



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

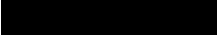


February 12, 2025

VIA ELECTRONIC MAIL



RE: Whether the “information session” of the Council of the District of Columbia on April 1, 2024, violated the Open Meetings Act and whether the Office of Open Government has the authority to take any action regarding same. (OOG-2024-0007)

Dear :

On April 2, 2024, the Office of Open Government (“OOG”) received the Open Meetings Act (“OMA”) complaint, numbered #OOG-2024-0007 (“Complaint”) that you submitted. The allegations in your complaint concern a Council of the District of Columbia (“Council”) gathering that occurred on Wednesday, March 27, 2024.

In conformity with 3 DCMR § 10400 *et seq.*, I reviewed the Complaint and referred it to the Office of Open Government’s (OOG) legal staff for review. OOG’s legal staff investigated the matter and recommended dismissal because I have no statutory authority to resolve the allegations you raise in the Complaint. The Director of Open Government is precluded from bringing a lawsuit to enforce the OMA regarding Council meetings pursuant to D.C. Official Code § 2-579(a). As discussed below, the Council prescribes its own rules regarding how it enforces the OMA. However, this does not preclude a private right of action in D.C. Superior Court pursuant to D.C. Official Code §1-207.42.

3 DCMR § 10403.1(a) provides for dismissal of a complaint that “does not raise issues within the Director[of Open Government]’s authority under the [OMA].” I must dismiss the Complaint because it does not raise issues under my authority.

While I do not have OMA-enforcement jurisdiction, in response to your request for information about the applicability of the OMA to the Council’s meeting, described in greater detail below, I am providing information and analysis of the matter at hand. The Director and OOG take such action to ensure that “all persons” receive “[f]ull and complete information regarding the affairs of government and the actions of those who represent them.”¹ Therefore, I am issuing this advisory opinion as Director of Open Government, pursuant to D.C. Official Code § 1-1162.05c.

¹ D.C. Official Code § 2-572.

I. Introduction

The Complaint, based upon press coverage centered on the Council Chairman Phil Mendelson’s (“the Chairman”) media briefing on Monday, April 1, 2024,² alleges that the Council’s conduct of a “closed door meeting” in the Chairman’s office was a “meeting, held without any public notice,” where “a quorum of the Council was present” and “the Councilmembers “gathered information” and “discussed” the deal” and that “there appears to have been no records kept of this closed April 1 meeting as required by statute.”³ Further, you state that “[t]he Council approved this \$515 million deal with no opportunity for public comment.”⁴

As relief, your Complaint requested, “that the Office of Open Government expeditiously open an investigation into the April 1, 2024, Meeting held in Chairman Mendelson’s office on the \$515 million dollar deal with Monumental Sports/Ted Leonsis. I request that OOG take prompt corrective action regarding this illegal meeting, including facilitating the release of any electronic recordings of this meeting. It is disconcerting that a quorum of the Council of the District of Columbia could/would so obviously violate the Open Meetings Act.”

After researching this matter, I find that, although the Council of the District of Columbia is subject to the OMA and *may* have violated the requirements of the OMA through its actions,⁵ it is the Council, and not OOG, that is responsible for the rules and enforcement regarding its own meetings and other “gatherings.” Pursuant to the Council rules, I referred the complaint to the Council, by way of its Office of the General Counsel.⁶

My analysis of the matter is below and begins with a statement of facts, brief analysis of OMA applicability, and concludes with a discussion of enforcement authority under the OMA and Council Rules, ending with conclusions and recommendations.

II. Statement of Facts

A. Details of the Complaint.

In your complaint, you stated that “[o]n April 1, 2024[,] it was reported by TV station NBC4 that DC Council Chairman Phil Mendelson summoned the other members of the DC Council to his office for a 1:30pm closed door meeting concerning a deal between the city and Monumental Sports and Ted Leonsis. This meeting, held without any public notice, was disclosed by News4 I-Team reporter Ted Oberg and the lead comment on the story was “the length city leaders went to

² <https://www.youtube.com/watch?v=t51spBPZdzY>

³ Letter stating complaint from Edward V. Hanlon, dated April 2, 2024 (via electronic mail), p 1. *Note* the letter references a meeting on “April 1,” however it appears that the meeting considered occurred on Wednesday, March 27, 2024.

