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FFF

June 23, 2022

*By email:* opengovoffice@dc.gov

D.C. Office of Open Government

441 4th St., N.W. Suite 540 S

Washington, DC 20002

Dear Colleagues:

This is a complaint requesting review of meetings of the Mayor’s Healthcare Workforce Task Force (HWTF) for compliance with the Open Meetings Act (OMA). We have received complaints from the community about aspects of the work so far. We request a review as soon as possible, so that there can be, if needed, guidance to the public body. The OMA may be new to the body and its private-sector co-chairs, so they may benefit from advice on how the law applies. We review the background of the body and the specifics of its work that have raised questions brought to our attention.

**The public body in this complaint**

The public body is the Healthcare Workforce Task Force (HWTF). The HWTF is #323 on a list of boards and commissions tracked by the Mayor’s Office of Talent and Appointments (MOTA): <https://octo.quickbase.com/db/bjngwsngm?a=dr&rid=323&rl=dt97>.

The MOTA page states the HWTF was established May 16 to “focus on developing recommendations that address the current stresses in the District’s healthcare system” with 28 members -- 15 public members, 10 agency appointees, and three D.C. Council appointees. No agency point of contact is listed on the form, though D.C. Health (Department of Health or DOH) is listed as the administrative agency. No enabling statute or mayor’s order are listed.

The Mayor announced the HWTF earlier, in a release May 2, <https://mayor.dc.gov/release/mayor-bowser-and-dc-health-launch-new-healthcare-workforce-task-force>. This announcement stated the body “will convene between May and September 2022, [and] will create short-term (6 month to 2 years), mid-term (3 to 5 years), and long-term (5 years and beyond) recommendations to expand the District’s healthcare workforce.” (DOH copied and reposted the release on its site.)

The announcement listed 24 members, including two deputy mayors and six senior D.C. government officials, as well as 16 leaders of universities, healthcare provider groups, and labor groups. The co-chairs are two non-government leaders, the president of Howard University and the CEO of Howard University Hospital/Adventist Health Care.

The Department of Health published Notices of Public Meetings in the *D.C. Register*, May 20 (p. 5558) and June 10 (p. 6916), for virtual meetings May 26 and June 16. Both included an agenda and no notice of closed session. An information contact listed was Darren Whetstone at (202) 934-0448 and darren.whetstone@dc.gov.

**Issues regarding compliance with the Open Meetings Act**

Our complaint is that meetings of the HWTF do not comply with specifics of the Open Meetings Act and there is generally no information about the task force publicly available.

Compliance is required as the HWTF appears to be a public body within the meaning of the D.C. Open Records Act, D.C. Code § 2-574 (3) (defining “public body” to include “an advisory body that takes official action by the vote of its members convened for such purpose”). The HWTF is established, according to the mayor’s release, to make recommendations for “**fresh ideas for how to best support current and aspiring health care workers,” including ideas for government actions to expand the health workforce such as loan repayment. This appears to be a delegation of authority by multiple D.C. agencies to the HWTF to advise on matters that clearly constitute public business.** Finding HWTF to be a public body is consistent with prior Office opinions that the law covers other advisory bodies established by D.C. agencies that are themselves exempt from the act (LSAT, cross-sector collaboration task force, uniform per-pupil funding working group, etc.).

As a public body, HWTF must hold open meetings as defined in the law, § 2-575. And the law requires as well that the text be “construed broadly to maximize public access to meetings.”

Specifically, we ask the Office to review the following aspects of HWTF activity:

1. **Notice.** Meeting notices are not on the DOH agency website or city-wide calendar of boards and commissions meetings list, but only in *D.C. Register.* This violates statutory requirements of “readily accessible location” for notice and also publication on an agency web site. 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 (such as a listing under “About”) for the public to locate details such as updated membership, subcommittees and their chairs, meeting slides, or the records of meetings the law requires. The public has learned privately from staff 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 task force membership and committee information. It also has a link labeled “Meeting Logistics,” which turns out to include recordings of the first two meetings. That is: <https://dchealth.dc.gov/node/1597726>. At the very least, meeting records should be accessible.
3. **Virtual meeting protocol.** The two meeting agendas have not included a designated time for public comment. Unlike other states, D.C. open meetings law does not require it. 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 matter of law, create a forum that should then be generally open for relevant offerings at least without content discrimination. The audience at HWTF meetings reports 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.

**The relief requested in this complaint**

We request the Office of Open Government gather full facts to understand the situation and review the law that we believe applies. We request an opinion based on those inquiries whether the HWTF is a public body whose meetings are covered by the Act. If the meetings are covered, we request evaluation of the problem areas described above (notice, meeting records, and meeting protocols for speaking and messaging). And we request the Office provide assistance if needed so that the DOH can help the task force comply promptly and start its work on a sound footing. The task force sunsets January 1, 2023, according to the MOTA information.

Thanks for your help. For any questions, you may reach me directly at fmulhauser@aol.com and 202-550-4131.

Sincerely,

*/s/*

Fritz Mulhauser

Co-chair, Legal Committee

D.C. Open Government Coalition