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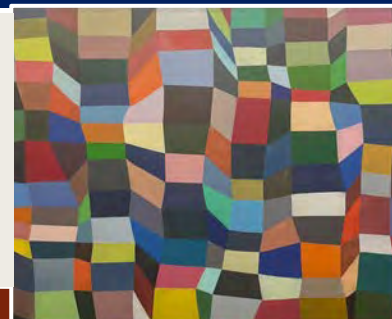
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The Office of Open Government's Newsletter

THE OPENGOVIST



DIRECTOR OF OPEN GOVERNMENT'S MESSAGE

Government transparency is the government's responsibility to its citizens. The government is required to be open, accountable, and honest with its citizens regarding how it uses taxpayer dollars and conducts its business. The Office of Open Government (OOG) is an advocate for citizens and their right to access the government's documents and proceedings so they can effectively have oversight over and understand the government's operations. Government openness is a window and a door. It is a window for the public to view the government's operations and a door for the public to enter and participate in governance. Government transparency enhances public's understanding of the process of governing and permits citizens to make informed choices regarding government officials. OOG continuously strives to ensure this occurs.

In this issue we provide information about legislation and litigation that impacts government transparency jurisprudence. Most notably, the D.C. Council slightly increased fines for violations of the Open Meetings Act provisions concerning closed meetings to \$500, which is still below the national average, but an improvement. We also inform you about exciting developments that have occurred with OOG's staff and our activities. As you ease into the summer, please consider signing up for one or more of OOG's training sessions that will be offered prior to the end of the fiscal year.

I hope you find the contents of this issue of *The Opengovist* informative and useful.



In Service,
Niquelle M. Allen, Esq.
Director of Open Government



OFFICE OF OPEN GOVERNMENT
BOARD OF ETHICS AND
GOVERNMENT ACCOUNTABILITY

DC FOIA Legislation Update

New D.C. FOIA Exemption: Physical and Mental Evaluation and Reports (Bill 25-0545)

The Health Occupations Revision General Amendment Act of 2023 was passed by the Council and signed by the Mayor. It is currently under congressional review with a Projected Law Date of August 01, 2024. This measure added a new enumerated D.C. FOIA exemption, Exemption 21, covering certain medical records; reports from “physical and mental evaluations”; and “Consent Orders, Final Orders, and Notices of Summary Suspensions issued pursuant to [the District of Columbia Health Occupations Revision Act of 1985].” (See D.C. Official Code § 3-1201.01 *et seq.*)

The Rulemaking Public Comment Modernization Amendment Act of 2024 (Bill 25-0790)

Councilmember Anita Bonds introduced this bill that would amend the District of Columbia Administrative Procedure Act to require agencies issuing proposed rulemakings to receive oral comments (“data and views”) and electronic written comments. Current law allows agencies to require that comments be presented in writing. (See D.C. Official Code § 2-505(a)) Also, the Office of Documents and Administrative Issuances would be required to “publish and maintain an electronic directory of . . . rules open for public comment.” The Council’s Committee on Executive Administration and Labor is planning to hold a hearing on July 10, 2024.



OMA Legislation Update

OMA Enforcement-Fine Increase

On June 25, 2024, the D.C. Council passed on final reading the Open Meetings Enforcement Amendment Act of 2024, as a subtitle of the annual Budget Support Act (BSA). (Subtitle D of Title I of Bill 25-0784).

Pending mayoral approval, congressional layover, and the arrival of Fiscal Year 2025 on October 1, 2024, this new act would raise civil fines to a maximum of \$500 per offense (up from the current \$250).

OOG will continue to monitor, though, of course, litigation remains a rare last resort. (OOG has had to take only one public body to court since its inception.) OOG’s objective is to train, guide, and collaborate with public bodies and their administrative points of contact to ensure that the District’s business remains intuitively and reliably transparent.

