



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



September 2, 2022

VIA ELECTRONIC MAIL

Fritz Mulhauser
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**RE: Healthcare Workforce Task Force, Compliance with Open Meetings Act
(#OOG-2022-0004-M)**

Dear Mr. Mulhauser:

On June 22, 2022, the Office of Open Government (“OOG”) received the complaint (**#OOG-2022-0004-M**) (“**Complaint**”) that you filed on behalf of the DC Open Government Coalition alleging that the Mayor’s Healthcare Workforce Task Force (“HWTF”) violated the Open Meetings Act (“OMA”).¹ OOG notified HWTF of the Complaint, pursuant to 3 DCMR § 10405.2; and, on August 5, 2022, the Department of Health (“DOH”) responded on behalf of HWTF.

The OMA reiterates the District government’s long-standing public policy “that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them.”² To this end the OMA requires that each public body: (1) publish meeting notices in the District of Columbia Register (“*Register*”); (2) post public meeting notices on its website, or that of the District government; (3) physically post public meeting notices in its office or a location readily accessible to the public;³ and (4) timely post public meeting records. The OMA does not require that public bodies provide a period of public comment during meetings.

Pursuant to 3 DCMR § 10400 *et seq.*, I have reviewed and assessed your Complaint; DOH’s response; HWTF’s published public meeting notices;⁴ [the DOH website](#), including its link to the [HWTF-specific page](#); OOG’s [Central Meeting Calendar](#) (“*Calendar*”); and the [posted recordings and transcripts](#) of HWTF’s meetings of May 26, June 16, July 14, and August 11, 2022. This correspondence sets out my analysis and disposition of your Complaint.

¹ Title IV of Pub. L. 90–614, added by D.C. Law 18-350, effective Mar. 31, 2011 (D.C. Official Code § 2-571 *et seq.*).

² D.C. Official Code § 2-572.

³ Pursuant to section 406(6) of the OMA (D.C. Official Code § 2-576(6)), the physical posting requirement is currently waived due to the pandemic and was not raised in the Complaint.

⁴ 69 DCR 005558 (May 20, 2022) (announcing May 26 meeting); 69 DCR 006916 (June 10, 2022) (announcing June 16 meeting); 69 DCR 008286, 008287 (July 8, 2022) (announcing July 14 and Aug. 11 meetings).

The OMA requires a public body to post a complete and timely notice of any meeting, including its agenda, “[o]n the website of the public body or the District government.”⁵ Based on my interpretation of the OMA in light of the facts revealed by OOG’s investigation, I find that: (1) HWTF has not complied with this OMA internet public meeting notice posting requirement; (2) HWTF’s uploading of transcribed recordings of its meetings satisfies the OMA’s requirement to post minutes or transcripts; and (3) the OMA does not guarantee a public-comment opportunity. I also find, *sua sponte*, an additional violation of OOG regulations regarding the content of meeting notices.⁶ The analysis below supports my findings.

I. BACKGROUND

The Complaint and DOH’s response are summarized below.

A. The Complaint

The Complaint alleges that HWTF violated numerous provisions of the OMA, as follows:⁷

1. **Notice.** Meeting notices are not on the DOH . . . website or city-wide calendar of boards and commissions meetings . . . , but only in [the] *Register*. This violates statutory requirements of “readily accessible[?]” location[] for notice and also publication on an agency web site.[⁸] The *Register* requires burdensome multi-step searching and thus is the least user-friendly of all.
2. **Meeting records.** HWTF is generally invisible to the public. There is no clearly identified page on the DOH web site . . . for the public to locate details such as updated membership, subcommittees and their chairs, meeting slides, or the records of meetings The public has learned privately from staff [that] there is a page for HWTF content, but it is not linked anywhere publicly. It is: <https://dchealth.dc.gov/hwtf22>. That page contains enlarged [HWTF] membership and committee information. It also has a link [to] recordings of the first two[⁹] meetings. That is: <https://dchealth.dc.gov/node/1597726>. At the very least, meeting records should be accessible.
3. **Virtual meeting protocol.** The . . . meeting agendas have not included a designated time for public comment. Unlike other [jurisdiction]s, D.C. open meetings law does not require [public-comment periods]. However, the sessions have raised questions about missing elements the public has come to expect in the Zoom era. In early sessions some individuals were promoted from audience to speaker without explanation. This can suggest bias in who is allowed to speak. And if some are recognized from the audience that may, as a

⁵ Section 406(2)(B) of the OMA (D.C. Official Code § 2-576(2)(B)).

⁶ Notices must state: “This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.” 3 DCMR § 10409.2.

⁷ A redacted copy of the Complaint is attached.

⁸ Section 406(2) of the OMA (D.C. Official Code § 2-576(2)) requires that notices of meetings be posted “(A) In the office of the public body or a location that is readily accessible to the public; and (B) On the website of the public body or the District government.”

⁹ By the time of this disposition, the number of prior meetings (and posted recordings) has increased. Fig. A (attached).

matter of law, create a forum that should then be generally open for relevant offerings at least without content discrimination. The audience[s] at HWTF meetings report[] they can't see all those in attendance. Attendees report two of the three chat functions were disabled meaning they could only send a question or comment to the panelists and didn't even know who they were. When they posted questions, it was unclear who saw them and they received no response.

