

EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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March 20, 2008

Robert V. Hess
Commissioner
Department of Homeless Services
33 Beaver Street
New York, NY 10004

Re: Resolution #08/01-071/Preliminary Determination Pursuant to the Audit of the Department of Homeless Services (DHS) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through June 30, 2006.

Dear Commissioner Hess:

Pursuant to Chapter 36 of the New York City Charter, the Equal Employment Practices Commission (EEPC) is empowered to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women. (New York City Charter, Chapter 36, sections 36(d)(2) and (5).)

The Charter defines city agency as any "city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government, where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

This letter contains the preliminary determinations of EEPC pursuant to its audit of compliance by the Department of Homeless Services (DHS) during the eighteen month period commencing January 1, 2005 through June 30, 2006. Requests for corrective actions and/or recommendations are included where the EEPC has determined that the DHS has failed to comply in whole or in part with the City's EEO Policy.

All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the EEO policy, which, in accordance with section 815 of the City Charter, holds agency heads responsible for the effective implementation of Equal Employment Opportunity. Therefore, the Department of Homeless Services should incorporate these recommendations in its agency-specific EEO Plan. The relevant sections of the City's EEO Policy are cited in parenthesis at the end of each recommendation. In addition, this Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment plans for minority group members and women.

The purpose of this audit is to evaluate the agency's compliance with the City's EEO Policy, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope and Methodology

Audit methodology included an analysis of the DHS's Agency Specific Plans, quarterly EEO reports, and responses to an EEPC Document and Information Request Form. In addition, EEPC auditors conducted in-depth, on-site interviews with the DHS's former EEO officer, career counselor, two EEO investigators, and the personnel director. The DHS's newly appointed EEO Officer Douglas James, who was appointed in June 2007, did not participate in this audit. Therefore, all indication of "EEO officer" in this letter refers to the former EEO officer. The DHS's Audit Director, Michael King, and the agency's Audit unit staff coordinated the EEO staff interviews and insured that all of the documents requested by the EEPC were submitted.

A survey of 1,000 people employed by the DHS during the audit period was distributed. (This number excludes 84 surveys that were returned as undeliverable.) One hundred twenty-two people (12.2%) responded. The results of these surveys are discussed in the proceeding pages and also attached. (Appendix 1)

Description of the Agency

The DHS was established as a permanent agency by Local Law 19 of 1999. The Department of Homeless Services' mission is to provide temporary emergency shelter for eligible homeless people in a safe, supportive environment, in partnership with public and private agencies. In an atmosphere of cooperation and respect, the DHS delivers services through a continuum of care, where the client assumes responsibility for achieving the goal of independent funding.

Personnel Activity During the Audit Period

During the audit period, 427 people were hired: 77 Caucasians, 250 African-Americans, 71 Hispanics, 27 Asians, and 2 Native Americans. Of the individuals hired, 239 were female. Two hundred sixteen individuals were promoted during the audit period: 54 Caucasians, 115 African Americans, 30 Hispanics, 15 Asians, 1 Native American, and 1 unknown. Of the employees promoted, 115 were female. (Appendix 2)

The DHS reports that 149 full-time employees were involuntarily separated during the audit period: 13 Caucasians, 109 African-Americans, 5 Asians, 21 Hispanics and 1 Native American. Ninety-two of those individuals were female.

As of December 2006, the DHS employed 2,077 people: 349 Caucasians, 1,294 African Americans, 343 Hispanics, 80 Asians, 9 Native Americans, and 2 unknown. Nine hundred and fifty-eight of the employees were women (46%). Between December 2005 and December 2006, the total number of DHS employees decreased by 8% going from 2,255 to 2,077. The percentage of African-Americans, Hispanics, and Asians remained the same (Appendices 3 and 4).

Discrimination Complaint Activity During the Audit Period

Thirty internal discrimination complaints were filed during the audit period: 13 were based on multiple categories, 7 were based on sexual harassment, 3 were based on gender, 2 were based on race, and one each was based on age, sexual orientation, disability, religion, and retaliation. Eight of the complaints were administratively closed, 7 received no probable cause determinations, 6 received probable cause determinations, 5 were withdrawn, 2 were unsubstantiated and 2 were mediated.

Twenty-seven external complaints were filed against the agency during the audit period. Thirteen were based on multiple categories, 7 were based on disability, 3 were based on sexual orientation, 3 were based on retaliation, and 1 was based on national origin. Fourteen of the complaints received no probable cause, 6 are still awaiting a decision, 4 were administratively closed, 2 received probable cause, and 1 was withdrawn.

PRELIMINARY DETERMINATION

Following are our preliminary determinations with required corrective actions and recommendations pursuant to the audit.