⁴ *Id.*

⁵ OOG has only had an opportunity to speak with the Council’s General Counsel, and not Chairman Mendelsohn or any other Councilmembers regarding this matter.

⁶ RULES OF ORGANIZATION AND PROCEDURE FOR THE COUNCIL OF THE DISTRICT OF COLUMBIA, COUNCIL PERIOD 25, ARTICLE VI, INVESTIGATIONS AND SUBPOENAS, [Section] D. REPRIMAND, CENSURE, AND EXPULSION PROCEDURES, [Rule] 651. ESTABLISHING AN AD HOC COMMITTEE, 79-80.

[to] try to keep it [meeting] secret”.⁷ You then provided a link to a version of the story posted on YouTube.⁸⁹

Your complaint alleged that this meeting was: (1) illegally closed;¹⁰ (2) the public was illegally denied the opportunity to (a) attend,¹¹ and (b) observe¹²; (3) not noticed to the public¹³; and (4) likely no records were kept of what took place in this closed meeting.¹⁴

In addition to your legal arguments regarding the applicability of the OMA to the April 1, 2024, gathering, you reference competing budget priorities and possible reasons for why the meeting was conducted as it was.¹⁵ That matter is beyond the scope of the OMA, and I take no position on it here.

B. The Council’s Media Briefing.

On April 1, 2024, Chairman of the Council, Phil Mendelson, held a media briefing regarding Council business, including the Committee of the Whole and Legislative Meetings scheduled for April 2, 2024 (the next day). At the briefing, the Chairman was asked by several of those present about information regarding the then-pending proposal and potential deal, regarding the future of the Capitol One Arena and the residency of the professional franchises the Washington Capitals and the Washington Wizards, between the District, represented by Mayor Muriel Bowser’s Administration, and Monumental Sports & Entertainment Corporation (“MSE”), represented by its CEO Ted Leonsis.

C. Meeting with the Council’s General Counsel.

Following the receipt of your complaint and investigation by my office, OOG Chief Counsel Louis Neal met with Nicole Streeter,¹⁶ General Counsel for the Council of the District of Columbia.¹⁷ The essentials of that consultation are included in the discussion below.

On November 22, 2024, OOG Chief Counsel Louis Neal met with District of Columbia Council General Counsel Nicole Streeter. Chief Counsel Neal re-confirmed with General Counsel Streeter that she had knowledge of your complaint regarding the matter which is the subject of this Advisory Opinion. Mr. Neal forwarded your complaint to the Council through Ms. Streeter’s office on May 6, 2024. Ms. Streeter acknowledged her receipt and

⁷ Complaint #OOG-2024-0007 (Hanlon), dated April 2, 2024, 1.

⁸ *Id.*, referring to the Council Chair’s Legislative Media Briefing, https://dc.granicus.com/MediaPlayer.php?view_id=4&clip_id=8790 (April 1, 2024). (Chairman Phil Mendelson and members of the press in a question-and-answer session).

⁹ *Id.*, <https://www.youtube.com/watch?v=t51spBPZdzY>.

¹⁰ Complaint #OOG-2024-0007 (Hanlon), dated April 2, 2024, 1-3.

¹¹ *Id.*, at 1-3.

¹² *Id.*, at 1,4.

¹³ *Id.*

¹⁴ *Id.*, at 1, 3-4.

¹⁵ *Id.*, at 1, 4-5.

¹⁶ Meeting on November 22, 2024.

¹⁷ RULES OF ORGANIZATION AND PROCEDURE FOR THE COUNCIL OF THE DISTRICT OF COLUMBIA, COUNCIL PERIOD 25, ARTICLE VI, INVESTIGATIONS AND SUBPOENAS, [Section] G. G. APPOINTED OFFICERS OF THE COUNCIL., [Rule] 263 GENERAL COUNSEL, 30-31.

review of your complaint. However, she asserted at that meeting that OOG did not have any enforcement authority over any member of the District of Columbia Council as it relates to the OMA. Ms. Streeter added that since the Council has promulgated its own rules on how it conducts its meetings, and when necessary, on how to initiate an investigation or action against one or more of its members for violation of its rules, Ms. Streeter concluded that OOG may only forward the complaint and defer to the Council's rules which govern its processes.

