



**DISTRICT OF COLUMBIA
D.C. Water and Sewer Authority
Board of Directors
Customer and Community Services Committee**

**Tuesday, May 20, 2008
11:00 a.m.**

Meeting Minutes

Committee Members Present

Alan Roth, Chair
Brenda Richardson
Joseph Cotruvo
Howard Gibbs

Other Board Member Present

David J. Bardin

Staff Members

Jerry N. Johnson, General Manager
Johnnie Hemphill, Chief of Staff
Michele Quander-Collins, Public Affairs Director
Gordon Fry, Government Relations Director
Charles Kiely, Ass't GM, Consumer Services
Donna Lewis, Acting Customer Service Director
Avis M. Russell, General Counsel
Linda R. Manley, Board Secretary

Call to Order

Mr. Roth called the meeting to order at approximately 11:20 a.m. He noted that copies of the Public Information Policy Implementation Plan, approved by the Committee on November 30, 2007, were being distributed at today's meeting to Committee members and relevant staff. This is to allow the Committee ample time to review the plan and to be better prepared to evaluate the benchmarks and desired objectives at its June 2008 meeting.

FOIA Response Policies and Practices

Mr. Roth provided the Committee with a brief overview of a complaint that he received regarding an outstanding FOIA request. He informed the Committee that he and Chairman Martin received a compilation of emails and attached documents from an individual who requested information through FOIA, expressing her frustration with her attempt to obtain responses and adequate production of documents from WASA that she feels she is entitled to under FOIA. Some of these requests have been outstanding for as long as two years without clear and final resolution. After reviewing the information, Mr. Roth forwarded a list of questions and requests to the General Manager and the General Counsel that dealt with the issues surrounding this FOIA request and requested that the responses be made available to interested Committee members as well. In response to Mr. Roth's request, staff provided most of the WASA documents requested by Mr. Roth together with responses to most of Mr. Roth's questions.

After reviewing the documents and responses from staff, Mr. Roth developed a set of questions and concerns regarding WASA's policies and procedures in dealing with FOIA requests. He read the list of questions and concerns to staff and, because he hadn't had the opportunity to type them up and have them copied prior to the meeting, committed to emailing the list to the General Manager and the General Counsel for response after the meeting, as well as to the Committee members. He noted that while it would be unproductive to attempt to deal in detail with his ten follow-up questions at today's meeting, he invited the General Manager and General Counsel to provide whatever responses they felt appropriate at this time and welcomed more detailed comment from them at a later date. [A copy of the questions/concerns was e-mailed by Mr. Roth on May 22nd to the General Manager, General Counsel, and Committee members, and is attached for the full Board's information.] He indicated that he would also continue to pursue answers to the questions raised by this case on a separate track, all in an effort to improve WASA's current FOIA process.

Ms. Russell reported that in looking at the summaries of FOIA requests received by WASA for the last five years there have been only three FOIA requests that have required her attention and that it is incorrect to assume that there is a systemic problem in responding to FOIA requests – she asserted that the vast majority of FOIA request are handled in a timely manner. She noted that there are no written policies or procedures, but rather there is an “internal process.” She gave the Committee a brief overview of how FOIA requests are processed from receipt to conclusion.

Ms. Russell discussed the Holder Archives and why the decision was made for WASA not to take physical custody of documents now being held by Mr. Holder, access to which was sought by the requestor. She made the point that WASA has no obligation to pursue documents from third parties. She also gave the Committee an explanation for having not completed another FOIA request that was brought to the Committee's attention at the Public Hearing on DC Drinking Water Quality earlier this month.

Ms. Russell gave the Committee an overview of the outstanding issues concerning the FOIA request brought to Mr. Roth's and Chairman Martin's attention. She noted that she believes that WASA has already responded to the outstanding requests – this requestor has been informed that WASA does not have the documents that are being requested. In addition, Ms. Russell noted that this requestor has submitted another FOIA request as of May 19, 2008. Ms. Russell also noted that there was extensive communication between her office and this FOIA requestor by emails, letters and undocumented telephone conversations.

Mr. Roth noted that if WASA's goal is to handle communications with openness and transparency, then the way this matter has been handled is not consistent with that goal. There was additional discussion on suggested methods that could have been pursued to obtain some of the documents that were requested by this requestor. In addition, other concerns were raised.

In particular, as to the so-called “Holder archives” – documents currently in the custody of a law firm retained by the Board, not by the General Manager or General Counsel – the requestor was never told that her request for access was denied on the basis of attorney-client privilege and/or the attorney work-product privilege. Instead, the staff simply told the requestor that WASA is not required to provide documents maintained by third parties and that therefore WASA was unable to comply with the request. The Board was never advised that a requestor had sought access to certain materials in the files of the Board’s own lawyer, and the Board was thus never given the opportunity to consult with Mr. Holder to decide whether and to what extent the documents in question were covered by any privilege, and to what extent, in the interest of openness and transparency, the Board might wish to make any of these documents, whether privileged or unprivileged, available to the requestor.