B. DOH's Complaint Response

DOH responded, on behalf of HWTF, as summarized below:¹⁰

1. **Notice.** DOH argues that (1) HWTF's posting of notices in the *Register* is a "posting...[o]n the website of...the District government" as required by section 406(2)(B) of the OMA (D.C. Official Code § 2-576(2)(B)); or (2) in the alternative, the inclusion of HWTF on the list of "What's New" articles on DOH's homepage¹¹ constitutes sufficient notice of HWTF's meetings on its website and thus complies with that same provision.

2. **Records of Meetings.** DOH argues that HWTF's page "provides details about HWTF in compliance of [*sic*] the Act, such as updated membership, subcommittees and their chairs, meeting slides,^[12] or the records of meetings."

3. **Public Comment.** DOH argues that (1) HWTF has begun allowing participants to comment^[12] and that, in any case, (2) the OMA does not require a period of public comment.

I address the merits of the Complaint and DOH's response to the Complaint below.

II. ANALYSIS

A. HWTF is a public body subject to the OMA.

As a preliminary matter, in order to be subject to the OMA, HWTF must be a public body as defined in the OMA.¹³ Based on the following, HWTF is a public body subject to the OMA. On May 2, 2022, Mayor Bowser and Dr. LaQuandra Nesbitt, then-Director of DOH, jointly "announced the formation of a new Healthcare Workforce Task Force charged with rebuilding, strengthening, and expanding the District's healthcare workforce."¹⁴ However, OOG did not find a Mayor's Order or other formal directive establishing HWTF in the course of its investigation. Nevertheless, HWTF

¹⁰ A redacted copy of DOH's response is attached.

¹¹ Fig. B (attached).

¹² I have not investigated these allegations because, as discussed below, they are beyond the scope of the OMA.

¹³ D.C. Official Code § 2-574(3) (section 404(3) of the OMA (defining "[p]ublic body" as "any government council . . . , board, commission, or similar entity, including . . . an advisory body that takes official action by the vote of its members convened for such purpose," with exceptions not pertinent here)).

¹⁴ Press Release, mayor.dc.gov/release/mayor-bowser-and-dc-health-launch-new-healthcare-workforce-task-force (May 2, 2022). The video of the announcement is at youtube.com/watch?v=edLcYl8e7sY (Mayor Bowser and Dr. Nesbitt speak from 4:06–end).

presents itself as “an advisory body that takes official action” based upon the entities’ objectives and actions respecting its meetings. HWTF is composed of District of Columbia government officials and academic leaders charged with advising the Mayor regarding the expansion of the healthcare workforce. HWTF also posted five public meeting notices in the *Register* through August 19, 2022, which also evidences that HWTF is conducting its business as a public body subject to the OMA. Further, the Mayor’s Office of Talent and Appointments lists HWTF on its website that includes all of the District’s Boards and Commissions. Most notably, DOH conceded that HWTF is a public body in DOH’s response to the Complaint and I rely on this concession as further evidence that HWTF is a public body as defined by the OMA.¹⁵

Therefore, I find that HWTF is a public body pursuant to the OMA.

B. HWTF announced its meetings through the *Register*, though it omitted the required OMA/OOG statement; and on its website, though it omitted the required OMA/OOG statement and the agendas.

Each HWTF public meeting notice in the *Register* includes the date, time, location (all remote so far), and planned meeting agenda. OOG found in its investigation of the Complaint that HWTF conscientiously complied with the *Register*’s strict publication deadlines.¹⁶

For full compliance with the OMA’s “Notice of meetings” provisions,¹⁷ a public body must *also* post public meeting notices on its webpage or on the Calendar¹⁸ that include the date, time, location, and planned meeting agendas (access credentials are available through OOG). This step is critical because, if the *Register* notice is rejected for publication, it is crucial for the public body to have control over a source for timely posting (or revision) as late as 48 hours or 2 business days, whichever is greater, before the meeting. OOG’s review of DOH’s website, www.dchealth.dc.gov, did not reveal electronic publication of meeting notices as required by the OMA. DOH’s publication of meeting information in the “News” section of its website was not sufficient to meet this requirement because it did not include the information required by the OMA.

Also, in its review of the public meeting notice that was published in the *Register*, OOG observed that the meeting notice did not contain the required statement advising the public to refer complaints about the meeting to OOG.¹⁹ HWTF’s public meeting notices must include, at the bottom of the published meeting agenda, the required notation “This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of

¹⁵ Response at 2 (citing “the D.C. Open Records [sic] Act, D.C. Code § 2-574[(3)”).) Plus, HWTF is listed on the Dashboard (public-bodies database) of the Mayor’s Office of Talent and Appointments at octo.quickbase.com/db/bjngwsngm?a=q&qid=-1129253&isRLK=1. See OOG’s opinion that an entity may be a public body without Mayor’s Order or legislation here: [OOG-0002 - OMA Complaint Resolving Whether the Cross-Sector Collaboration Task Force is public body subject to the Open Meetings Act - Oct 7 2015](#).