Below, I address the issue of whether the Council is subject to the OMA, and by what authority the Council conducts its meetings. I will also discuss the rule(s) cited by Ms. Streeter which govern the Council's open meetings activities, and which explain the process involved in investigating and affecting an action against any member of the Council.

III. Discussion of OMA Enforcement

The Council is subject to the OMA pursuant to D.C. Official Code § 2-574(3), which defines OMA-subject bodies as a "public body," which means "any government council, including the Council of the District of Columbia..." The plain language of the OMA statute makes clear that the Council intended to make itself subject to the requirements of the OMA. While the Council is subject to the OMA and its requirements,¹⁸ the OMA affords the Council with jurisdiction over its members respecting OMA enforcement.

A. Jurisdiction resides with the Council for oversight of its conduct of meetings and other gatherings.

The jurisdiction resides with the Council for the conduct of meetings and other gatherings. As stated above, the Council promulgates rules for its legislative periods, providing for the creation and adoption of rules and their applicability between legislative periods. The Council has adopted its own rules regarding Open Meetings.¹⁹ These rules are parallel to the statutory provisions of the OMA (D.C. Official Code § 2-571 *et seq.*), but they are not identical.

The meeting or gathering that is the subject of this Complaint occurred in Period 25. The Rules for Period 25 state "...the Council shall convene an organizational meeting for the purpose of considering the adoption of Rules of Organization and Procedure and Code of Official Conduct" and "[i]f a quorum is not present, the Chairman shall convene an organizational meeting as soon as feasible."²⁰

¹⁸ D.C. Official Code § 2-574(3).

¹⁹ See COUNCIL RULES, ARTICLE III, [Subsection] H. OPEN MEETINGS, [Rules] 371-376, 57-61.

²⁰ RULES OF ORGANIZATION AND PROCEDURE FOR THE COUNCIL OF THE DISTRICT OF COLUMBIA, COUNCIL PERIOD 25, ARTICLE X—CONSTRUCTION, SUSPENSION, AND AMENDMENT OF RULES. See ARTICLE III—PROCEDURES FOR MEETINGS, A. LEGISLATIVE MEETINGS. [Rule] 301. ORGANIZATIONAL MEETING., p. 36, and [Rule] 1005. EFFECTIVE PERIOD. "These Rules shall be effective until superseded by Rules of Organization and Procedure adopted in a succeeding Council Period, as provided in Rule 301." ("COUNCIL RULES"), 101.

D.C. Official Code § 2–579 states:

(a) [t]he Office of Open Government may bring a lawsuit in the Superior Court of the District of Columbia for injunctive or declaratory relief for any violation of this subchapter before or after the meeting in question takes place; ***provided, that the Council shall adopt its own rules for enforcement related to Council meetings.*** (emphasis added)

In line with the OMA, the Council promulgated rules concerning its meetings and enforcement. The Council Period 25 Rules define the characteristics of a “Meeting of the Council,” under rules for “open meetings” using the same language that is in the OMA²¹:

“Meeting of the Council” means a gathering of a quorum of the Council, **including hearings and roundtables, whether informal or formal, regular, special, additional or emergency, at which the Councilmembers consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless of whether held in person, by telephone, electronically, or by other means of communication.**” (emphasis added)

The Council Period Rules, including Council Period 25,²² have explicit rules for Open Meetings.²³ Although the Open Meetings section of the rules parallels the OMA in many respects, the Council rules differ in material ways. Under Rule 373, subsection (e), “[t]his section²⁴ shall not apply to administrative meetings, breakfast meetings, open discussions, or other gathering of the Council when no official action is expected to take place; provided, that no official action may be taken at such meetings.” (emphasis added) This exact language is then found again under the provisions regarding recording of meetings in the OMA.²⁵

²¹ COUNCIL RULES, ARTICLE III, [Subsection] H. OPEN MEETINGS, [Rule] 371(c)(2) OPEN MEETINGS, GENERALLY, 57.