Plan Dissemination – Internally

The DHS is in compliance with the following requirements:

1. In 2005, the agency head distributed a general EEO policy statement memo to all employees reiterating her commitment to EEO, advising employees of the names, locations, and phone numbers of the EEO officer and Career Counselor, and providing electronic links to the Citywide EEO Policy and EEO Policy Handbook. A copy of the Citywide EEO Policy was attached to the memo. The EEO officer informed EEPAC auditors that during EEO training sessions in 2005, the DHS distributed the Citywide EEO Policy and the EEO Policy Handbook to DHS employees. In addition, 79% of the employees surveyed by the EEPAC indicated they had received the EEO Policy and 90% indicated that they had received the EEO Policy Handbook.
2. According to the agency's EEO Officer and 69% of the employees surveyed, the DHS's EEO policies are posted on agency bulletin boards throughout the department's six floors. The

EEO Officer continually checks and maintains the boards to ensure that the EEO information is clearly posted and current.

3. The EEO Officer informed EEPC auditors that, during the new employee orientation, the personnel director ensured that all employees are advised of the City's EEO policies, the employees' rights and responsibilities under such policies, and the discrimination complaint procedures.

The DHS is in partial compliance with the following requirement:

The EEO Officer informed EEPC auditors that the Citywide EEO Policy and EEO Policy Handbook was included in the new hire packet, which was distributed at new employee orientations, and are accompanied with the Mayor's policy statement. The new hire packet, which was given to the EEPC auditors, however, does not contain the Citywide EEO Policy or EEO Policy handbook. Corrective action is required.

Recommendation: To comply with the Citywide EEO Policy and to ensure a uniform internal distribution process, the new hire package should include the Citywide EEO Policy and the EEO Policy Handbook. (Sect. VB, EEOP)

Plan Dissemination – Externally

The DHS is in compliance with the following requirement:

Five job vacancy notices (Special Assistant to the General Counsel, Principal Administrative Associate Level II, Program Counsel, Family Attorney and Peace Officer) submitted by the agency to the EEPC indicate that the Department of Homeless Services is an equal opportunity employer. Ten job advertisements for Agency Attorney Level II and III and Assistant Commissioner of Security similarly indicate that the Department of Homeless Services is an equal opportunity employer.

EEO and Reasonable Accommodation for Persons with Disabilities

The DHS is in compliance with the following requirements:

1. The EEO officer was appointed the disability rights coordinator.
2. The DHS has provided reasonable accommodations to persons with disabilities such as: visual aid computer enhancements, special keyboards and mice, schedule changes, and work reassignments. The DHS provided documentation of reasonable accommodations it provided to employees with disabilities.

The DHS is in partial compliance with the following requirement:

1. The DHS participates in the Section 55-A Program. The EEO officer informed the EEPC auditors that she keeps records of all Section 55-A program participants. However, DHS is uncertain of the number of employees that participated in the Program because the records

can not be located. The EEO officer informed EEPC auditors that the Section 55-A Program pamphlet is distributed during periodic EEO trainings and is also included in the new hire packet, which is distributed to employees during orientation. The new hire packet given to EEPC auditors by the DHS audit director, however, did not contain that pamphlet. Corrective action is required.

Recommendation: To ensure that all employees are made aware of the Program, the Section 55-A Program pamphlets issued by the DCAS should be included in the new hire packet. (Sect. IIB, EEOP)

2. The EEO officer indicated that the DHS's facility at 33 Beaver Street is accessible to, and useable by, persons with disabilities. The bathrooms have grab bars and wide stalls for wheelchair access, low sink and bathroom fixtures, a special chair called "evacuchair" for persons with wheelchairs, wheelchair accessible elevators, and Braille in elevators. The DHS has submitted an accessibility for persons with disabilities checklist for each of their 25 facilities. The checklists indicate, however, that not all facilities are completely accessible to persons with disabilities. Corrective action is required.

Recommendation: The DHS should ensure that all its facilities are completely accessible to persons with disabilities.

The DHS is not in compliance with the following requirement:

The EEO officer stated that the DHS does not have the EEO policies in alternate formats available for persons with disabilities.

Recommendation: The DHS should ensure that EEO policies and procedures are available in alternate formats (i.e., large print, audio tape and/or Braille). (Sect.VC, EEOP)

EEO Complaint and Investigation System

The DHS is in compliance with the following requirements:

1. The EEO Officer maintains a monthly log of discrimination complaints filed against the agency.
2. The DHS's EEO officer and EEO investigators have all completed the basic training course for EEO professionals conducted by the Department of Citywide Administrative Services (DCAS).
3. The agency has identified its EEO staff by posting their names and numbers in the agency head EEO Policy statement, and on bulletin boards.
4. During and after the audit period, a male (EEO counselor) and female (EEO officer) were available for complaint intake and investigation.

The DHS is not in compliance with the following requirements:

1. Six of the 10 discrimination complaint files (complaint # 06042, 06046, 06044, 06047, 06037, and 06043) submitted by the DHS do not contain a written notice to complainant/respondent regarding the EEO office's determination. Corrective action is required.

Recommendation: All relevant complaint files should include copies of letters to the complainants and respondents regarding the EEO office's determinations. (DCAS, Discrimination Complaint Procedures Implementation Guidelines, sec. 12b (1993).)

