

Baltimore County Blue Ribbon Commission on Ethics and Accountability
Meeting Minutes – Thursday, June 30, 2022
5:30-8:30 p.m.
Meeting held via Zoom

Present

Rev. William Johnson, Chair
Ms. Joanne Antoine
Brigadier General Janeen Birckhead
Ms. Kathleen Cox
Mr. Thomas Glancy
Mr. Jon Laria
Ms. Cynthia Leppert

Not Present

Mr. Joseph F. Murphy, Jr.

Schaefer Center Staff Present

Dr. Ann Cotten
Dr. Sarah Ficenec
Ms. Savannah Smith

Baltimore County Staff Present

Baltimore County Inspector General Kelly Madigan

1. Call to order

- The meeting was called to order by Chair Johnson at 5:34 p.m.

2. Welcome

- The Chair announced the agenda for the meeting and reminded the audience of housekeeping items including: The session was being recorded; the agenda was shared with the commission members directly and was posted to the commission website; and the meeting is set to end at 8:30PM but should the commission make it through the agenda early, we will end early.

3. Review of Minutes of the Previous Meeting

- The Chair asked if Commission members had any comments or changes on the minutes from the previous session, which they had been provided earlier. There were no comments from the Commission members, and the minutes were approved as distributed.

This Commission is staffed by the Schaefer Center for Public Policy at The University of Baltimore.

The Commission webpage is: BlueRibbonEthics.ubalt.edu
The Commission email address: BlueRibbonEthics@ubalt.edu

4. Presentation by Baltimore County Office of Inspector General

- Kelly Madigan, the Inspector General for Baltimore County, presented an overview of the Office of Inspector General (OIG), its history, current funding, and other operational matters. She also reviewed the Baltimore County Ethics Commission, for which she serves as Director, including its activities and budget. For both the OIG and Ethics Commission, she also presented data from comparable offices in Maryland and Ohio.
- Commission members asked questions throughout the presentation. These questions included:
 - Mr. Laria asked about how the statute initially establishing the Office of Ethics and Accountability, which was later revised to the Office of Inspector General. Ms. Madigan said the legislation was copied from that establishing the Office of Ethics and Accountability in Prince George’s County. Mr. Laria noted that the Blue Ribbon Commission could recommend amending the establishing statute as part of its scope of work, and Ms. Madigan said she would recommend improving a part of the statute but most of it consistent with the model legislation for OIGs.
 - Mr. Glancy asked if the model statute from 2002 provided to Commission members had been updated. Ms. Madigan said she would check but did not think there had been changes.
 - Chair Johnson asked if the two weeks her office provides the County administration for responding to draft reports is in the enabling statute. Ms. Madigan said it was not and had given up to six weeks for response when requested. It is part of the office’s policies and procedures.
 - Mr. Laria asked Ms. Madigan to confirm that there is no language in the statute about the report response process. She confirmed that was the case and said she interpreted language to “make recommendations” in the legislation as part of the report process. She initially provided the report drafts to the agency heads and cc’ed the County Executive, County Administrative Officer (CAO), etc., but now sends the draft reports to the CAO and carbon copies the agency director. Mr. Laria asked if there had been any cases in which the administration had not provided a response. Ms. Madigan said there was one draft report for which her office only received a response after the report was posted on the IG’s website. She also said she believes providing stakeholders time to respond to draft reports is one of the ways the office is accountable to County residents.
 - In response to a question from Ms. Cox about the OIG following up on complaints it receives and making recommendations, Ms. Madigan said most of the office’s reports have had recommendations, usually in the conclusion. She also noted that her office does not have enforcement power – it can only make recommendations, but cannot make a change happen, including in cases of employee discipline.
 - Chair Johnson asked if the response provided by the administration could change the report. Ms. Madigan responded that it was possible for that to happen but has not happened yet beyond a few minor corrections. Chair Johnson followed up by asking what would be posted on the IG’s website if there were major corrections, and Ms.

Madigan said the reply with the correction would probably be posted but had not encountered this situation yet.