²² RULES OF ORGANIZATION AND PROCEDURE FOR THE COUNCIL OF THE DISTRICT OF COLUMBIA, COUNCIL PERIOD 25, ARTICLE X—CONSTRUCTION, SUSPENSION, AND AMENDMENT OF RULES. See ARTICLE III—PROCEDURES FOR MEETINGS, A. LEGISLATIVE MEETINGS. [Rule] 301. ORGANIZATIONAL MEETING. and [Rule] 1005. EFFECTIVE PERIOD. “These Rules shall be effective until superseded by Rules of Organization and Procedure adopted in a succeeding Council Period, as provided in Rule 301.” (“COUNCIL RULES”), 101.

²³ See COUNCIL RULES, ARTICLE III, [Subsection] H. OPEN MEETINGS, [Rules] 371-376, 57-61.

²⁴ COUNCIL RULES, ARTICLE III, [Subsection] H. OPEN MEETINGS, [Rule] 373. NOTICE OF MEETINGS, 58-59.

²⁵ COUNCIL RULES, ARTICLE III, [Subsection] H. OPEN MEETINGS, [Rule] 374. RECORD OF MEETINGS. (c), 59.

As the Council specifically provided that the Council, itself, “shall adopt its own rules for enforcement related to Council meetings,” and did so in the OMA statute where “Enforcement” and “authority” are addressed, the rules of statutory interpretation lead to the conclusion that the Council intended and is solely empowered to “create rules for enforcement” relative to the instant gathering and all Council meetings. Further, the Rules adopt the same language, which does not parallel the OMA, regarding both notice and recording of “open discussions, or other gathering of the Council when no official action is expected to take place,” so presumptively the Council intended to have a category of “gathering[s]” that were not “open meetings” either according to the OMA or the Council Rules.

The Council Chair described the “gathering” as being a “briefing” by the Council’s Budget Director, called by himself, “so the members...because I didn’t have time to call each member separately...could learn what these confidential negotiations were. And also, to alert them of the schedule, which was shifted. There was no business taken, there was no intention of any business to be taken. There was no ask of members. ...it was strictly so that...that they would know what’s going on because nobody knew before then. And this was highly confidential.”²⁶ During the media briefing, a reporter asked, “I just want you to explain to me...my question is about the transparency of the process...,”²⁷ to which the Chairman responded, “...I believe we followed the Council’s rules.”²⁸

In reviewing the legislative record and the Council rules since the passage of the OMA,²⁹ it appears that the Council has taken the course of adopting “rules,” meaning “its own rules,” (i.e., “RULES OF ORGANIZATION FOR THE COUNCIL OF THE DISTRICT OF COLUMBIA COUNCIL PERIOD 25,” etc.), as regard “...administrative meetings, breakfast meetings, open discussions, or other gathering of the Council...” which are specifically distinguished in Council Rules 373(e) and 374(c),³⁰ as compared to “Meetings of the Council,” which are described in Council Rule 371(c)(2), which parallel the definition of “Meeting” in the OMA,³¹ without amending the OMA.

The apparent carve-out within the Council Rules regarding this class of Council events excludes them from both the “Notice” and “Record” requirements that otherwise apply to Council “Meetings,” provided that “...no official action is expected to take place; provided, that no official action may be taken at such meetings.”³² There is an ambiguity

²⁶ Legislative Media Briefing, at time stamp 50:05.

²⁷ *Id.*, at time stamp 49:55.

²⁸ *Id.*, at time stamp 50:01.

²⁹ Council of the District of Columbia, Legislative Information Management System (LIMS), <https://lims.dccouncil.gov/>.

³⁰ See above in Section II, Subsection A,

³¹ D.C. Official Code § 2-574(1).