Litigation Update



Issue No. 6

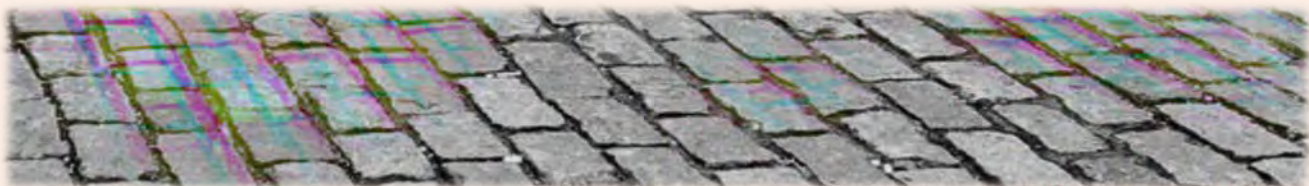
Does FOIA Guarantee that You Get What You Ordered?

On June 21, 2024, Superior Court Judge Milton Lee directed the parties to “meet and confer” regarding the documents provided by the Office of the Chief Technology Officer (OCTO) to the Plaintiffs, the D.C. Open Government Coalition. Plaintiffs argued OCTO did not fulfill their FOIA request when the data provided differed from what they requested. The next hearing is scheduled for July 31, 2024, at 2 p.m. *D.C. Open Government Coalition v. District of Columbia* (Case No. 2023-CAB-007251 (D.C. Super. Ct.)).

The Check Wasn't in the Mail

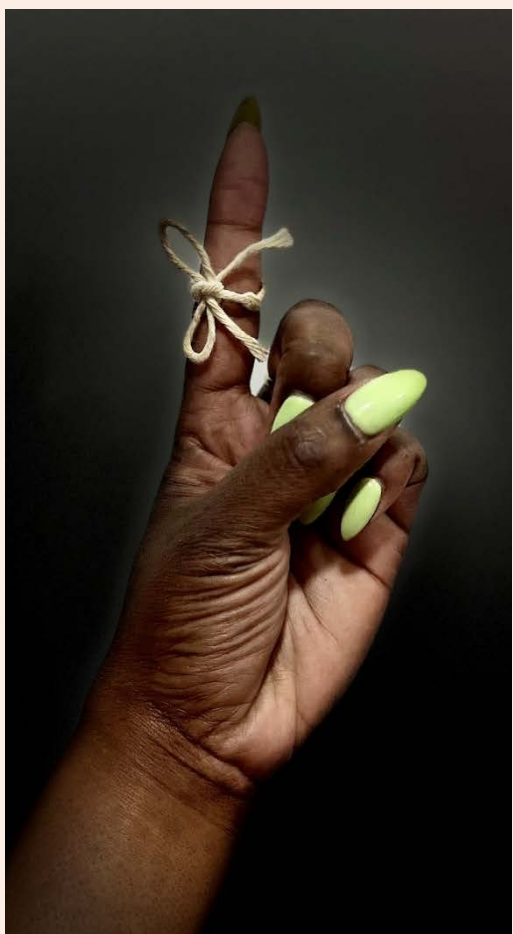
A self-represented requester asserts that the University of the District of Columbia (UDC) owes her about \$7000. She wants to know who deposited a particular check into Wells Fargo Bank and brought a claim under D.C. FOIA to attempt to compel the District to disclose that information, which the District asserts that it does not have. (D.C. FOIA does not require agencies to create records that are not already in their custody.)

The Superior Court dismissed the complaint because the plaintiff failed to properly serve the District nor state a claim upon which relief could be granted. The requester has appealed. OOG will continue to monitor. *Richards v. D.C. Finance & Treasury* (Case No. 24-CV-0034 (D.C. Ct. of App.)); (Case No. 2021-CA-003762-B (Super. Ct.)).



OMA IN ACTION

Cancellations and Special Meetings



When a public body sets its annual calendar, it often lists all of its meetings for the year on its website, as well as on the District's Central Meeting Calendar ("CMC") maintained by OOG on open-dc.gov.

