations to improve the D.C. Freedom of Information Act.

5. Microsoft 365 Workshop Series

On July 28, 2022, I, along with Chief Counsel Barton and Attorney Weil, attended the first of a series of workshops on using MS Office 365 applications. The OCTO

trainings will focus on tips and best practices for collaboration and share helpful resources to enhance productivity.

6. OMA (Office of Administrative Hearing) Training

On August 2, 2022, I presented an OMA training to the Office of Administrative Hearings. Twelve staff members, including Chief Administrative Law Judge M. Colleen Currie, attended the training. The training covered the provisions of the OMA and practical advice for ensuring OMA compliance. Chief Counsel Barton and Attorney DeBerry attended the training.

7. OMA (Civilian Review Panel) Training

On August 2, 2022, Chief Counsel Barton presented an OMA training to the Civilian Review Panel, a public body within the Child and Family Services Agency. The training consisted of instruction on the OMA, examples of special circumstances to consider in meetings, and practical advice for OMA compliance.

8. Mandatory Online Harassment Prevention Course for Supervisors and Employees

On July 12, 2022, Attorney Orji completed the "Harassment Prevention for US Employees-Office" course. All D.C. government employees must complete this course by September 30, 2022.

D. Litigation and Legislative Update

1. Litigation

a. Terris, Pravlik & Millian, LLP lawsuit re: preliminary budget documents (Case No. 21-CV-0543).

As I have reported previously, the Terris, Pravlik & Millian, LLP lawsuit alleges that the District's failure to produce and post online various budget-related documents, violates D.C. FOIA's proactive disclosure provisions.

On July 28, 2022, the Court of Appeals set oral argument for September 28, 2022.

Also, as I report in the Legislation section, the Council of the District of Columbia I has recently enacted legislation to clarify that category (6A) of affirmative disclosures (certain "[b]udget requests, submissions, and reports") are not exempt *per se*.

b. Washington Post FOIA lawsuit re: records arising out of Capitol insurrection (Case No. 2021 CA 002114 B).

The Washington Post's legal entity WP Company, LLC is seeking certain records from the District relating to the Capitol insurrection. The Superior

Court has continued the parties' mediation session to September 21, 2022. The amended scheduling order is in the Dropbox. OOG legal staff will continue to monitor these cases.

2. Legislation

a. Agency Budget Request Freedom of Information Clarification (Emergency) Amendment Act of 2022

On July 13, 2022, the Mayor signed the Fiscal Year 2023 Budget Support Emergency Act of 2022, D.C. Act 24-470. This measure includes a subtitle that amends D.C. FOIA to clarify that Exemption (4) ("Inter-agency or intra-agency memorandums or letters") does not cover certain budget records created on or after December 7, 2004.

The corresponding permanent measure, D.C. Act 24-492, was signed by the Mayor on July 25, 2022, but awaits congressional layover.

The signed version of the emergency act and the enrolled version of the permanent act are in the Dropbox. The FOIA provisions appear on page 7 (subtitle L ("Agency Budget Request Freedom of Information Clarification (Emergency) Amendment Act of 2022") of title I).

b. Structured Literacy Action Plan Act of 2022

The permanent budget support act will also include an Open Meetings Act implication. Section 4114 requires the Office of the State Superintendent of Education to create an Early Literacy Education Task Force no later than December 1, 2022. But the statute expressly provides that "[t]he task force shall not be considered a public body for purposes of the Open Meetings Act...." There is no express rationale for this in the legislative history.

The enrolled act (along with documentation of the legislative history—the underlying amendment-in-the-nature-of-a-substitute and its notice memo) is in the Dropbox. The OMA language appears on page 67 (subsection (d) of section 4114 of subtitle L ("Structured Literacy Action Plan Act of 2022") of title IV).