¹⁶ For most purposes, a public body must deliver its notice to the Office of Documents by noon on the Thursday *before* the week *before* its meeting. See 1 DCMR § 306.11(g).

¹⁷ D.C. Official Code § 2-576 (section 406 of the OMA).

¹⁸ OOG provides access credentials to post public meeting notices on the Calendar. See [OOG-2021-0001-M AO Final.pdf \(open-dc.gov\)](#) at 1 n.5 (Sept. 20, 2021) (advisory opinion construing “the website of . . . the District government” as “OOG’s Central Meeting Calendar”).

¹⁹ 3 DCMR § 10409.2.

Open Government at opengovoffice@dc.gov” (hereinafter referred to as “regulation statement”). HWTF must include this information in its meeting notices.

Based on the foregoing, HWTF failed to properly comply with the OMA’s “Notice of meetings” provision.

C. HWTF has complied with the OMA by uploading transcribed recordings of its meetings.

The Complaint takes issue with HWTF’s lack of posted records. You state that “[t]here is no clearly identified page on the DOH web site (such as a listing under ‘About’) for the public to locate . . . the records of meetings the law requires.”²⁰

OOG’s investigation discovered that HWTF complied with the OMA to the extent that it posts recordings of its meetings that are transcribed. DOH maintains an “Open Government and FOIA” area on its website.²¹ The page on its website links, in turn, to a page of meeting minutes.²² But, as of August 17, 2022, OOG found no HWTF meeting minutes posted there, only non-working links of three other public bodies. Similarly, OOG’s review of the Calendar revealed that there are no materials for HWTF, and it has not registered an Administrative Point of Contact to post onto the Calendar. However, OOG’s investigation ascertained that HWTF’s [“Meetings” page](#) does include working links to transcribed recordings of its meetings. Accordingly, HWTF’s publication on its Meetings page is sufficient to comply with the transcript/minutes posting requirement of 3 DCMR § 10409.4. So, I find that it satisfied the OMA’s publication requirements.

The Complaint also alleged that HWTF fails to post “details such as updated membership, subcommittees and their chairs, [and] meeting slides.”²³ Again, a public body must timely post its notices and its transcripts or draft and final meeting minutes. However, the OMA is silent as to internal parliamentary details and substantive content such as “membership, subcommittees and their chairs, [and] meeting slides.” Thus, I agree with DOH that you have not raised a cognizable objection to HWTF’s display of its leadership structure, personnel, or policy substance.

D. The OMA does not guarantee a public-comment opportunity.

The Complaint also asserted that HWTF administers its public-comment period inequitably. While you concede that the OMA does not *require* “a designated time for public comment,” you note that HWTF *elects* to include a comment period yet (1) “some individuals were promoted from audience to speaker without explanation,” which “can suggest bias in who is allowed to speak,” if not “content discrimination”; (2) less than the entire audience is visible; and (3) the chat function is configured such that users “d[o]n’t even know who [the panelists a]re.”²⁴ DOH responded: “As stated in the [C]omplaint, [HWTF] has not violated a . . . meeting protocol because the [OMA] does not require public comment Further, it is the opinion of the complainant, not [evidence of a violation],

²⁰ Complaint at 2.

²¹ Fig. C (attached).

²² Fig. D (attached).

²³ Complaint at 2.

²⁴ *See id.* at 2, 3.

that the meetings have raised questions about missing elements. However, in [an] effort to increase public participation, from the July meeting onward, HWTF provided the option to ‘raise hands’ for the public to ask questions during the meetings.”²⁵

DOH is correct with regard to public comment: the OMA does not *require* any public body to allow the participation of any attendees or observers. At most, this is an internal parliamentary-procedure question; *e.g.*, if the bylaws, or a standing order—or even just an entrenched custom—of a public body provides for a comment-period, then that segment of the meeting *should* be administered consistently and fairly. The concerns raised in the Complaint, which are essentially parliamentary points-of-order,²⁶ cannot be contested under the OMA. Thus, I find that HWTF’s exclusion of a public comment opportunity does not violate the OMA.

III. CONCLUSION

I conclude that HWTF is a public body, as defined in the OMA. HWTF failed to comply with the OMA when it failed to provide notice of past public meetings on its website or OOG’s Central Meeting Calendar and omitted the required regulation statement from its meeting notices.

To remedy the OMA violation, HWTF must retroactively post its meeting agendas online, which include at the bottom of its public meeting notice agendas “This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.” Going forward, the public body must publish the same information on its meeting notices. Also, HWTF must give notice of its remaining meeting(s) on its website or the Central Meeting Calendar as well as in the *Register*.

I also recommend that DOH’s Administrative Point of Contact that is responsible for HWTF’s meeting notices register with OOG to utilize its Central Meeting Calendar and take an OMA refresher course from OOG.

²⁵ Response at 3.

²⁶ I have not investigated, and am not opining on, whether any inequities or procedural infirmities lay in the particular meetings challenged by the Complaint.

Sincerely,



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

cc:

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Attachments (6)