

Testimony of

The Hon. Kathy Patterson

D.C. Auditor

Before the

Council of the District of Columbia
Committee on the Judiciary and Public Safety

Public Oversight Roundtable on the Performance
of the
Board of Ethics and Government Accountability Office of Government Ethics

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Room 123
The John A. Wilson Building
1350 Pennsylvania Avenue NW
Washington, DC 20004

Good morning Chairman Allen and members of the Committee on the Judiciary and Public Safety. I am Kathy Patterson and I serve as the Auditor of the District of Columbia. I am joined today by Ingrid Drake, who served as auditor in charge of our report, [BEGA Mishandled Whistleblower Complaint on Housing Procurement](#), published on October 2, 2019.

On October 28, 2019, *The Washington Post* ran an article in the Style section headlined, “The Whistleblowers Among Us.” An opening paragraph read,

In a way, whistleblowers are like angels, looking after the well-being of government and corporations on behalf of the public – which may never be aware of their existence, let alone their names. They report waste, fraud, and abuse on a daily basis all across Washington and the private sector. Federal whistleblowers made more than 3,300 disclosures in fiscal years 2017 and 2018. Members of the intelligence community contacted their own whistleblowing hotline 563 times in fiscal 2018 and are on pace to exceed that number this year.

I am here today to share the story of a District of Columbia government whistleblower, someone who may at some point come forward publicly but who has not yet done so, though the individual’s name unfortunately was made public by a member of the Council of the District of Columbia. I will refer to the whistleblower as “he.”

Between spring of 2015 and 2019, the Office of the D.C. Auditor (ODCA) published six reports on the District’s Housing Production Trust Fund (HPTF), our government’s highest priority program aimed at the challenge of affordable housing. The series of studies was prompted by a request by D.C. Councilmember Jack Evans who was concerned with whether taxpayers were getting the bang for their buck to the tune of \$100 million invested each year.

During the early stages of that work the ODCA team concluded that the internal procurement procedures at the Department of Housing and Urban Development (DHCD) worked well. We documented that there were multiple internal controls in place within the Development Finance Division (DFC), including a flowchart of the RFP process, a detailed handbook for project management and underwriting, supervision, and a thoughtful allocation of staff resources to ensure that all proposals were treated the same. Another important control was in place: when criteria had room for subjectivity, two scorers were assigned, and their scores were either averaged or discussed and consensus reached. Because of the apparent quality of this internal review process we turned our own attention to an area that appeared to present more risks, the management of the program after funding was awarded.

We assumed we had completed our HPTF work when a member of the ODCA team received an email in February 2019 from one of the officials we had interviewed on the procurement procedures. In a telephone conversation he explained that he had been very concerned with the decision-making process in Spring 2018 to the point where he had filed an ethics complaint with both the Board of Ethics and Government Accountability (BEGA) and the Office of the Inspector General (OIG). He asked if we would be able to check on what had happened with his complaint. He essentially claimed that political pressure caused recommendations made by the internal procurement review to be overturned by the department’s leadership. By the time he reached out to us, the whistleblower had left District government.

We decided to review his complaint and on May 30, 2019, published another report on the HPTF titled **Low Ranked Projects Secure Affordable Housing Funds**. We substantiated the whistleblower's claim that the ranking of projects by the well-ordered and objective criteria we had documented had, in fact, been overridden and two low-ranked projects had gotten funding. The other projects with higher rankings received funding, but not until a year later.

Our next step was to turn to the whistleblower's complaint itself and what had become of that complaint. As the chairman knows, it had been my hope initially that this Committee, given its responsibility for oversight of BEGA, would launch its own investigation of the whistleblower's complaint. Instead, ODCA was asked to do a focused investigation to learn what had become of the whistleblower's complaint.

To do that we reviewed emails to and from BEGA, including the email accounts of the Director of Government Ethics, the BEGA General Counsel, and various other officials within the Bowser Administration. Our effort was two-pronged: to look for email communications that would corroborate the allegation of political pressure from senior officials in the Bowser Administration and look also for what was done by BEGA on the whistleblower's complaint. We found no email traffic that corroborated the claim of political influence. This does not mean there was no such pressure but does indicate that if there were such communication it was not conducted over D.C. government email.

We did document what was done or, more precisely, what was not done with the complaint made by the DHCD whistleblower. I will share that timeline which includes ODCA's own outreach to BEGA.

- On June 14, 2018, the whistleblower submitted his complaint to BEGA by email to the BEGA General Mailbox and mentioned he was also sending it to the OIG.
- The following day then-BEGA General Counsel Brian Flowers retrieved the complaint and forwarded it to Director of Government Ethics Brent Wolfingbarger.
- The following week on June 20, 2018, Mr. Wolfingbarger responded to Mr. Flowers's email and wrote, "Let's keep this as an undocketed matter for now, add this as an agenda item for our meeting on Monday [June 25] with the OIG, and we'll decide how to proceed after that discussion."
- On June 25, 2018, the OIG referred the matter to BEGA by email stating in an attached letter, "Our analysis determined that BEGA is in the best position to address the issues raised."
- More than a month later, in August 2018, the whistleblower contacted BEGA to request confirmation that his complaint was received and also resubmitted it using the BEGA Complaint Form submission process.
- On August 10, 2018, Mr. Flowers responded to the whistleblower by email stating that both copies of the complaint had been received.
- Our review of BEGA emails throughout the summer of 2018 found no evidence the matter was assigned a tracking number or initiated as an investigation nor any indication that it was on an agenda for regular meetings between BEGA and the OIG.