OOG staff will continue to monitor legislative activity.

c. Federal FOIA Update

OOG issued a FOIA Advisory Opinion in June 2022 that discussed the Mayor's large backlog of administrative appeals. We recommended a legislative enlargement of the processing deadline for the Mayor's Office of Legal Counsel ("MOLC"). On July 22, 2022, Federal News Network provided

a “Summary of Annual Freedom of Information Reports” released by the U.S. Department of Justice’s Office of Information Policy that revealed a federal backlog of administrative FOIA appeals.

While the total number of requests to federal agencies increased by 6% in Fiscal Year 2021, and the backlog grew by 8%, the backlog of administrative appeals dropped by almost 7%. Federal agencies had a backlog of 4734 cases at the end of the fiscal year.

Even though federal agencies have more time to process administrative appeals than the MOLC, there is also a backlog on the federal level. Federal administrative appeals are allotted 20 working days (subject to tolling for clarification), or 30 working days in “unusual circumstances.” (5 U.S.C. § 552(a)(6)(A), (B)(i), (iii)). However, the MOLC has a firm statutory deadline of only 10 working days. (D.C. Official Code § 2-537(a)).

OOG will also monitor the federal appeals backlog as we continue to monitor the progress of the MOLC in addressing its backlog.

E. Administrative Matters

1. Paralegal Specialist Position:

The OOG’s employment offer for the Paralegal Specialist position was accepted. We look forward to welcoming the new paralegal to BEGA by the end of the month.

2. BEGA Website Redesign Meeting

On August 2, 2022, BEGA met with representatives from the Office of the Chief Technology Officer about redesigning bega.dc.gov. Present at the meeting were Director Allen, Director Cooks, Senior Attorney Tran, and IT Specialist Bridges. The discussion focused on the proposed redesign of the current website. OOG is primarily looking to migrate its Advisory Opinions, Memoranda, and other documents to bega.dc.gov using FileNet or a similar solution, to make its files searchable and more user-friendly. The aim is to make more room on open-dc.gov for the Central Meeting Calendar and related documents.

This concludes the Office of Open Government’s August 4, 2022, report.

Chairperson Hutcheson noted that Board Member Darrin Sobin had joined the meeting and that all Board Members were present for the meeting.

V. Report by the Director of Government Ethics

Good afternoon, Chairperson Hutcheson and Members of the Board. I am Ashley Cooks, 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 occur as a result of actions taken by the Board during today’s meeting.

OPEN INVESTIGATIONS BY STATUS	
Open	49
Open - Negotiations	0
Open - Show Cause Hearing	0
Grand Total	49

OPEN "UNDOCKETED MATTERS"	
Grand Total	6

PENDING/STAYED INVESTIGATIONS BY STATUS	
Closed - Pending Collection	27
Stayed - Pending DC Superior Court Case	4
Stayed - OAG False Claims Act Case	6
Stayed - OIG Investigation	5
Stayed - US District Court Case	1
Grand Total	43

REGULATORY MATTERS BY STATUS	
Closed - Pending Collection	22
Open	10
Grand Total	32

	Current	Last month	May
Investigations Currently	49	46	51
Investigations Stayed	16	16	15

The number of open preliminary and formal investigations includes 12 new matters. The investigative team resolved 9 investigations since the Board last met. OGE is working on the Quarterly Complaint Report for the third quarter of Fiscal Year 2022. It is expected to be posted to the website on next week.

B. Trainings/Outreach

1. Professional Development Trainings Attended by staff

Auditor Amanueil Tujuba completed the Certified Fraud Examiner Course and is now a Certified Fraud Examiner (CFE). CFEs are trained professionals who possess a unique set of diverse skills in preventing, detecting, and investigating fraud. As a CFE, he will have access to world-class anti-fraud training and resources through the Association of Certified Fraud Examiners. This certification enables him to build and maintain expertise and stay informed about the latest trends and best practices. Auditor Tujuba also attended four trainings: (1) Expert Insights on Ethics, (2) Positive Atmosphere: Establishing a Positive Work Environment, (3) Running Meetings in Better Directions, and (4) Taking Action to Empower Employees.