- BG Birckhead asked if the OIG was adjudicating cases, and Ms. Madigan responded it was not.
- BG Birckhead asked what Ms. Madigan considered an “administrative” investigation compared to civil or criminal investigations, and Ms. Madigan said almost all of the cases the office investigates are administrative. When she receives information about possible criminal issues, she refers to the proper authorities. The statute does say her office can conduct criminal investigations jointly with other law enforcement, but her office cannot prosecute such investigations. In addition, Ms. Madigan said part of the reason the office has almost only investigated administrative issues is because of limited resources since the office received 155 complaints in the previous year and had only 1.5 staff members.
- Ms. Antoine asked if there were examples of when a complaint has been forwarded to a different agency but comes back to IG’s office after the other agency investigates. Ms. Madigan said that had not happened yet, but noted the referral included language that the other agency should not hesitate to contact the OIG if it would be the more appropriate investigator.
- Mr. Laria asked how the office would decide to investigate something if it was not in response to a complaint. Ms. Madigan said some IGs have an audit function, and that can be done on a regular schedule. In Baltimore County, the County Auditor is responsible for fiscal and performance audits by statute and has to be licensed. Ms. Cox asked if something could be investigation based on media investigations, and Ms. Madigan said yes, the media could bring something to her attention. BG Birckhead stated that it might not always be clear how responsibilities between the IG and Auditor are divided, such as on contracts. Mr. Laria followed up by noting that when Ms. Madigan outlined the purpose of the IG office earlier in her presentation, she mentioned “efficient” which sounds more like an Auditor role rather than an IG. Ms. Madigan responded that there are a number of OIGs that only do investigations and not audits; combining the responsibilities in one office happens mostly at the federal and state levels.
- In response to a statement from Mr. Glancy about the extent of the powers of the OIG with respect to waste and corruption, Ms. Madigan said that the main issue concerning the extent of the office’s powers concerned its unrestricted access to records, since she feels the office needs all relevant information to investigate a complaint. In some cases, she has only been able to close a case because she had all the relevant information.
- Mr. Glancy asked if the County OIG statute requirement of 90 days wait before issuing a subpoena is unusual or best practices, and Ms. Madigan said most OIGs do not have that wait and it was not best practice. Ms. Antoine asked if there had been situations where the custodians of records did not respond to the OIG’s request, and Ms. Madigan said that had not been her experience and she works to have good

relationships with agencies' leadership. She thought it would be more likely to need to issue a subpoena to a Baltimore County vendor or company rather than a County agency, but would first request the information prior to issuing a subpoena. Mr. Laria asked if the legal consequences for noncompliance were different between requesting records by email and issuing a subpoena, and Ms. Madigan confirmed that there was a legal difference and that if an office has subpoena authority it should be able to issue a subpoena when appropriate. Mr. Laria suggested that an IG needs to be trusted and have the authority to make sure information would not be destroyed before a subpoena could be issued.

- Mr. Glancy noted that the Ethics Office is reactive and asked if the OIG was as well. Ms. Madigan said the OIG can start an investigation without a complaint but that is a resource issue.
- Mr. Laria asked if there was a template for the County OIG reports and, if so, how it was developed. Ms. Madigan said most reports have a similar structure and that structure has been modified slightly. She was not sure if there was a best practice on report structure, but said her goal was to make the reports readable for the average County resident.
- Ms. Leppert asked where Ethics Commissions are housed in comparable jurisdictions that have a standalone OIG, and Ms. Madigan said both the Montgomery County and Maryland Department of Education had separate Ethics Commissions.
- Ms. Leppert asked if Ms. Madigan got advice from the County Law Office, and Ms. Madigan said she did not have independent counsel. Ms. Leppert asked if the comparable OIGs did have their own counsel, and Ms. Madigan said they did and it was not unusual for an OIG to have its own counsel. Mr. Laria asked who would defend the OIG in any legal instances, and Ms. Madigan noted it would be the County Law Office, since it represents all county agencies unless the conflict is between two agencies, in which case one agency would need to obtain separate counsel. Mr. Laria asked if other County agencies have their own in-house counsel, and Ms. Madigan said the School Board and County Council do. In response to Ms. Leppert's question if the County Executive and County Council have the same lawyer, Ms. Madigan said it would be better for the County Attorney to respond to that. Ms. Leppert said it would be useful to look at similar issues with respect to other offices, and Ms. Madigan said the data she presented on comparable offices was obtained by looking at public budgets.
- Ms. Cox asked if there was caseload data that correlated with the growth of comparable OIGs' budgets. Ms. Madigan did not know but assumed there had been justifications for the increases. Ms. Cox asked if there were national standards for IG caseloads, and Ms. Madigan was unaware of any but did appreciate the County providing three additional positions in the most recent budget in response to number of complaints received and reports produced.
- Mr. Glancy asked if it would be possible to estimate the amount of revenue generated in response to OIG reports, and Ms. Madigan said she would prefer to show the savings identified within reports and also shows the office's value in annual reports. Mr. Laria

said it would be preferable that OIGs are not incentivized to pursue cases only for the monetary return to the County. Ms. Madigan agreed but said it was important to consider the value added of the office, which is produced in different ways that are not always monetary.