2. All of the complaint files provided to EEPC auditors were missing investigation interview notes.

Recommendation: All relevant complaint files should include word processed notes of the discrimination investigation interviews.

3. The investigation of four complaints (file #06029, 06030, 06031, and 0638) took more than the required 90 days to complete. Corrective action is required.

Recommendation: Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint. (DCPIG, April 1996 Amendment)

4. The aforementioned files did not contain a letter notifying parties of the delay or projecting a timeframe for completion of the investigation. Corrective action is required.

Recommendation: In circumstances where the investigation cannot be completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation. (DCPIG, April 1996 Amendment)

5. The EEO officer informed EEPC auditors that the agency head has signed each confidential report to indicate that it has been reviewed and the recommendation, if any, is approved and adopted. The last 10 complaint files that the DHS provided to EEPC auditors, however, did not contain a confidential written report with the agency head signature. Corrective action is required.

Recommendation: At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines. (DCPIG, sect. 12b)

Recommendation: The agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, EEOP and DCPIG, sect. 12b)

EEO Training

The DHS is in compliance with the following requirement:

The DHS provides EEO training on an ongoing basis. The EEO Officer informed EEPC auditors that during the audit period, approximately 700 employees (34% of DHS workforce) were trained. The training was based on DCAS standards and included a component on preventing sexual harassment. In addition, 76% of survey respondents indicated they received EEO training.

Selection and Recruitment

The DHS is in compliance with the following requirements:

1. According to the DHS's EEO officer, all DHS personnel involved in the recruitment and hiring have received DCAS's structured interview training.
2. Job vacancy notices for the Assistant Commissioner of Security position was advertised in periodicals with large minority readership, such as *El Diario* and the *Amsterdam News*.

The DHS is not in compliance with the following requirement:

The DHS's response to the EEPC's Document and Information Request Form indicated that the agency did not conduct an adverse impact study during the audit period. The DHS's EEO officer did say she has reviewed the agency's interview log system to access the agency's hiring practices. Corrective action is required.

Recommendation: The DHS should secure the necessary training, either from DCAS or another appropriate source, to assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Section IV, EEOP).

Promotional Opportunities

The DHS is in compliance with the following requirements:

The DHS has appointed an individual familiar with civil service and provisional jobs to serve as career counselor. A memo was distributed to all employees listing the name, address, and phone number of the counselor.

The DHS is not in compliance with the following requirement:

According to the DHS's EEO Plan for Fiscal Year 2006, an EEO component has been included in its managerial performance evaluation form. However, there is no EEO component included in the managerial performance evaluation form that the DHS provided to EEPC auditors. Corrective action is required.

Recommendation: The DHS should include a rating on EEO in their managerial evaluation form or use the managerial performance evaluation form designed by the DCAS, which contains a rating for EEO.

EEO Officer Reporting Arrangement

The DHS is in partial compliance with the following requirement:

The EEO officer reports to a direct report to the agency head on EEO matters and meets with him on a daily basis. According to the DHS, DCAS is aware of this reporting structure. However, the EEO Officer does not take notes or have documentation of these meetings. Corrective action is required.

Recommendation: It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the direct report to the agency head regarding EEO program operational decisions be maintained.

EEO Officer Responsibilities

The DHS is in compliance with the following requirements:

1. The EEO Officer spends 100% of her time on EEO matters.
2. The EEO Officer meets regularly with the EEO investigators to review their work and to keep them abreast on EEO developments. Documentation of these meetings was provided to EEPC auditors.

The DHS is not in compliance with the following requirement:

The EEO officer told EEPC auditors that she is not involved in developing recruitment strategies or selecting recruitment media; that is the sole responsibility of the human resources department.

Recommendation: To ensure fair employment practices, the agency head should direct the human resources department to include the EEO officer in the development of recruitment strategies and the selection of recruitment media. (Sect. IV, EEOP)

Supervisory Responsibility in EEO Plan Implementation

The DHS is in partial compliance with the following requirements:

The EEO officer informed EEPC auditors that in a memo from the agency head, managers and supervisors were directed to conduct meetings with staff, at least once a year, to reaffirm their commitment to the Citywide EEOP and discuss the right of employees to file discrimination complaints with the EEO officer. The EEO officer, though, indicated that she is uncertain if these meetings are documented. Corrective action is required.

Recommendation: It is the Commission's position that meetings between managers/supervisors and staff where they affirm their managerial commitment to the Citywide EEOP should be documented.

Special Problems/Contingencies

The DHS is not in compliance with the following requirement:

Seventy-four percent of survey respondents indicated that they do not know the name of the person in the agency responsible for providing career counseling. Corrective action is required.

