
From: Mendelson, Phil (COUNCIL) <PMENDELSON@DCCOUNCIL.US>
Sent: Wednesday, December 8, 2021 5:36 PM
To: Allen, Niquelle (BEGA) <Niquelle.Allen@dc.gov>
Cc: Setlow, Christina (Council) <csetlow@DCCOUNCIL.US>
Subject: FW: Re RPP Advisory Committee

Ms. Allen,

I am pleased to know that I misunderstood Mr. Barton's December 1 email to Josephine Bias Robinson. I did not understand it to be an initial, or preliminary, analysis, nor to be a request to the RPP's legal counsel to respond with any arguments they might have. Indeed, the final paragraph seemed quite clear that Ms. Robinson would be breaking the law and she should so advise her attorney. Incidentally, I do not believe the RPP has counsel yet.

Mr. Barton's email stated that it was based on his conversation with Ms. Robinson, but your email states that Mr. Barton was acting on a complaint received November 22nd. I request a copy of the complaint so that I may better understand the circumstances.

I appreciate your statement that you or your office will revisit the applicability of the OMA to the Advisory Committee as a threshold matter. My December 3rd letter did not fully develop arguments on that point as I was focused on both the legal authority and legal argument for OOG ruling that the Executive Director of one office cannot help another entity with scheduling a meeting or drafting documents. I will summarize, though, my thoughts on why the Advisory Committee is not a "public body":

1. It is adjunct to the RPP which Mr. Barton admits is "a non-government entity."
2. While its membership includes representatives of government agencies, they are a minority (6 of 21); and while half the members are initially appointed by the Mayor and me, thereafter the Advisory Committee itself will be responsible for appointing the 12 non-institutional members. (The remaining members are also non-government (e.g., a representative of the Washington Teachers Union).
3. To ensure no doubt as to whether the Advisory Committee's meetings must be open to the public, the statute states explicitly that the Advisory Committee will decide "the extent to which Advisory Committee meetings are open to the public." The Council did not intend that the Advisory Committee be subject to the OMA but did want to say that some of the meetings should be open.
4. The RPP is a public-private partnership by which the government shares data to get research. A P3 is not a public entity.

This list is not exhaustive on the subject but I hope it is helpful as you look at this further. Again, thank you for clarifying that Mr. Barton's email was not a final opinion. And, again, please send me the complaint that apparently started this matter.

-Phil Mendelson