- Ms. Madigan identified the office's challenges at the conclusion of her presentation as: resources, including the work she does for the Ethics Commission; the issue of independent legal counsel, which is also a resource issue; independence, defined as her budget being part of the County Executive's request even as OIG investigations may find fault with the administration; the Code of Conduct she and the CAO developed for County employees not yet being implemented; and issues doing outreach to both County employees and residents due to COVID-19.
- Ms. Antoine asked what outreach from the OIG would be and if it would include staffing, and Ms. Madigan said that would be ideal since she currently writes her own press releases and does her own redactions.
- Mr. Laria asked if the Code of Conduct was to be updated regularly, and Ms. Madigan did not know how frequently it needed to be updated although she had asked that in the past. Mr. Laria also asked why the policies and procedures for the OIG were confidential, and Ms. Madigan said it was because they included investigative techniques and that most agencies have separate public and internal policies and procedures.
- BG Birckhead asked if Ms. Madigan had data on the average processing days for a complaint to filing, and Ms. Madigan said she did not track that information due to resource issues. She also noted that there was some information on trends in the investigations included in the annual report the OIG produced.
- Ms. Antoine asked what happened when County residents whose first language is not English or who are hard of hearing call the OIG tip line. Ms. Madigan said they would get the needed resources immediately. She noted that she also makes sure videos and reports are accessible.
- Chair Johnson thanked Ms. Madigan for her presentation, and she noted she would be happy to return to answer further Commission questions or to respond in email. Mr. Glancy asked who she would recommend the Commission speak with as it gathered information, and she respond to Commission comments or question. Mr. Glancy asked who she recommends the Blue Ribbon Commission speak with or if there was additional model documentation she recommended, and she encouraged the Commission to talk to other IGs to learned what they did and what worked for their offices.
- Chair Johnson noted that he had been but was no longer a member of the Association of Inspector generals and a certified IG.

5. Subcommittee Reports

- Chair Johnson asked if BG Birckhead or Ms. Cox, the heads of the Commission’s subcommittees, had any comments, and Ms. Cox noted that there would be an organizational meeting on July 7th when they and Chair Johnson will start planning the subcommittees’ work.

6. Review of Outstanding Items from Previous Meeting

- In response to questions from the Commission, Executive Order No. 2021 025 was distributed to the commission. It stated that the goal of the commission is to “develop recommendations to modernize the Public Ethics and Open Government laws and the Office of Inspector General in accordance with best practices”. He also said there had been a request to change the due dates in the Executive Order due to the delay in the Commission starting its work.
- Chair Johnson reviewed the topics that had previously been presented as part of the Commission’s charge with respect to the duties and responsibilities of the OIG and asked if there were any comments and changes by Commission members. Mr. Laria suggested that the task related to "Process and timeline for submission of executive response to reports” be modified by removing “executive” so it would include legislative response. There were no objections to this change.
- Chair Johnson reminded the Commission of the list of questions that were written to guide the Commission’s work and were shown at the first meeting. In response to his question if there were any changes in response to the Executive Order or Ms. Madigan’s presentation, Mr. Laria asked for more time for the Commission for review. Chair Johnson agreed. Ms. Antoine asked if the Commission’s work was limited to the scope presentation, and Chair Johnson said it was not. Dr. Cotten said Commission members could send her any proposed changes.
- Dr. Cotten reviewed the changes in the Ethical Climate Survey of Baltimore County employees and board or commission members in response to Commission comments as well as comments from Ms. Madigan. Dr. Cotten said the plan was to launch the survey in the next week.

7. Commission Business

- Dr. Cotten explained the process the Commission would use if it would need to go into closed session. This would entail Commission members leaving the public webinar, going into a private Zoom session, then returning to the public webinar at the conclusion of the closed session.

8. Adjournment

- Mr. Glancy proposed a motion to adjourn, and the meeting was adjourned at 7:50 p.m.

Action Items

Item	Responsible Party
• Clarification if the 2002 model legislation for OIGs was the most recent	Kelly Madigan
• Suggested changes to list of questions that will guide Commission’s work	Commission members