Recommendation: The DHS personnel officer should notify all employees in writing of the name, location, and telephone number/email address of the career counselor. (Sect. VF, EEOP)

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. To comply with the Citywide EEO Policy and to ensure a uniform internal distribution process, the new hire package should include the Citywide EEO Policy and the EEO Policy Handbook. (Sect. VB, EEOP)
2. To ensure that all employees are made aware of the Program, the Section 55-A Program pamphlets issued by the DCAS should be included in the new hire packet. (Sect. IIB, EEOP)
3. The DHS should ensure that all its facilities are completely accessible to persons with disabilities.
4. The DHS should ensure that EEO policies and procedures are available in alternate formats (i.e., large print, audio tape and/or Braille). (Sect. VC, EEOP)
5. All relevant complaint files should include copies of letters to the complainants and respondents regarding the EEO office's determinations. (DCAS, Discrimination Complaint Procedures Implementation Guidelines, sec. 12b (1993).)
6. All relevant complaint files should include word processed notes of the discrimination investigation interviews.
7. Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint. (DCPIG, April 1996 Amendment)
8. In circumstances where the investigation cannot be completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation. (DCPIG, April 1996 Amendment)

9. At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines. (DCPIG, sect. 12b)
10. The agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, EEOP and DCPIG, sect. 12b)
11. The DHS should secure the necessary training, either from DCAS or another appropriate source, to assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Section IV, EEOP).
12. The DHS should include a rating on EEO in their managerial evaluation form or use the managerial performance evaluation form designed by the DCAS, which contains a rating for EEO.
13. It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the direct report to the agency head regarding EEO program operational decisions be maintained.
14. The EEO officer must report directly to the agency head, or if approved by DCAS, to a direct report to the agency head on all EEO matters. (Sect. VB, EEOP)
15. To ensure fair employment practices, the agency head should direct the human resources department to include the EEO officer in the development of recruitment strategies and the selection of recruitment media. (Sect. IV, EEOP)
16. It is the Commission's position that meetings between managers/supervisors and staff where they affirm their managerial commitment to the Citywide EEOP should be documented.
17. The DHS personnel officer should notify all employees in writing of the name, location, and telephone number/email address of the career counselor. (Sect. VF, EEOP)

In addition to the above recommendations, during the compliance process, the Commission requires that the agency head distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit. This memorandum should re-emphasize the agency head's commitment to the agency's Equal Employment Opportunity Program.

Conclusion

Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of the Department of Homeless Services compliance with its Equal Employment Opportunity Policy, and EEO standards expressed in the

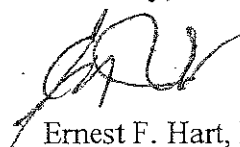
Citywide EEO Policy, we respectfully request your response to the aforementioned preliminary determinations.

Your response should indicate what corrective actions your office will take, and which recommendations it intends to incorporate into its Equal Employment Opportunity Plan, where appropriate, to comply with the City's Equal Employment Opportunity Policy. As you informed us during the exit meeting on February 8, 2008, you have already implemented some of our recommended corrective actions. Please specify those corrective actions in your response. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, as amended in 1999, if you do not implement all of these recommendations for corrective actions during a compliance period not to exceed six months, this Commission may publish a report and recommend to the Mayor the appropriate corrective actions that you should implement in your agency's Equal Employment Opportunity Plan.

In closing, we thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,



Ernest F. Hart, Esq.
Chair



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Robert V. Hess
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June 10, 2008

Ernest F. Hart
Chairman
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Re: Resolution #08/01-071/Preliminary Determination Pursuant to the Audit of the Department of Homeless Services (DHS) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through June 30, 2006

Dear Chairman Hart:

I am writing regarding the Preliminary Determination to the Audit of the Department of Homeless Services (DHS) dated March 20, 2008. Thank you for this opportunity to respond.

I share your commitment to ensuring equal opportunity for all DHS employees and applicants, and to strict adherence to the Citywide EEO Policy. Ensuring a workplace free from unlawful bias is integral to our ability to carry out our mission of reducing homelessness. Bigotry of any kind is not only wrong; it reduces our efficiency and distracts us from our mission.

In keeping with that commitment, since the end of the audit period, the agency has made programmatic changes to the functioning of its Equal Opportunity Affairs Office (the "EOA Office" or "EOA") and has changed the reporting relationship of its EEO Officer consistent with our commitment to EEO principles. We address these changes in detail below.

In this response, I discuss the recommendations of the Commission that the agency is in compliance with; our efforts to adopt other of its recommendations; and the few recommendations where DHS differs with the position expressed by the Equal Employment Practices Commission.

Of the Commission's 17 recommendations, DHS is compliant with six, has plans to implement an additional eight, and disagrees with three.

Recommendations with which DHS Is Compliant

Recommendation No. 5

- All relevant complaint files should include copies of letters to the complainants and respondents regarding the EEO office's determinations.

Response

Upon completing all EEO investigations, letters are sent to the complainants and respondents informing them of the EOA's determinations. The Preliminary Determination letter lists six cases (file Nos. 06042, 06046, 06044, 06047, 06037 and 06043) that did not include written notices of the EOA's determinations.