Inevitably, though, as the year progresses, things can change (an inability to raise a quorum; a venue becomes unavailable; a major disruption occurs, etc.), and public bodies may decide to cancel one of their announced meetings. Even if the meeting is not fully, properly noticed according to the requirements of the Open Meetings Act (OMA) (D.C. Official Code § 2-576), if a meeting is listed as scheduled to occur on a public body's website and/or the CMC, and there is a cancellation, please note that it is important to update all of the places that the meeting has been announced or is listed. A cancellation, which would apply to a fully noticed meeting (and is, according to the OMA a 'change in the schedule') or even just a failure to correct either or both websites, can create confusion for the public, stakeholders, journalists, etc. A quick, clear update, stating that a meeting is not going to occur, placed everywhere that the meeting was announced makes the process more transparent, and everyone's life a little easier. And remember, a rescheduled meeting is treated like a new, additional (or "special") meeting and has all the same requirements as a "regular" meeting under the OMA.

ROBERT'S RULES
MADE SIMPLE
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ROBERT'S RULES OF ORDER

Robert's Rules of Order Training Portal

- ✓ Learn the basics of Robert's Rules of Order
- ✓ Self-guided modules & live webinars
- ✓ **FREE ACCESS** for DC Board Members

To learn more about Robert's Rules Made Simple visit: <https://robertsrulesmadesimple.com/dc>

"You can't have a sense of community without rules." – Judith Martin a/k/a "Miss Manners"

OMA Advisory Opinions

[OOG-2024-0005 OMA ANC Dismissal](#)

On March 26, 2024, Director Allen dismissed an OMA complaint against an Advisory Neighborhood Commission (ANC), because ANCs are not considered public bodies under the OMA. ANC meetings are subject to their own open meetings laws pursuant to D.C. Official Code § 1-309.11. ANC meetings fall under the Sunshine Act (D.C. Official Code § 1-207.42), which provides a private right of action in D.C. Superior Court for violations. The Director referred the complainant to the Office of Advisory Neighborhood Commissions for assistance.

[OOG-2024-0008 OMA Advisory Opinion on Aston CAT](#)

On April 12, 2024, Director Allen released an advisory opinion in response to a request for advice regarding whether the Aston CAT is a public body subject to the OMA. OOG previously issued advisory opinions that have broadened our interpretation to include public bodies that have not been established by a Mayor’s Order or statute, but by a subordinate office or agency. Entities that are considered public bodies include task forces and others that were created with the intent to impact District operations and inform policy. The Director concluded that the Ashton CAT and comparable “community advisory teams” are subject to the OMA because such entities meet this description.

[OMA Advisory Opinions | Open DC \(open-dc.gov\)](#)

Administrative Law

[Proposal to Require Agencies to Allow the Public to Speak on Regulations](#)

The Rulemaking Public Comment Modernization Amendment Act of 2024 (Bill 25-0790) would require agencies that issue proposed regulations to receive *oral* comments and *electronic* written comments. Current law allows agencies to require that comments be in writing.

Also, the Office of Documents and Administrative Issuances would be required to “publish and maintain an electronic directory of . . . rules open for public comment.”

The Committee on Executive Administration and Labor will hold a hearing on this bill on July 10.

(Yes, interested constituents may comment either in writing or aloud. Instructions are at [B25-0790-Hearing_Notice1.pdf \(dccouncil.gov\)](#).)

Welcome Attorney Advisor Brandon Lewis, Esquire

On April 22, 2024, OOG welcomed its newest attorney, Brandon Lewis. Brandon is originally from Smyrna, Georgia, but has lived in The District for the past 14 years. Brandon has a long history of, and commitment to, public service in DC, starting with serving as an Americorps volunteer prior to law school and holding positions within the District and Federal governments, including serving as an Assistant Attorney General with the Criminal section of the Office of the Attorney General for DC, as well as an Associate Counsel with the Department of Veterans' Affairs, Board of Veterans' Appeals. Brandon received his B.A. from the University of North Carolina at Chapel Hill and his J.D. from William & Mary Law School. Brandon is currently our Generalist attorney – making himself proficient in all areas of OOG's workflows. We are thrilled to have Brandon and look forward to a long, productive career with him.