³² COUNCIL RULES, ARTICLE III, [Subsection] H. OPEN MEETINGS, [Rule] 373. NOTICE OF MEETINGS., (e), 58-59, and COUNCIL RULES, ARTICLE III, [Subsection] H. OPEN MEETINGS, [Rule] 374. RECORD OF MEETINGS. (c), 59.

between the requirements of a “Meeting of the Council,” which is defined as the OMA defines an “open meeting,” and the apparent carved-out type of “other gathering.”

The OMA allows the Council “to adopt its own rules...with respect to Council meetings,” and the language is specific in referring to “rules.” The Council Period Rules are adopted after passage of a resolution, not a bill.³³ This distinction raises the question of whether a resolution adopted by the Council can override the requirements of a law passed by the Council, under the requirements of the Home Rule Act.³⁴

The OMA itself, passed by the Council: (1) grants that “[n]otwithstanding any provision of [the OMA], the Council may adopt its own **rules**...with respect to Council meetings;”³⁵ (emphasis added) and (2) because the Council has established “rules” for its own conduct of “meetings,”³⁶ and distinguished “other gatherings;”³⁷ and (3) the language in § 2-575(f) finishes by qualifying its exercise of this authority “...provided, that the rules of the Council shall comply with this section and the definition of meeting in § 2-574(1); provided further, that until the Council adopts rules pursuant to this subsection, this subchapter shall apply to the Council,”³⁸ I must conclude that the Council has followed its own procedure as laid out in, and granted itself interpretive and enforcement authority under, the OMA. Its choice of creating a carve-out for certain Council gatherings within its rules, and not a statutory amendment to the OMA, appear to be within the requirements of the Act.

As the Council has carved out a category of gatherings that are not “open meetings” within its rules, and specifically left the creation of rules of enforcement to itself, I must conclude that neither I nor this office have jurisdiction of “enforcement” or “authority” on the Council’s conduct of gatherings which may or may not meet either the OMA or the Council Rules’ definition of open meetings.

B. The Council’s process for handling questions of OMA violations.

During Chief Counsel Neal’s meeting with General Counsel Streeter, he was made aware of instant options as interpreted by the Council’s Office of General Counsel’s. Under Council Rule 651(c) the “Chairman³⁹ may establish an ad hoc committee pursuant to this

³³ The “Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 25, Resolution of 2023” (PR25-0001), <https://lims.dccouncil.gov/Legislation/PR25-0001>, passed the Council by a roll call vote of 12-1 on January 3, 2024. Voting Information for PR25-0001.

<https://lims.dccouncil.gov/Legislation/PR25-0001>, and was retained on January 17, 2023.

³⁴ Home Rule Act, approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42)

³⁵ D.C. Official Code § 2-575(f).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ RULES OF ORGANIZATION AND PROCEDURE FOR THE COUNCIL OF THE DISTRICT OF COLUMBIA, COUNCIL PERIOD 25, ARTICLE VI, INVESTIGATIONS AND SUBPOENAS, [Section] D. REPRIMAND, CENSURE, AND EXPULSION PROCEDURES., [Rule] 651. ESTABLISHING AN AD HOC COMMITTEE, 79-80. *Note* that under subsection (h) “For the purposes of this part, the term “Chairman” means, if the Chairman is the Councilmember whose conduct is under consideration by the ad hoc committee, the Chairman Pro Tempore.”

section at the Chairman’s discretion, regardless of whether one of the events described in subsection (b) of this section has occurred. If the Chairman establishes an ad hoc committee under this subsection, the memorandum filed pursuant to subsection (d) of this section shall include a description of the alleged violation of law or rule committed by the Councilmember whose conduct will be under consideration by the ad hoc committee.”⁴⁰

If the Chairman establishes an ad hoc committee, or 5 Members file a request,⁴¹ then the Council may pursue its own consideration of the present matter.

Per Council Period 25 Rules, “[n]o sanction pursuant to Rule 655[. CENSURE AND EXPULSION.] shall be imposed unless: (1) First recommended by an ad hoc committee; and (2) A proceeding is held pursuant to Rule 653.[COUNCIL CONSIDERATION OF REPORT.]”⁴² Unless either the Chairman, or 5 members jointly, file for the creation of an ad hoc committee, the Council rules do not provide for further action to investigate the conduct of meetings by the Council.