However, the complete and original files maintained in the EOA for Case Nos. 06042, 06046, 06047, 06037 and 06043 all include determination letters. Copies of these letters are attached to this response as ~~Appendix 1~~. With respect to Case No. 06044, the respondent passed away and the complainant withdrew her complaint. Accordingly, determination letters were not warranted.

Recommendations Nos. 9 and 10

- At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines.
- The agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted.

Response

At the conclusion of every internal investigation, a written confidential report is prepared detailing the complainant's allegations, the investigation conducted, the determination of the EOA and recommended actions regarding that determination. That confidential report is submitted to the Commissioner for his review and signature.

In conjunction with this audit, the agency submitted ten case files. With the exception of Case No. 06044 where the respondent passed away, in each case a written confidential report was reviewed and signed by the Commissioner. Copies of these signed reports are attached to this response as ~~Appendix 3~~.

Recommendations Implemented Since the End of the Audit Period

Recommendation No. 13

It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the direct report to the agency head regarding EEO program operational decisions be maintained.

of the audit period, I have instituted monthly meetings with the Executive
regarding EEO program operational decisions. For these meetings, type-
follow-up item reports are prepared and maintained.

Recommendation No. 14

- The EEO officer must report directly to the agency head, or if approved by DCAS, to a direct report to the agency head on all EEO matters.

Response

Since the end of the audit period, the reporting structure of the EOA Office has changed. The EOA Officer now reports directly to me on all EEO matters and reports to the Chief-of Staff on day-to-day operational matters. This reporting structure has been approved by DCAS.

Recommendation No. 15

- To ensure fair employment practices, the agency head should direct the human resources department to include the EEO officer in the development of recruitment strategies and the selection of recruitment media.

Response

Since the end of the audit period, the Agency's hiring and recruiting process has changed. All Personnel Action Requests are now reviewed by the EOA Officer. Further, with respect to open leadership positions within the agency, the personnel liaisons consult with the EOA Officer regarding the use of appropriate recruiting sources.

Recommendation that DHS is Taking Actions to Implement

Recommendation No. 4

- The DHS should ensure that EEO policies and procedures are available in alternate formats (i.e., large print, audio tape and/or Braille).

Response

DHS has produced large print versions of the Citywide EEO Policy and will make them available to employees and applicants.

Recommendation No. 6

- All relevant complaint files should include word processed notes of the discrimination investigation interviews.

Response

The EOA does more than maintain notes of discrimination investigation interviews. The current practice is to tape record all discrimination investigation interviews and to summarize them in word processed memoranda that become part of the investigation files. Tape recordings of interviews are maintained only during the course of an investigation and, accordingly, do not become part of the permanent investigation file.

Recommendation No. 7

- Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint.

Response

For each complaint filed with the EOA Office, every effort is made to complete the investigation within 90 days. To ensure the prompt completion of all investigations, the EOA Office will endeavor to maintain an appropriate number of investigators and EOA staff.

Recommendation No. 8

- In circumstances where the investigation cannot be completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation.

Response

Whenever an investigation is not completed within 90 days, letters are sent to the complainants and respondents informing them of the reason for the delay. The Preliminary Determination lists four cases (file No. 06029, 06030, 06031, 06038) that did not include 90-day notification letters.

However, the complete and original files maintained in the EOA office for Case # 06031 include 90-day letters. Copies of these letters are attached to this response as ~~Appendix 2~~.

Cases Nos. 06029, 06030, and 06038 were resolved in 116, 118, and 117 days respectively, and in these instances, 90-day letters were not issued. In the future, special care will be taken to ensure that 90-day letters are sent to the parties in every case not resolved within 90 days.

Recommendation No. 11

- The DHS should secure the necessary training, either from DCAS or another appropriate source, to assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group.

Response

The EOA Officer has not received from DCAS the training necessary to perform an appropriate adverse impact analysis. We understand that the EEPC is currently working with DCAS to ensure that this training is available in the future.

Recommendation No. 12

- The DHS should include a rating on EEO in the managerial evaluation form or use the managerial performance evaluation designed by the DCAS, which contains a rating for EEO.

Response

A rating for EEO, similar to the one created by DCAS, will be added to the managerial performance evaluation form no later than the second quarter of FY 09.

Recommendations No. 16

- It is the Commission's position that meetings between managers/supervisors and staff where they affirm their managerial commitment to the Citywide EEOP should be documented.

Response

The Quarterly Staff Review form will be amended to include a section for memorializing managers'/supervisors' managerial commitment to the Citywide EEO Policy no later than the second quarter of FY 09.

Recommendation No. 17

- The DHS personnel officer should notify all employees in writing of the name, location, and telephone number/email address of the Career Counselor.

