

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**



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**COUNCIL OF THE DISTRICT OF COLUMBIA**

**PUBLIC HEARING**

**AGENCY PERFORMANCE OVERSIGHT HEARING  
FISCAL YEAR 2024-2025**

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**Testimony of Niquelle M. Allen, Esq.  
Director of Open Government  
Board of Ethics and Government Accountability**

**Wednesday, February 5, 2025  
10:00 a.m.  
Virtual Meeting Platform  
1350 Pennsylvania Avenue, N.W.  
Room 120  
Washington, D.C. 20004**

Good morning, Chairwoman Pinto and members of the Committee. I am Niquelle Allen, Director of Open Government. It is a pleasure to be here today to update the Committee and the public on the performance of the Office of Open Government (the “OOG”), an office within Board of Ethics and Government Accountability (“BEGA”) that is responsible for ensuring that the District of Columbia Government’s (the “District”) operations are open, transparent, and accessible to the public. OOG ensures this primarily through enforcement of the Open Meetings Act (“OMA”) and providing advice on compliance with the District of Columbia Freedom of Information Act of 1976 (“D.C. FOIA”). I refer to these statutes collectively as the District’s open government meeting and public records laws.

## I. Introduction

I will begin my testimony with an overview of OOG’s responsibilities. As Director of Open Government, BEGA’s enabling legislation requires that I issue advisory opinions regarding compliance with the Open Meetings Act; provide training for members of public bodies and their staff on the OMA; and issue rules to implement the OMA. I may also bring a lawsuit in D.C. Superior Court to enforce the OMA, if necessary. Our enabling legislation also permits OOG to issue advisory opinions and to render advice on the implementation of D.C. FOIA.

OOG is also responsible for training the District’s FOIA Officers on D.C. FOIA law and regulations in coordination with the Executive Office of the Mayor (EOM). We also train Advisory Neighborhood Commissioners (ANCs) on D.C. FOIA, twice a year, with the Office of ANCs. OOG assists the public with their submissions of records requests to ensure the process remains fair and available to all persons. In short, OOG advances government transparency by providing fair, objective, and clear guidance and training on the application of the OMA and FOIA laws and regulations.

## II. FY 2024 and FY 2025 to Date Performance Highlights

OOG oversees the OMA compliance of government boards, commissions, and public bodies; and advises the District of Columbia Government (the “District”) and the public regarding compliance with D.C. FOIA. Our overall goal in each fiscal year is to ensure that OOG provides fair and objective advice, and that the information we provide is accurate and current. OOG’s performance in FY2024 and FY2025, to date, was primarily focused on meeting monitoring and training. Both activities provided a means for greater understanding of the application of the OMA and FOIA laws and regulations.

### A. Advisory and Compliance Activity

#### 1. *Informal OMA and FOIA Advice*

OOG provides informal advice to public bodies and members of the public regarding the OMA and D.C. FOIA. OOG’s tracking and reporting cycles for this activity corresponds with BEGA’s monthly Board meeting schedule. OOG provides informal advice to the government and the public regarding OMA and D.C. FOIA. We respond informally by providing advice via telephone or e-mail, as opposed to a formal written opinion. In FY2024, OOG received and

processed 60 requests for informal OMA advice and 45 request for informal D.C. FOIA advice. In FY2025, to date, OOG received and processed 18 requests for informal OMA advice and 22 requests for informal D.C. FOIA advice.

## 2. *Resolution of OMA Complaints and Issuance of FOIA Advisory Opinions*

OOG also responds to formal complaints about public bodies' compliance with the OMA. Public bodies may request formal legal advice regarding the OMA. We provide advisory opinions in both instances. In FY2024, OOG received one request for formal OMA advice. In FY2025, OOG has not received any requests for formal OMA advice. In FY2024, OOG received 16 OMA complaints and in FY2025, to date OOG received 3 OMA complaints. In FY2024, OOG issued two advisory opinions resolving OMA complaints and one advisory opinion providing OMA advice. In FY2025, OOG issued one OMA advisory opinion resolving an OMA complaint and one advisory opinion concerning D.C. FOIA.