Considering the points and legal references presented in the foregoing, I conclude that the final enforcement authority, as it relates to possible violations of the OMA and its own open meetings rules, lies with the Council itself, and not OOG. As such, I must dismiss your complaint as outside of OOG’s scope of authority.

As a final point, according to D.C. Official Code § 2-579(a)(1)”...Nothing in this subchapter shall: (1) Be construed to create or imply a private cause of action for a violation of this subchapter; or (2) Restrict the private right of action citizens have under § 1-207.42.⁴³ Here, the Chair insists that no official action was either contemplated or conducted.⁴⁴ If a private individual has knowledge to the contrary, then they could either pursue a right of action as laid out under § 1-207.42, or direct their complaint to the Council, which could consider the complaint under the provisions of Council Rules.

⁴⁰ *Id.*

⁴¹ *Id.*, 79-80. Note that under Rule 651(b)(3) that “An ad hoc committee shall be established, pursuant to subsection (d) of this section, within 3 business days after:... 5 Councilmembers file with the Secretary a written request for the establishment of an ad hoc committee, which shall include a description of the alleged violation of law or rule that forms the basis of the request.”

⁴² RULES OF ORGANIZATION AND PROCEDURE FOR THE COUNCIL OF THE DISTRICT OF COLUMBIA, COUNCIL PERIOD 25, ARTICLE VI, INVESTIGATIONS AND SUBPOENAS, [Section] D. REPRIMAND, CENSURE, AND EXPULSION PROCEDURES., [Rule] 653. COUNCIL CONSIDERATION OF REPORT., 82-83, and [Rule] 655. CENSURE AND EXPULSION., 84.”

⁴³ Commonly known as the “Sunshine Act,” D.C. Official Code § 1–207.42. Open meetings., states: “(a) **All meetings** (including hearings) of any department, agency, board, or commission of the District government, **including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public.** No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting. (b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available, upon request, to the public at reasonable cost.” (emphasis added)

⁴⁴ Legislative Media Briefing, at time stamp 50:05.

Finally, you may certainly present your complaint and this advisory opinion to the Council or, in the alternative, upon your request, I will forward both to the Council.

IV. Conclusion

The Council of the District of Columbia is subject to the OMA. According to publicly available information, Chairman Mendelson assembled a majority of the D.C. Council members in his office to receive a briefing on the terms of the city’s deal with Monumental Sports, which Chairman Mendelson described as a “gathering.” The presumed gathering of a quorum of Councilmembers in Chairman Mendelson’s office to receive a briefing about the Monumental deal was a meeting according to the OMA, and arguably under D.C. Council Rules, but it appears to be exempt from public notice requirements under the Council’s rules.

As discussed above, Rule 373(e) excludes certain meetings from the notice provisions if the D.C. Councilmembers assembled do not take official action. Such meetings include “administrative meetings, breakfast meetings, open discussions, or other gathering of the Council when no official action is expected to take place.” The gathering of the majority of the D.C. Council on April 1, 2024, appears to fall under Rule 373(e), based on the facts reported by the media though OOG has not independently verified these facts. The Council, through the process set forth above, is the appropriate entity to determine what elements of the “gathering” were apparently violative of the OMA.

The Council promulgated its rules concerning open meetings and is responsible for enforcement regarding its own meetings and other “gatherings.” Based upon 3 DCMR § 10403.1(a),⁴⁵ I must dismiss your complaint as being beyond the scope of my authority under the OMA. As stated above, this dismissal does not preclude a private action under the “Sunshine Act” (D.C. Official Code § 1-207.42).

Please feel free to contact Chief Counsel Louis Neal, at louis.neal@dc.gov, or myself, at niquelle.allen@dc.gov, at any time.

Sincerely,



Niquelle M. Allen
Director of Open Government

⁴⁵ 3 DCMR 10403.1(a) provides that “The Director may dismiss a complaint on one or more of the following grounds: (a) The complaint does not raise issues within the Director's authority under the Open Meetings Act.”