Response

The agency Career Counselor is responsible for conducting all new employee orientations, and during each orientation, introduces herself to new employees. Further, on the Commissioner's EEO Memoranda posted on every floor of DHS' headquarters at 33 Beaver Street, the agency Career Counselor is identified by name. Finally, to ensure that current employees are familiar with the agency's Career Counselor, she will be profiled in an upcoming issue of the agency's *Staff Matters* newsletter.

Recommendations Where DHS Differs with the Commission's Determination

Recommendations Nos. 1 and 2

- To comply with the Citywide EEO Policy and to ensure a uniform internal distribution process, the new hire package should include the Citywide EEO policy and the EEO Policy Handbook.
- To ensure that all employees are made aware of the Program, the Section 55-A Program pamphlets issued by the DCAS should be included in the new hire packet.

Response

All new DHS employees receive orientation trainings within four weeks of their hire. The orientation training includes an EEO briefing during which new employees receive a copy of the Citywide EEO Policy, the EEO Policy Handbook, and the DCAS Section 55-A Program pamphlet. We believe that distributing these documents in conjunction with a discussion of employee rights and responsibilities regarding equal opportunity affairs is far more effective than including them in the new hire packets. We intend to continue our current practice. A copy of the DHS EEO orientation packet is attached as Appendix 4.

Recommendation No. 3

- The DHS should ensure that all its facilities are completely accessible to persons with disabilities.

Response

DHS is committed to ensuring that all employees, clients, and applicants for employment or services, irrespective of disability, have equal access to DHS programs and facilities. We believe that our facilities and shelter system, as currently configured, are accessible to disabled individuals in keeping with the letter and spirit of applicable Federal, State, and City disability rights laws.

Employees

With respect to disabled employees and job applicants, the Americans with Disabilities Act ("ADA") and the State and City Human Rights Laws ("NYSHRA" and "NYCHRA") require us to make reasonable accommodations to address or remove architectural obstacles. As required by these statutes, DHS is required only to make a reasonable accommodation determination on an individualized, case-specific basis, taking into account whether a proposed accommodation places an undue burden on the agency. Wernick v. Federal Reserve Bank, 91 F.3d 379, 385 (2d Cir. 1996). "[E]nsur[ing] that all facilities are completely accessible" (Preliminary Determination at 9) is not consistent with the ADA's "principal focus . . . [on] the protection of the individual employee" and is unduly burdensome on the agency. Connecticut v. Teal, 457 U.S. 440, 453-54; 73 L. Ed. 2d 130, 141; 102 S. Ct. 2525, 2534 (1982).

Clients

With respect to clients and applicants for DHS services, Title II of the ADA requires that we provide "program accessibility," and that individuals with disabilities have "an equally effective opportunity to participate in or benefit" from our services. Section II-3.3000 of the ADA Title II Technical Assistance Manual.

"Program accessibility" is addressed directly in Section II-5.000 which specifically states that "[a] public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. . . . Public entities; however, are not necessarily required to make each of their existing facilities accessible." Section II-5.2000. Accordingly, the law is clear that we are not required to provide physical access to all parts of all facilities.

An example is provided in Section II-3.4200, outlining that a school system need only provide wheelchair access at schools dispersed throughout its service area so that children using wheelchairs can attend school at locations comparable in convenience to those available to other children. This example can be clearly analogized to the current state of our shelter system.

The NYSHRA generally requires the removal of structural barriers where their removal is "readily achievable." Here, the burden imposed by the addition of elevators and the making of other capital improvements to our shelter system is unduly burdensome and, as a result, not readily achievable.


On the other hand, when structural changes are not readily achievable, a public accommodation may comply with NYSHRL by making DHS "privileges, advantages, or accommodations available through alternative methods." NY CLS Exec § 296. That is exactly the case here, as DHS has 23 facilities with accessible ramps, elevators, restrooms and dorms dispersed throughout the five boroughs, affording the full range of DHS services and programs.

Finally, as required by the ADA, the NYSHRL and NYCRHL, DHS makes reasonable accommodations to individual disabled clients on a case-by-case basis. It is DHS policy that all DHS and Facility Staff responsible for placing or providing services to DHS clients must routinely take into account the requirements of each client, including the special needs of clients with physical and/or mental impairments. Whenever a client's disability affects his or her ability to access services, DHS engages in an interactive process to address the client's special needs.

Conclusion

I would like to thank you again for this opportunity to respond and for your continued commitment to equal opportunity. I look forward to working with you as we work to ensure that DHS complies with the EEO standards expressed in the Citywide EEO Policy.

Sincerely,



Robert V. Hess

cc: Michele M. Ovesey, Esq.
Michael King
Douglas C. James, Esq.



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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Executive Director

Eric Matusewitch, PHR, CAAP
Deputy Director.

July 9, 2008

Robert V. Hess
Commissioner
Department of Homeless Services
33 Beaver Street, 17th Floor
New York, NY 10004

Re: Final Determination Pursuant to the Audit of the Department of Homeless Services (DHS) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through June 30, 2006.

