



**Statement of  
Robert S. Becker**

On behalf of the  
D.C. Open Government Coalition and  
The Society of Professional Journalists  
D.C. Professional Chapter

April 14, 2014

Before the Committee on Government Operations  
of the Council of the District of Columbia

Chairman McDuffie, members of the Committee on Government Operations, thank you for giving me the opportunity to address you on behalf of the D.C. Open Government Coalition, of which I am government relations chair, and the D.C. Professional Chapter of the Society of Professional Journalists, of which I am First Amendment/FOI chair.

Just over a year ago the Board of Ethics and Government Accountability appointed Traci Hughes to be the first director of the Office of Open Government. That appointment was a long time coming.

The Council passed legislation in December 2010 creating the Office to oversee the new Open Meetings Act included in the same bill. But the Mayor refused to appoint a director. In 2012, as part of comprehensive ethics and government accountability legislation shepherded by Councilmember Bowser, then chair of this committee, the Open Government Office was placed within BEGA for administrative purposes.

We supported that legislation, but we had reservations, which we expressed in hearings on the ethics bill. In response to one of our concerns, the legislation was careful to state that the Office would be an independent body. Our second major concern, not addressed in the ethics bill, was to ensure that the Office received funding sufficient to perform its mission.

That second concern has proved to be well founded, and it is the reason we are here today. Despite the Office of Open Government's importance as a bulwark of government accountability, funding for it has been cut repeatedly. The Council allocated \$236,000 to fund operations from April 2011 until the end of the fiscal year, anticipating an annual budget of \$472,000 to employ a director, a staff attorney and an administrative staff member. But the 2013 budget allocated only \$422,000, and the 2014 budget imposed an even stiffer cut to \$304,000.

The BEGA budget plan for fiscal 2015 states that "OOG is staffed with one person, the director. An Attorney Adviser FTE has been approved for FY 2014 to assist with the training of 176

current boards and commissions.”<sup>1</sup> In reality, in 2014 Ms. Hughes received \$44,000 for salaries in addition to her own, about half what a junior attorney advisor would earn, and only 2/3 of the salary of the IT staffer she needs to work on tracking FOIA requests and developing online training tools.

The Mayor’s budget proposes yet another cut in FY 2015 to \$300,000, a 5 percent reduction. At the same time, the Mayor is proposing to increase BEGA’s budget \$187,000, a 14 percent increase.

The Office of Open Government’s portfolio includes:

- Overseeing implementation of the Open Meetings Act and the Freedom of Information Act.
- Training agency personnel, boards and commissions on compliance with both statutes.
- Training the public on both statutes.
- Mediating disputes among access requesters and government bodies.
- Issuing advisory opinions in response to requester appeals.
- Advising the Council on legislation affecting public access to government records and meetings.<sup>2</sup>

Although a FOIA requester dissatisfied with an agency’s response can appeal to the Mayor or sue in Superior Court, there is no private right of action under the Open Meetings Act. In response to a complaint, only the Office can act when a public body violates the meetings law.

In the past several years, the Office of the Attorney General has come to the Council for relief from what it considers to be burdensome FOIA requests that stretch agency resources to comply and the AG’s resources to defend agency decisions in the Superior Court. As originally intended, if adequately staffed, the Open Government Office could significantly reduce the number of FOIA and open meetings complaints, and resolve disputes without resort to litigation.

For the Open Government Office to make a significant difference will require resources including, in addition to Ms. Hughes, a staff attorney experienced with transparency issues, and the IT person she had hoped to hire in 2014 to implement a city-wide FOIA request tracking system. In short, in FY 2015 she needs \$472,000, the amount the Council, when it created the Open Government Office, anticipated would be needed to fulfill its mission.

At current funding levels, no matter how hard Ms. Hughes works, she is doomed to fail. Funding the Office of Open Government in 2015 at the proposed \$300,000 level would send a clear

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<sup>1</sup> FY 2015 Proposed Budget and Financial Plan, p. A-219, fn. 5.

<sup>2</sup> Since the beginning of this Council period several bills have been introduced that would impact public access to agency records. Ms. Hughes, the Coalition and the SPJ chapter have testified on those measures. In addition, the Office needs legislative action to strengthen its authority over FOIA, and to address deficiencies in the FOI and Open Meetings acts that have come to light in recent years. Finally, as BEGA suggests in its budget plan, the Council should amend the Open Meetings Act to bring Advisory Neighborhood Commissions into compliance with it. p. A-219.

message that the Council, like the Mayor, is more interested in giving the appearance that government transparency is important than in making the D.C. government more open to the public.

That is not what Councilmember Bowser intended in 2010 when she introduced the Open Meetings Act, nor in 2012 when she advocated placing the Office under BEGA's administration to overcome the Mayor's refusal to appoint a director. It is not what I believe the Council intended when it created the independent Office of Open Government with a mandate to improve government accountability by increasing public access to government records and meetings.

We look forward to working with you to reach the point where the Open Government Office can have a real, significant impact on D.C. residents' access to their government.

Thank you.

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Formed in March 2009, the D.C. Open Government Coalition seeks to enhance public access to government information and transparency of government operations of the District. We believe transparency promotes civic engagement and is critical to a responsive and accountable government. We strive to improve the processes by which the public gains access to government records and proceedings, and to educate the public and government officials about the principles and benefits of open government.

The Society of Professional Journalists is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ also promotes the free flow of information vital to a well-informed citizenry; works to inspire and educate the next generation of journalists; and protects First Amendment guarantees of freedom of speech and press. The D.C. Professional Chapter, with members representing local and national news media, is one of its largest chapter with nearly 300 members.

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