Best Wishes Trial Attorney Nicholas Weil, Esquire

While we welcome Brandon, we also say goodbye to Nick Weil, OOG's Trial Attorney, whose last day was on June 5th. Nick came to OOG as an attorney advisor in May of 2021, and became the agency's Trial Attorney in October of 2022. During Nick's tenure he distinguished himself as an extraordinary legal researcher with legendary turnaround time in producing complex work product. Nick also reviewed and published to the OOG Team the daily issue of the *Daily Washington Law Reporter*, thereby keeping the Team informed of important legal issues as well as allowing OOG to be informed and sometimes proactive in handling Open Government issues. Nick leaves OOG to return to private civil/appellate litigation practice. Nick expressed his gratitude for his time at OOG and stated that he was most proud of all the citizens who presented him with fascinating legal questions over the years. We will miss Nick, and we wish him continued success in his amazing legal career.

D.C. Bar Payton Leadership Academy

Attorney Advisor Anthony J. Scerbo graduated on June 17 as a member of this year's D.C. Bar John Payton Leadership Academy. The participants selected are "attorneys from a variety of professional settings embarking on a three-month intensive training to unlock their leadership potential in a competitive, rapidly changing professional landscape" and "better understand their leadership styles so that they can better articulate their professional and personal values and successfully lead." Congratulations, Anthony!

Come Work With Us! OOG is currently receiving applications for an Attorney Advisor vacancy. Additional information on how to apply is here: <https://lnkd.in/epF7SBtW>

SUNSHINE MOMENT

Issue No. 6



DC PAC

The D.C. Pedestrian Advisory Council (“DC PAC”) was established to advise the Mayor, D.C. Council, and D.C. government agencies on safety and accessibility for pedestrians within the District. DC PAC consists of thirteen voting community members who are residents of the District of Columbia, the members serve a three-year term, and are appointed by the D. C. Council. In addition to the thirteen community members, DC PAC also includes five non-voting members that represent each of the following D.C. agencies: District Department of Transportation, Metropolitan Police Department, D.C. Office of Planning, D.C. Public Schools, and Department of Parks and Recreation. DC PAC meetings are held monthly and are open to the public. This advisory council is charged with developing policy recommendations, reviewing existing city policies that affect pedestrian environment, and monitoring plans implemented. The Council seeks to identify opportunities for city officials to address issues through education, engaging, and learning from the public about the problems pedestrians encounter throughout the city. They invite members of the public to share stories, concerns, and incidents witnessed regarding the location of dangerous encounters. Pedestrians are also encouraged to share success stories of how safety measures for pedestrians have been improved. (Share your story by emailing dcpedcouncil@gmail.com.)

To learn more about the D.C. Pedestrian Advisory Council and get involved, visit:

<https://www.walkdcwalk.org/>

Upcoming Training ...

D.C. FOIA Officer Webinar Series

The annual FOIA webinar series for D.C. Government’s FOIA Officers will occur on Tuesdays at 1 p.m., from July 16 thru August 24, 2024. If you are new to the position of FOIA Officer, please send a note to OOG at opengovoffice@dc.gov to be added to our list for notifications of training and news.

OMA & Parliamentary Procedure Training

Public bodies, including Local School Advisory Teams (LSATs) and Public Charter School Boards, may seek training from OOG on both the Open Meetings Act and Parliamentary Procedure. Please send an inquiry to opengovoffice@dc.gov and we will work with you to schedule appropriate training.

Contact Us...

OOG provides advice to agencies, members of public bodies, and the public on the Open Meetings Act and the D.C. Freedom of Information Act. For assistance, please reach us via telephone at 202-481-3411 or via email at: opengovoffice@dc.gov



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Brandon Lewis - Attorney Advisor
Kimberly Brown - Paralegal
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**For more information
about OOG you can
find us:**



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