Dear Commissioner Hess:

Thank you for your June 10, 2008 response to our March 20, 2008 Letter of Preliminary Determination pursuant to the audit of the Department of Homeless Services' Equal Employment Opportunity Policy from January 1, 2005 through June 30, 2006.

After reviewing your response, our Final Determination is as follows:

Agree

We agree with your responses to the following EEPC recommendations, pending documentation that can be attached to your reply or provided during the compliance period:

Recommendation #1

To comply with the Citywide EEO Policy and to ensure a uniform internal distribution process, the new hire package should include the Citywide EEO Policy and the EEO Policy Handbook. (Sect. VB, EEOP)

Recommendation #2

To ensure that all employees are made aware of the Program, the Section 55-A Program pamphlets issued by the DCAS should be included in the new hire packet. (Sect. IIB, EEOP)

Recommendation #5

All relevant complaint files should include copies of letters to the complainants and respondents regarding the EEO office's determinations. (DCAS, Discrimination Complaint Procedures Implementation Guidelines, sec. 12b (1993).)

Recommendation #6

All relevant complaint files should include word processed notes of the discrimination investigation interviews.

Recommendation #7

Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint. (DCPIG, April 1996 Amendment)

Recommendation #8

In circumstances where the investigation cannot be completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation. (DCPIG, April 1996 Amendment)

Recommendation #9

At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines. (DCPIG, sect. 12b)

Recommendation #10

The agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, EEOP and DCPIG, sect. 12b)

Recommendation #12

The DHS should include a rating on EEO in their managerial evaluation form or use the managerial performance evaluation form designed by the DCAS, which contains a rating for EEO.

Recommendation #13

It is the Commission's position that appropriate documentation of meetings and other communications between the EEO officer and the direct report to the agency head regarding EEO program operational decisions be maintained.

Recommendation #14

The EEO officer must report directly to the agency head, or if approved by DCAS, to a direct report to the agency head on all EEO matters. (Sect. VB, EEOP)

Partially Agree

For the following reasons, hereafter identified as EEPC rationale, we partially agree with your responses to the following EEPC recommendation:

Recommendation #15

To ensure fair employment practices, the agency head should direct the human resources department to include the EEO officer in the development of recruitment strategies and the selection of recruitment media. (Sect. IV, EEOP)

Your Response:

Since the end of the audit period, the Agency's hiring and recruiting process has changed. All Personnel Action Requests are now reviewed by the EOA Officer. Further, with respect to open leadership position within the agency, the personnel liaisons consult with the EOA Officer regarding the use of appropriate recruiting sources.

EEPC Rationale

It is unclear whether the human resources department was directed to include the EEO officer in the development of recruitment strategies. Further, the personnel liaisons should consult with the EEO officer regarding all positions within the agency regarding the use of appropriate recruitment sources.

Requires Clarification

For the following reasons, hereafter identified as EEPC Rational, we request clarification of your response to the following recommendations, which can be addressed in your response or during the compliance period:

Recommendation #4

The DHS should ensure that EEO policies and procedures are available in alternate formats (i.e., large print, audio tape and/or Braille). (Sect.VC, EEOP)

Your Response:

DHS has produced large print versions of the Citywide EEO Policy and will make them available to employees and applicants.

EEPC Rationale

It is unclear whether the DHS' EEO Policy statement is also available in alternate formats for persons with disabilities.

Recommendation #17

The DHS personnel officer should notify all employees in writing of the name, location, and telephone number/email address of the career counselor. (Sect. VF, EEOP)

Your Response:

The agency Career Counselor is responsible for conducting all new employee orientations, and during each orientation, introduces herself to new employees. Further, on the Commissioner's EEO Memoranda posted on every floor of DHS' headquarters at 33 Beaver Street, the agency Career Counselor is identified by name. Finally, to ensure that current

employees are familiar with the agency's Career Counselor, she will be profiled in an upcoming issue of the agency's *Staff Matters* newsletter.

EEPC Rationale

It is unclear whether the "Staff Matters" newsletter is distributed to all DHS employees. Further, it is unclear whether the Commissioner's EEO Memoranda is posted at all DHS facilities where there are DHS employees.

Disagree

For the following reasons, hereafter identified as EEPC rationale, we disagree with your response to the following EEPC recommendations:

Recommendation #3

The DHS should ensure that all its facilities are completely accessible to persons with disabilities.

Your Response:

DHS is committed to ensuring that all employees, clients, and applicants for employment or services, irrespective of disability, have equal access to DHS programs and facilities. We believe that our facilities and shelter system, as currently configured, are accessible to disabled individuals in keeping with the letter and spirit of applicable Federal, State, and City disability rights laws.

EEPC Rationale

The Commission's concern is that DHS employees with disabilities and disabled applicants for employment with the DHS have access to all DHS facilities, in accordance with the Citywide EEO Policy, Commission policies and EEO standards expressed in the Federal, State and City Human Rights Laws. Recommended corrective action #3 is consistent with the audit's findings, the parameters set forth in the Citywide EEO Policy, and applicable federal, state and city laws. The DHS should address its assertion that the Citywide EEO Policy is unduly burdensome on the DHS to the Department of Citywide Administrative Services.