## 3. *Public Body Meeting Monitoring*

OOG's legal staff attends remote public body meetings on a weekly basis to ensure compliance with the OMA. During their weekly monitoring, they also inspect public body's websites and OOG's Central Meeting Calendar for public meeting notices and records. OOG's attorneys also provide legal advice on OMA compliance and take corrective action, if necessary.

In FY2025, to date, OOG attended 51 public body meetings. As a result of monitoring, OOG took corrective actions in 9 instances. The most frequent violation was failure to post a detailed meeting agenda. In FY2024, OOG attended 242 public body meetings. As a result of monitoring, OOG took corrective actions in 24 instances. The most frequent violations were failure to post a detailed agenda (12 violations); lack of the OMA regulatory statement (5 violations); and failure to provide the electronic or physical meeting location (4 instances).

### B. *Training and Outreach*

OOG also bolsters District government transparency by conducting training sessions on the OMA and D.C. FOIA. In FY24, OOG conducted 10 FOIA trainings and 15 OMA trainings. In FY25, to date, OOG has conducted 3 FOIA trainings and 6 OMA trainings. OOG staff trained approximately 457 District employees in FY24 and have trained approximately 569 to date in FY25.

Note that D.C. FOIA Officers are required to receive at least eight hours of training on D.C. FOIA (D.C. Official Code § 2-538(d)). To help D.C. FOIA Officers meet their training obligations, OOG hosts an annual FOIA Webinar Series for the District's FOIA Officers on various topics germane to responding to FOIA requests. In FY2024, this training was held from July 16, 2024 - August 13, 2024. The training is scheduled in FY25 for July 15, 2025 – August 19, 2025.

OOG continued to publish its newsletter, The OpenGovist. OOG released three issues in FY24, and two issues in FY25, which provided updates on the activities of OOG, including the advisory

opinions issued and other open government topics of interest.

OOG also participated in several events to benefit the community hosted by the D.C. Open Government Coalition. In FY24, OOG co-hosted and participated in the DC Open Government Coalition's Sunshine Week, a nonpartisan collaboration among groups in the journalism, civic, education, government and private sectors that shines a light on the importance of public records and open government. The theme of the event, which was held from March 10-16, 2024, was public safety transparency. In FY25, the Director of Open Government participated in a panel discussion for a symposium entitled "Global to Local: Lessons for Open Government & Civic Engagement for DC." This event, held on October 15, 2024, was sponsored by the D.C. Open Government Coalition in conjunction with the federal Open Government Secretariat. In FY2025, OOG plans to collaborate again with the D.C. Open Government Coalition on Sunshine Week, with a summit tentatively planned for March 19, 2025.

### III. Fiscal Year 2025 Priorities

In FY2025, OOG will continue its outreach to the government and to the public, to further the goals of openness and transparency. To advance OOG's mission, the office is focusing on these primary initiatives: (1) advocate for advances in open records and open meeting laws to advance the District's ability to be transparent and inspire public confidence; (2) continue monitoring public body compliance with the OMA and FOIA by attending public body meetings and audit websites for required information; and (3) increase public outreach through OOG's provision of increased in-person and virtual training opportunities.

I would also note that OOG has hired an Attorney-Advisor to focus on education entities – Local School Advisory Teams and Public Charter School Boards of Trustees. We are working to tailor a monitoring and training program that addresses the unique issues that arise with the regulation of District of Columbia public and charter school-related public bodies.

### IV. Recommendations for Changes to the OMA and FOIA

The Committee should consider the following changes to the Open Meetings Act and Freedom of Information Act to make the District's operations more transparent, accessible, and open to the public.

#### A. Remote Access to Public Body Meetings

The pandemic-era changes to the OMA that allowed public bodies to permit the public to attend open meetings to the public via streaming and/or teleconference should be permanently adopted. The Committee should consider the permanent enactment of D.C. Official Code §§ 2-575(a)(4), 2-577(a)(1), which are currently temporary and set to expire on March 1, 2025.

#### B. Information Technology and Transparency Commission

We encourage the Committee to adopt the Open Government Coalition's proposed legislation to create an "Information Technology and Transparency Commission" comprised of government

and private experts in records management and technology to overhaul the District's transparency framework, laws, and record-keeping mechanisms. D.C. FOIA was enacted in 1976 and is inadequate to regulate the volume and scope of requests that the District's agencies and offices now receive. Similarly, the OMA currently includes several policy gaps and ambiguities. Persons who are experienced and knowledgeable about technology and open meetings issues should make recommendations for its revision.