Investigator Ralph Bradley completed Harassment Prevention for US Employees-Office 1 Training and a Questions and Training Session present by our case management vendor, CMTS. General Counsel Rashee Raj attended Writing for Transactional Lawyers 2022.

Attorney Advisors Millicent Jones and Maurice Echols are currently attending the 39th Annual National Black Prosecutors Conference in Houston, Texas. This year's conference is entitled "Enduring Pillars of Justice: Policing, Penology, and Prosecutorial Discretion." The event includes courses such as How History Will Treat the Progressive Prosecutor: A View from the District + State's Attorneys; Chief Prosecutors Panel: United States Attorneys' Perspective; and Trial Skills & Techniques.

I attended the District Integrated Financial System Agency Point of Contact Kick-off event. The event covered information on the District's new financial system software. I also completed Embracing Microsoft 365 presented by the Office of the Chief Technology Officer.

2. Conducted by staff

Since the July 14th meeting, OGE conducted four trainings: including the July Quarterly ANC Training, the July Quarterly B&C Training, the Monthly Brown Bag session, and the August Hatch Act Training.

Last week, Supervisory Attorney Asia Stewart-Mitchell led our Monthly Ethics Counselor Brown Bag session on the Misuse of Government Resources. She gave the Ethics Counselors a deeper dive into what is government property and what constitutes misuse. Thirty-two Ethics Counselors participated in the session. Our next Brown Bag session will take place on Monday, August 29, during which we will present information on the Comprehensive Code of Conduct and the agency's plan to propose the legislation to the Council.

During July, 36 employees completed our online ethics training via PeopleSoft.

3. Outreach

OGE and OOG continue to meet with the Office of the Chief Technology Officer's website development staff to discuss the BEGA website refresh. The website refresh will improve organization, searchability, and user friendliness, as well as the overall appearance of the website. We are currently working on changing the website's design, so that information is readily available with minimal search efforts.

4. Ethics Week 2022

OGE is preparing for Ethics Week 2022. This year's theme is "Ethics in Practice", and it will take place October 11-14th as a virtual event. The event will feature courses presented by OGE and OOG staff, as well as guest presentations and panel discussions by Marcy Maslov, Chief Integrity Builder for e-Factor; Michael Bret Hood, Owner of 21st Century Learning and Consulting; Kedrick Payne, Vice President, General Counsel, and Senior Director of Ethics at the Campaign Legal Center; and Erika Stillabower of the D.C. Bar. A copy of the draft schedule was placed in the drop box for your review. The schedule will be posted by the end of next week.

C. Advisory Opinions/Advice

1. Informal Advice

OGE's legal staff provided advice for approximately 16 ethics inquiries, which is 38 less than the 52 reported at the July meeting. This number does not include responses we have provided to questions regarding the Lobbyist and FDS e-filing systems.

2. Formal Advice

OGE is in the final stages of editing an Advisory Opinion focusing on the fundraising prohibition of the Local Hatch Act. OGE is also drafting an Advisory Opinion that will focus on the prohibition on outside representation, specifically as it relates to Board and Commission members serving in a representative capacity before the board they serve on.

D. Legislation Updates

1. Pro Bono Legal Representation Expansion Amendment Act of 2021

On June 28, 2022, the Mayor signed the Pro Bono Legal Representation Expansion Amendment Act of 2021, Bill 24-0298. This Bill will allow employees to provide

pro bono legal representation before District and federal courts and agencies, subject to certain restrictions. The Act was submitted for Congressional Review. The Projected Law Date is September 14, 2022. A copy of the legislation was placed in the drop box for your review.

2. Delinquent Debt Recovery Amendment Act of 2022

On July 6, 2022, the Committee on Human Services held a meeting on the Board of Ethics and Government Accountability Delinquent Debt Recovery Amendment Act of 2022, Bill 24-706. The Act will allow BEGA, at its discretion, to transfer delinquent debts associated with settlements and judgements for ethics and Open Meeting Act violations to the CCU for collection, and for the funds collected on BEGA's behalf to be deposited into the Ethics Fund or OMA Fund instead of the General Fund. The Committee voted in favor of the Bill and recommended approval by the Council. The Bill will be presented before the Council at the next Committee of the Whole on September 20th. A copy of the committee report was placed in the drop box for your review.