- Early in 2019, the whistleblower contacted this Committee and on February 20, 2019, a member of the Committee staff contacted Mr. Wolfingbarger by email to ask that BEGA reach out to the complainant about the status of this complaint. Mr. Wolfingbarger responded on the same day writing, “Will do.” We saw no evidence that anyone from BEGA reached out to the whistleblower.
- On February 22, 2019, the whistleblower contacted ODCA by email to discuss “ODCA’s ongoing oversight of DHCD and HPTF [Housing Production Trust Fund].” In a telephone conversation with two ODCA auditors he described his actions filing complaints with BEGA and OIG and said he had not heard from either agency in seven months.
- On May 30, 2019, I called Mr. Wolfingbarger and left a message that we were issuing a report that referenced a complaint made to BEGA nearly a year earlier. On June 2, 2019, I had not heard from Mr. Wolfingbarger so emailed him a copy of the report which refers to “confidential information regarding the discrepancies between DFD’s [DHCD’s Development Finance Division] and the proposals that were selected by the DHCD Director.”
- On June 5, 2019, I contacted Darrin Sobin, the former Director of Government Ethics now serving as a BEGA board member, and let him know of our report referencing the BEGA complaint. He indicated he would follow up and apparently did because I heard within an hour from Mr. Wolfingbarger. We traded phone calls and in response to his request I sent him another copy of the whistleblower’s complaint.
- The BEGA board met the following day. According to notes of that meeting the DHCD whistleblower’s complaint was discussed in closed session. According to the notes Mr. Wolfingbarger told the Board that ODCA had released an audit report, which I had indicated was related to a complaint filed with BEGA last summer. He reportedly said he could not find it in BEGA’s case management system but did find emails indicating that they were to discuss the matter with the OIG. The draft notes state that Mr. Wolfingbarger said, “I think it is likely we decided to wait until the OIG completed its review of the allegations before opening an ethics investigation, but I will obtain a status report from the OIG at our next meeting on June 20 [2019]...”.
- The BEGA Board met again July 11, 2019. According to the notes, Mr. Wolfingbarger told the BEGA Board, again in closed session, “I discussed this matter with the OIG at our meeting on June 20 and confirm the OIG is no longer investigating the matter, so I created a new preliminary investigation (Case #19-0010-P) related to this Complaint in CMTS and assigned it to [investigators].”
- The BEGA Complaint Report for the period April 1, 2019–June 30, 2019, includes BEGA Case #19-0010P, with the description, “Allegations that senior staff in a District agency directed District employees to manipulate a procurement process for improper purposes.” The date initiated is listed as June 26, 2019.

That concludes a summary of the timeline reflected in the report we issued on October 2, 2019, titled [*BEGA Mishandled Whistleblower Complaint on Housing Procurement*](#). In our review of emails that documented the mishandling of the whistleblower complaint and the misinformation given to the BEGA

board on whether the OIG was investigating, we saw other instances of BEGA failing to respond timely to investigative requests and ethics inquiries from District employees. For the Committee's benefit we included that additional information in the October 2, 2019, report.

Mr. Chairman I would like to return to *The Washington Post* quote. Whistleblowers serve the public. In this instance an effective and productive District employee was so troubled by what he saw as unethical behavior in his agency that he filed a complaint with the government agency created precisely to respond to such concerns. This government has lost the services of someone who appeared to the ODCA team to be a diligent and productive public servant—in all likelihood because of a perception of unethical behavior at his agency which was exacerbated by the failure of the ethics agency to respond. I am glad that BEGA has now opened an investigation into his complaint. But justice delayed is justice denied and harm has been done. We have not served that employee well. And failures should have consequences.

Thank you for holding this hearing today. I hope you and the BEGA board will provide assurances to employees throughout the District government that good and effective work performed on behalf of District taxpayers will be respected and will be protected.

I would be happy to respond to questions.

Reports on the District's Housing Production Trust Fund by the Office of the D.C. Auditor

- ▶ **March 15, 2016:** Management Alert to the Department of Housing and Community Development Regarding the Housing Production Trust Fund
- ▶ **June 30, 2016:** The District of Columbia Housing Production Trust Fund: Revenues and Expenditures and 5-City Comparison
- ▶ **March 17, 2017:** DHCD Should Improve Management of the Housing Production Trust Fund to Better Meet Affordable Housing Goals
- ▶ **March 20, 2018:** Stronger Management of the Housing Production Trust Fund Could Build More Affordable Housing
- ▶ **April 12, 2018:** How Not to Create Affordable Housing: A Cautionary Tale About Disappointed Homeowners and Lost Taxpayer Dollars
- ▶ **May 30, 2019:** Low-Ranked Projects Secure Affordable Housing Funds
- ▶ **October 2, 2019:** BEGA Mishandled Whistleblower Complaint on Housing Procurement