

In Reply Refer To: HCR-20
DOT# 2016-0004

FEB 02 2017

(b) (6)

The Honorable Mark Stodola
Mayor City of Little Rock
500 West Markham Street, Rm. 303
Little Rock, AR 72201

Subject: Letter of Finding (LOF) for Complaint DOT# 2016-0004

Dear (b) (6) and Mayor Stodola:

On July 1, 2015, the Federal Highway Administration (FHWA) Office of Civil Rights received a complaint from (b) (6) alleging that the City of Little Rock (Respondent) violated Title VI of the Civil Rights Act of 1964 (Title VI) and the Title VI regulations of both the United States Department of Transportation (USDOT), Title 49 of the Code of Federal Regulations (C.F.R.) Part 21, and the FHWA, at Title 23 C.F.R. Part 200. This letter provides the decision for the Title VI issues raised in the complaint.

Issues

- 1. Whether the City of Little Rock (City) is a recipient or subrecipient of Federal financial assistance, requiring the City to maintain a Title VI Implementation Plan;**
- 2. Whether the City has a current and compliant Title VI Implementation Plan, including a complaint process and public participation plan.**

Legal Background

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. In particular, Title VI provides:

“[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

42 U.S.C. § 2000d.

The USDOT's Title VI implementing regulations state that a recipient "may not utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin," 49 C.F.R. § 21.5(b)(2). Recipients also must take "affirmative action to remove or overcome the effects" of discrimination where prior discriminatory practice or usage exists. 49 C.F.R. § 21.5(b)(7). FHWA's Title VI regulations similarly require Title VI compliance by recipients receiving Federal financial assistance from FHWA. 23 C.F.R. Part 200.

Regarding Title VI Implementation Plans, states and state agencies that are recipients of continuing Federal financial assistance from the FHWA must provide the FHWA with "such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with Title VI." 49 C.F.R. § 21.7(b). The regulations further provide that state highway agencies (SHAs) must create a Title VI Implementation Plan and submit it to the FHWA annually for approval. 23 C.F.R. § 200.9 (b)(11). The regulations do not provide implementation plan requirements for local public agencies (LPAs) (e.g. cities, counties, etc.) that receive federal financial assistance through SHAs; however, SHAs must create policies to ensure subrecipient compliance and conduct Title VI reviews of subrecipients per 23 C.F.R. § 200.9(b)(7). Therefore, SHAs must define what LPAs must produce to satisfy the "methods of administration" requirement and conduct subrecipient reviews, and the SHA may or may not require a full Title VI Implementation plan akin to what a SHA submits to FHWA each year.

State DOTs must also develop procedures for prompt processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA, per 23 C.F.R. § 200.9(b)(3). Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Each recipient processing Title VI complaints must maintain a complaint log. A copy of the complaint, together with a copy of the SHA's report of investigation, must be forwarded to the FHWA division office within 60 days of the date the complaint was received by the SHA. These procedures must be outlined in the SHA's Title VI Implementation Plan. State DOTs must ensure that subrecipients receive adequate information and training regarding complaint procedures.

Any person who believes they, or any specific class of persons, have been subjected to discrimination prohibited by Title VI may by themselves or by a representative file a written complaint with the FHWA. 49 C.F.R. § 21.11(b). A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by FHWA. Once a complaint is accepted, FHWA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with Title VI. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with 49 C.F.R. Part 21 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with Title VI. 49 C.F.R. § 21.11(c).

Factual Background

The Complainant submitted a Title VI complaint against the Respondent on July 1, 2015. The Complainant alleged he filed complaints with the Respondent in 2013 but received no response. The Complainant separately alleged the Respondent showed “disrespect” to African-American participants in a public meeting on the 8th Street project and did not hold public meetings for the 12th Street project. Finally, the Complainant alleged the Respondent does not have a current and compliant Title VI Implementation Plan, including a written complaint process and log, a public participation plan, and other elements of a compliant Title VI Program as required by 23 C.F.R. Part 200. The allegations regarding public meetings were not timely received by FHWA per 49 C.F.R. § 21.11(b); however, the FHWA did accept the allegations regarding the Respondent’s Title VI Implementation Plan and complaint procedures on November 2, 2015 as timely because the allegations regarded current practice.

FHWA requested documentation from the Respondent related to the complaint on February 22, 2016. The Respondent did not submit the information by April 1, 2016, as requested. FHWA discussed the complaint by phone with the Respondent and provided guidance on what FHWA required to proceed with the investigation. FHWA conducted interviews with the Respondent, Complainant, and the FHWA Arkansas Division Office.

Findings

The Respondent is a Recipient of Federal financial assistance from the FHWA through FHWA’s primary recipient, the Arkansas State Highway and Transportation Department (State). Although Title VI applies to all Recipients through 49 C.F.R. Part 21, the specific actions to affect compliance in 23 C.F.R. Part 200 apply to State Highway Agencies only. Therefore, the regulations do not expressly provide that a subrecipient Local Public Agency (LPA) such as the Respondent, must submit a Title VI Plan or other programmatic documents. Rather, the State DOT may prescribe the specific actions its subrecipients must perform to ensure compliance with Title VI as it regards policy and procedures documents.

The Respondent’s representatives stated they were unaware the City of Little Rock was required to create a Title VI Implementation Plan. Through interviews with the FHWA Arkansas Division and the Respondent, FHWA found evidence Respondent had not received Title VI training from the State or FHWA over at least the last two years. In fact, the Respondent requested this training through FHWA during the course of the investigation and FHWA advised the Arkansas FHWA Division to assist the Respondent in obtaining training through the FHWA Resource Center.

The State’s most recent Title VI Implementation Plan does not address training or the State’s procedures for conducting Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds. The Plan does not prescribe any particular requirements for how the State ensures its LPA subrecipients are in compliance with Title VI or what policies and procedures LPAs must adopt.

During the course of FHWA’s investigation, the Respondent created a Title VI Plan based on guidance from the FHWA. The Respondent stated that it requested assistance from the State but the State was not responsive to the request.

Findings

For the foregoing reasons, FHWA, having examined the facts and the relevant law, finds that the Respondent did not violate Title VI of the Civil Rights Act of 1964 regarding the above allegations.

This letter concludes FHWA's investigation, and the case will be closed with no further action. If you have any questions regarding this matter, please contact Mr. Kevin Resler, FHWA National Title VI Coordinator, at (202) 366-2925, or kevin.resler@dot.gov.

Sincerely,



Irene Rico
Associate Administrator
FHWA Office of Civil Rights

cc: Angel Correa, Division Administrator, FHWA Arkansas Division Office
Peter Jilek, Assistant Division Administrator, FHWA Arkansas Division Office
David Blakeney, Civil Rights Specialist, FHWA Arkansas Division Office
James Esselman, Senior Attorney Advisor, FHWA Office of Chief Counsel (HCC-40)
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division