#### C. Advisory Neighborhood Commissions' Meetings

The Committee should also revise the OMA to bring ANCs under the scope of the OMA. OOG receives requests from individual ANCs for OMA and parliamentary procedure training. We have provided ANCs with access to our training portal to facilitate their ability to conduct orderly ANC meetings. But we also receive complaints from members of the public regarding ANC meeting compliance with the OMA. There seems to be a general thought in the District that ANCs are subject to the OMA. I believe that more people have been attending DC government meetings in general since they have become available online; so, there is a general assumption that these meetings are subject to the OMA like all other government meetings.

ANC meetings should be subject to the OMA and OOG should have the authority to resolve complaints about ANC meetings. Bringing ANCs under the OOG's regulatory authority over meetings would allow OOG to provide them with training, support, and other resources they need to be more effective leaders, and to hold more open and transparent meetings.

#### D. OMA Enforcement by OOG

While litigation remains OOG's last resort for use in cases where public bodies resist conciliation and other communicative remedies, OOG recommends legislation to accomplish the following: increase the maximum civil fine for an OMA violation; enable recovery of fines for any category of OMA violation, not just improper closure; and enable recovery of the costs and fees of litigation.

Under existing law, the monetary penalty for an OMA violation is limited in three critical ways: (1) it is limited to "a civil fine of not more than \$500"; (2) that fine only applies to improper closure (not advance-notice or recordkeeping violations); (3) the court must find "a pattern or practice of willfully participating in one or more [improper] closed meetings," implying that OOG cannot seek a fine unless it has waited and observed multiple (if not several) violations taking place, in order to establish the evidence of "a pattern or practice." D.C. Official Code § 2-579(e). For the OMA's enforcement provisions to work early, effectively, and comprehensively, OOG recommends increasing the maximum fine to \$1000 per violation and extending it to cover any violation of OMA (assuming, of course, it is serious or deliberate enough to warrant a fine).

#### E. D.C. FOIA Ombudsman (Mediator)

OOG should officially serve as the "D.C. FOIA Ombudsman," like the federal government's Office of Government Information Services (OGIS). If adopted, OOG would provide

confidential dispute resolution allowing for requesters and D.C. public bodies to engage in candid and fruitful discussions of issues and concerns. OOG's participation in this process would provide a neutral referee to provide resolution to D.C FOIA conflicts. Given the current tendency for the Mayor's Office of Legal Counsel to develop a backlog in processing D.C. FOIA appeals due to the large volume of requests it receives, if instituted, this program would be designed to reduce that load. It would also be a tool to avoid costly litigation for disputes concerning requesters and the District. With respect to legislative changes, we recommend changes to BEGA's enabling statute and D.C. FOIA to create this program.

## V. Conclusion

I assumed the role of the Director of Open Government in July 2018 and was reappointed in July 2023. As Director, I have facilitated OOG's growth from a legal staff of one to a full legal staff with a General Counsel (Chief Counsel), three attorneys, and a paralegal; I have established OOG as a reliable resource for expert information and assistance; and I have worked with the Executive Office of the Mayor (through the Department of General Services) and the D.C. Council to successfully relocate the agency to a new facility. While OOG has made great strides during my tenure as Director from an organizational standpoint, I believe there is still much work for us to do to maintain the public's confidence in government by ensuring it is operating in a manner that is transparent.

There is an even greater need to inspire confidence in government now, by opening meetings and records to public scrutiny, than when I first joined BEGA in 2018. Meeting this need, in accordance with BEGA's statutory authority, has always been OOG's focus. Through our public body monitoring and education activities, OOG aims to ensure public bodies and government agencies are well positioned, equipped, and motivated to comply with the law. We are here to facilitate accountability in the District government's operations.

I would like to end my testimony by publicly thanking the OOG team for their work and dedication to ensuring that BEGA properly executes its mission of ensuring the District government operates in a manner that is transparent and accessible to the public. I could not ask for more dedicated partners in our mission and I appreciate all that you do for the District.

Thank you, Chairwoman Pinto for providing me the opportunity to testify about the Office of Open Government. I am pleased to answer any questions you or Members of the Committee may have.