3. Comprehensive Code of Conduct

OGE's legal team continues to review and update the Comprehensive Code of Conduct ("CCC") with the goal of submitting an updated version of the legislation to the Board and then the Council. As defined in the Ethics Act, the Code of Conduct consists of seven different statutes and regulations with varying applicability. The CCC is legislation that consolidates the District's ethics laws and standardizes the ethical practices between the legislative and executive branches. The goal is to have the CCC introduced before the Council in the Fall of this year.

E. OGE Administrative Matters

1. OGE Staffing

Director Allen, General Counsel Raj, and I interviewed 5 candidates for the open Chief of Staff position. An offer of employment will be made to the top candidate by next week. On this past Tuesday, the Attorney Advisor vacancy was posted on careers.dc and will remain open until September 30th.

2. Budget

I am pleased to announce that, in partnership with the Office of the Chief Technology Officer, BEGA has implemented an online fine payment portal which allows the use of credit cards to pay fines associated with ethics violations, and financial disclosure and lobbyists penalties. The payment link is located under the enforcement tab on the BEGA website and will streamline the fine payment process for Respondents and the agency. Since its activation two weeks ago, it has already been utilized by a few Respondents, proving its effectiveness.

F. Financial Disclosure Statement (FDS)

The review of Financial Disclosure Statements for the 2022 season has begun. Auditor Tujuba has requested to review forty-five (45) Confidential Financial Disclosure Statements. These statements were flagged by the agencies' ethics counselors for further review. Auditor Tujuba completed a CY2021 Public FDS Filers Conflict of Interest Audit, and these findings will be reviewed by the FDS team.

Attorney Advisor Jones and Program Specialist Kosick are currently reviewing the agency lists to identify non-filers and late filers. This process involves reviewing the Financial Disclosure Review Reports and reconciliation of the agencies' filer lists. On July 29th, Attorney Advisor Jones sent a reminder to the agencies that have not provided an FDRR.

The contractual requisition for the FDS E-Filing System upgrade has been published and closes on today. This upgrade consists of enhancing log-in privileges for Council members and adding certification language that is consistent with the member's bi-annual filing requirements.

G. Lobbying Registration and Reporting (LRR)

The 2022 second quarter Activity Reports were due July 15, 2022. On June 30, the LRR team sent a reminder notice of the deadline to 275 lobbyists. In response, 466 Activity Reports have been filed using the LRR E-File System. Lobbyists have also filed 48 New Registrations, 5 Renewals, and 26 Termination reports. Program Specialist Kosick has generated a CY 2022 Second Half list of Lobbyists and Clients for publication in the DC Register.

Thank you. This concludes the Office of Government Ethics' August 4, 2022 report.

Board Member Sobin asked who was paying the credit card fees associated with the new payment link on the BEGA website. Director Cooks advised that there was no fee associated with the system. Board Member Sobin suggested following up with the Office of the Chief Financial Officer to confirm whether BEGA or the payor would be required to pay any associated fees to avoid any anti-deficiency concerns with the agency incurring the fees. Auditor Tujuba advised that the transactions using the payment portal that he reviewed did not include any associated fees.

Board Member Tucker noted that OGE closed nine investigations in the two weeks since the last Board meeting. She indicated that this was an impressive number given the short timeframe and wanted to commend the team for their hard work.

VI. Public Comment – if received

The Board did not receive any public comments.

VII. Discussion of any remaining public items

The Board discussed whether to move the September Board meeting to a different date but decided against any changes to the approved schedule.

VIII. Adjournment

The Board will meet next on September 8, 2022, at 12:00 pm.

UNAPPROVED