Recommendation #11

The DHS should secure the necessary training, either from the DCAS or another appropriate source, to assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group. (Section IV, EEOP)

Your Response:

The EOA Officer has not received from DCAS the training necessary to perform an appropriate adverse impact analysis. We understand that the EEPC is currently working with DCAS to ensure that this training is available in the future.

EEPC Rationale

It is DCAS' position that all EEO officers have received adverse impact training from the DCAS and are capable of conducting the adverse impact study. Further, if the EEO officer has

not received the training from the DCAS, he/she should obtain training from another source such as Cornell's School of Industrial and Labor Relations.

Recommendation #16

It is the Commission's position that meetings between managers/supervisors and staff where they affirm their managerial commitment to the Citywide EEOP should be documented.

Your Response:

The Quarterly Staff Review form will be amended to include a section for memorializing managers/supervisors' managerial commitment to the Citywide EEO Policy no later than the second quarter of FY 09.

EEPC Rationale

It is our understanding that the DHS' Quarterly Staff Review form is attached to the managerial evaluation form and is based on a meeting between managers/supervisors and individual staff members. It is the Commission's position that managers/supervisors should conduct meetings with staff at least once a year to reaffirm their commitment to the Citywide EEO Policy during regular staff meetings and discuss the right of employees to file discrimination complaints with the EEO officer. The manager/supervisor should document these staff meetings with a memo to file or an agenda indicating that the Citywide EEOP was addressed.

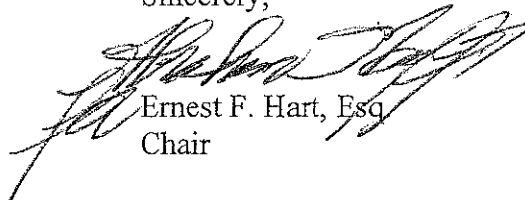
Conclusion

Pursuant to section 832 of the New York City Charter, this Commission will initiate an audit compliance procedure not to exceed six months. However, you may respond to the aforementioned determinations prior to the initiation of audit compliance.

If you choose to issue a written response, please do so within thirty days. If you choose not to issue a written response, we will initiate audit compliance shortly thereafter. EEPC Counsel Judith Garcia Quiñonez or her designee will contact your EEO Officer in seven days to ascertain your intentions.

In closing, we want to thank you and your staff for your cooperation during the audit process. We look forward to a mutually satisfactory compliance process.

Sincerely,



Ernest F. Hart, Esq.
Chair



agme

Robert V. Hess
Commissioner

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September 11, 2008

Ernest F. Hart
Chairman
Equal Employment Practices Commission
40 Rector Street, 14th Floor
New York, NY 10006

Re: Final Determination Pursuant to the Audit of the Department of Homeless Services (DHS) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through June 30, 2006

Dear Chairman Hart:

I am writing regarding the Final Determination to the Audit of the Department of Homeless Services (DHS) dated July 9, 2008. Thank you again for this opportunity to respond.

In the Final Determination, you requested clarification regarding some of our responses. I am happy to clarify those responses.

With respect to Recommendation #4, the DHS EEO Policy statement is also available in a large print version, alternative format.

With respect to Recommendation #17, all employees receive a copy of the "Staff Matters" newsletter electronically or, for employees that do not have computer access, in print.

With respect to the other recommendations, DHS has no additional response save for one. With respect to Recommendation #3, "The DHS should ensure that all its facilities are completely accessible to persons with disabilities," we must reassert the position expressed in our earlier response.

With respect to Recommendation #15, we adopt the Commission's position.

As we stated in our response to the Preliminary Determination, DHS is committed to ensuring that all employees, clients, and applicants for employment or services, irrespective of disability, have equal access to DHS programs and facilities. We believe that our facilities and shelter system, as currently configured, are accessible to disabled individuals in keeping with the letter and spirit of applicable federal, state, and city disability rights laws.

Specifically, we provide "program accessibility," and all individuals with disabilities have "an equally effective opportunity to participate in or benefit" from DHS's

services. Section II-3.3000 of the ADA Title II Technical Assistance Manual. Further, whenever there are architectural obstacles that affect DHS employees or job applicants, we address them on a case by case basis to ensure that all disabled employees and applicants experience no barriers to equal employment with DHS.

What is proposed is unduly burdensome and, in our opinion, not contemplated or required by the Citywide EEO Policy and federal, state, and city law.

Conclusion

I would like to thank you again for this opportunity to respond and for your continued commitment to equal opportunity. I look forward to working with you as we work to ensure that DHS complies with the EEO standards expressed in the Citywide EEO Policy.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Hess".

Robert V. Hess

cc: Mark L. Neal, Esq.
Michele M. Ovesey, Esq.
Michael King
Douglas C. James, Esq.