As to another set of requested documents, there was no explanation for why no one at WASA kept a copy of certain potentially sensitive materials that apparently, at least at one time, were in the possession of a former WASA contractor. Citing a paragraph of the Holder Report, the requestor alleged that these materials would show a conscious decision to avoid residential lead sampling in certain sections of Ward 4. While the General Counsel wrote to her counterpart at the contractor seeking the documents, that request was ignored and, after seeking advice from outside counsel, WASA abandoned the effort to obtain those materials in spite of its contractual right to them and despite the fact that the contractor had been paid in excess of \$22 million by WASA over a period of years. The Board was never apprised of these issues either.

Mr. Roth made the point that all of the efforts the Board and staff have been making to improve WASA’s public image through the media and public outreach will be for naught if WASA itself continues to give its most vocal critics the ammunition to claim that WASA is hiding the truth.

The Committee agreed unanimously that there is a need to have a written policy and written procedures governing FOIA practices and requests and invited staff to prepare a first draft for the Committee’s review. The General Manager indicated that he would like to confer with the General Counsel before committing to providing a first draft for a FOIA policy and would let the Committee know his response by the end of the week.

Broadcasting/Webcasting of Board Meetings

- **Preliminary Report and Analysis on Technical Requirements and Costs**

Ms. Quander-Collins reported on three options she had explored for the broadcasting and/or webcasting of WASA Board meetings, with the philosophy that WASA cannot cut corners in the quality and sophistication of its production. Option one would be to obtain the services of Channel 16, which has a lot of advantages in terms of marketing to a viewing audience. Channel 16 would tape the meetings at Blue Plains and take the tapes back to its studio for editing, including the insertion of titles and/or any audio/visual presentations made at the meetings. Depending on how long it takes to do

the edits, there could be a delay of up to a week before the tape is ready to air on the network or the website. This method would require a 3-camera taping.

Option two requires a four-camera taping, "live to tape," in a DC Council hearing room at the Wilson Building. Although this option is less labor intensive for the crew because the meeting and production would take place at the Wilson Building, where the video and audio equipment is already installed, the parking in that area is scarce, and this option would require staff to transport documents, presentation material, and any other needed equipment before every Board meeting. In addition, WASA could be bumped at anytime by the Council.

Option three involves purchasing equipment for installation at Blue Plains and server space to host the webcast. WASA would also have to contract with a vendor that specializes in digital solutions for PEG channels and government webcasts. One company Ms. Quander-Collins looked at provides a solution called Toastmaster, which is a single-user system for switching, audio mixing, using titles/text and encoding to digital format. It also requires WASA to purchase four cameras.

The Committee requested more detail on option three, including the cost for an operator, and on trying to reduce the cost of option one. The Committee also asked staff to look into possibly using the DC Public Library's equipment and staff as an option for taping the Board meetings, and also asked staff to talk to the Board of Education and the Board of Zoning Adjustment to obtain additional input on their methods and expenses for broadcasting and/or webcasting their meetings.

SPLASH Program

- **Report on Discussions with Greater Washington Urban League**

Staff met with the Urban League on April 21st and Mr. Hemphill reported that the leadership at the Urban League is quite enthusiastic about its partnership with WASA. WASA's current agreement with the Urban League includes an incentive for both improved outreach as well as increasing the level of funding for the program. They have had success in increasing the level of funding. Mr. Hemphill noted that staff believes that WASA has had some success with the program in terms of administration and improved outreach.

The focus going forward will be to work with the Urban League to increase the fundraising. Public Affairs and Customer Service staff will be meeting to discuss the coordination of outreach to the public. He also noted that one of the best opportunities that WASA has is outreach to the corporate community, which will be handled by the Urban League. Mr. Kiely added that in terms of applicant approvals, the Urban League is slightly ahead of the Salvation Army's pace. They have actually reached out to 337 customers with \$105,621 of distributions to customers from May through March 2008.

High-Use Notification Alert (HUNA) Update

- **Report on Number of Current Users and Cost of Mail Notification**

Mr. Kiely noted that at the last Customer & Community Services Committee meeting, the Committee asked staff to do an analysis on the cost to provide mail notification service with a given set of parameters to customers who don't use or have access to HUNA. He noted that he contacted the billing vendor and that the programming cost would be in the range of 20 to 30 thousand dollars in addition to transaction cost of 19 cents plus postage for everything that is generated (approximately 51 cents). The vendor also cautioned that we would be running into the Impervious Surface Area Rate billing changes. Rather than pursuing programming at this time, which would definitely interfere with ongoing work, staff is proposing that it aggressively update its telephone database.

In response to a question on the risk of liability for such a program, Ms. Russell explained that WASA has been successful in a couple of instances where the courts have determined that WASA is not liable for notifying residents when they have an internal problem. The concern is that the more proactive WASA becomes, the more WASA increases the risk of exposing itself to liability. She also suggested that if WASA goes forward with this program, that it implement a disclaimer. In response to a question from Mr. Roth, she noted that she would look at dealing with the disclaimer in the form of a promulgated regulation.

Website Review and Overhaul

- **Report on Correction of Errors and Gaps in E-Board Site**

Mr. Lodhi reported that staff has corrected all of the errors that were brought to IT's attention and that staff will continue to review the website's content for quality control. In response to a question from Mr. Bardin, he noted that a special section called "e-Boardroom" has been set up for Board members which allow use of an advanced search engine for website documents. He will provide the user ID and password to Ms. Manley to pass on to all Board members.

Hearing no other business, Mr. Roth adjourned the meeting at approximately 1:40 p.m.