



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

**Via Certified Mail Return Receipt Requested**

August 12, 2013

Harold W. Clarke  
Director  
Virginia Department of Corrections  
P. O. Box 26963  
Richmond, VA 23261-6962

Re: Letter of Finding  
[Redacted] v. Va. Dep't of Corr. (13-OCR-10)

Dear Director Clarke:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) received the above-referenced administrative Complaint from [Redacted] (Complainant), an inmate of the Virginia Department of Corrections (VADOC or Respondent), who states that he is a Satanist and claims that VADOC unlawfully discriminated against him based on religion by denying him access to *The Satanic Bible* by Anton LaVey. The OCR has investigated the Complaint and has concluded that the Respondent's denial of the Complainant's access to *The Satanic Bible* does not constitute religious discrimination under any of the laws that the OCR enforces.

**Jurisdiction**

The OCR is responsible for ensuring that recipients of financial assistance from the DOJ (i.e., the Office of Community Oriented Policing Services, the Office on Violence Against Women, and the OJP and its components) are in compliance with the applicable federal civil rights laws that prohibit unlawful discrimination. The OCR received the Complaint in a timely manner (*see* 28 C.F.R. § 42.205(b)). The OCR determined that the claim involved the federally protected class of religion, that the Respondent was a recipient of DOJ financial assistance at the time of the alleged discrimination, and that the Respondent was a current recipient of DOJ financial

assistance.<sup>1</sup> 28 C.F.R. pt. 42, subpt. D, app. A (§ 42.205(c)(1)). Consequently, the OCR initiated an investigation into the instant Complaint. *See id.* § 42.205.

### **Applicable Laws**

The VADOC, as a recipient of federal financial assistance under the RSAT program, is subject to the nondiscrimination provision in the Omnibus Crime Control and Safe Streets Act of 1968, as amended, which expressly prohibits a recipient from discriminating on the basis of religion in the delivery of services or benefits. Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 42 U.S.C. § 3789d(c)(1) (2006); 28 C.F.R. § 42.203(a) (2012). In addition, the DOJ regulation, Equal Treatment for Faith-Based Organizations, also prohibits all recipients of DOJ financial assistance, regardless of the particular grant program or funding statute, from discriminating against beneficiaries based on religion. *Id.* §§ 38.1(d), 38.2(d) (Equal Treatment Regulation).

### **Statement of Facts and Claims**

Neither the Respondent nor the Complainant disagrees about the relevant underlying facts in this matter. The Complainant is an inmate in the custody of the Respondent and states that he is a Satanist. The Respondent does not contest that the Complainant's beliefs are sincerely held, and there is no evidence to suggest otherwise.

The Complainant requested access to a copy of *The Satanic Bible* by Anton LaVey, and the Respondent denied his request.

The Complainant avers that the Respondent's denial of his access to the requested text is a violation of his civil rights, claiming the Respondent has the obligation to treat his request for a religious text in the same way it would treat similar requests for sacred scripture from Christian inmates in the Respondent's custody.

The Respondent states that consistent with its internal operating procedures, it reviewed *The Satanic Bible* and placed it on a list of disapproved publications for distribution to inmates because it encourages behavior that would undermine the safe operation of its prisons. Citing the need to maintain prison security, the Respondent asserts that denying the Complainant's request did not constitute discrimination based on religion.

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<sup>1</sup> Based on records from the Bureau of Justice Assistance, an OJP component, the OCR found that the VADOC received a subaward from the Virginia Department of Criminal Justice Services (Grant No. 2011-RT-BX-0036) in the amount of \$1,437,960 under the DOJ's Residential Substance Abuse Treatment (RSAT) grant program with the grant period extending from October 1, 2011, to September 30, 2015.

## Discussion

In considering an inmate's religious discrimination claim as it applies to the delivery of services or benefits under the Safe Streets Act and the Equal Treatment Regulation, the OCR reviews the matter under the constitutional standards of the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. *See* U.S. Const. amends. I & XIV, § 1; *see also* 28 C.F.R. § 42.203(b)(8). Even though the Complainant is incarcerated, the OCR, like federal courts, has a duty to safeguard his constitutional rights regarding religious expression while he is in the custody of a DOJ-funded correctional institution. *See Carpenter v. Wilkinson*, 946 F. Supp. 522, 524 (N.D. Ohio 1996). If a prison, however, adopts a policy that violates a prisoner's constitutional rights, it may do so "'if it is reasonably related to legitimate penological interests.'" *Id.* (citing *Turner v. Safely*, 482 U.S. 78, 89 (1987)).

The Supreme Court has held that there are two prerequisites that a claimant must meet to assert the right to free exercise of religion under the First Amendment: (1) the person must have sincerely held beliefs, and (2) the beliefs must be religious in nature. *Id.* at 525 (citing *United States v. Seeger*, 380 U.S. 163, 185 (1965)). In this instance, the OCR assumes that the Complainant meets both of these threshold requirements. *See id.* at 525-528. Where the Complainant's claim founders is in dispelling the Respondent's assertion that it has legitimate penological interests in denying him access to *The Satanic Bible*. The *Carpenter* court, which addressed a similar claim from a Satanist inmate against a prison system, undertook an independent review of *The Satanic Bible* and found that it clearly undermined prison safety:

The Court ordinarily must defer to the institution's decisions regarding the appropriateness of policies and practices. Here, no deference is necessary because the Court is in complete agreement that large portions of *The Satanic Bible* have great potential for fomenting trouble of all kinds in a prison setting, leading to difficulty in maintaining security and order and in delivering rehabilitative services in the prisons. In addition, much of the publication advocates preying on the weak in any way possible for one's own gratification—clearly an extremely dangerous "teaching" in *any* setting, but especially in a prison where the weak have fewer avoidance strategies at their disposal.

*Id.* at 529.

The court concluded that the prison system's concerns for safety and security were indeed legitimate penological interests that permitted banning *The Satanic Bible*. *Id.* at 530. Moreover, the court found that denying the inmate access to the text did not substantially burden his free exercise of religion. *Id.*; *see also McCorkle v. Johnson*, 881 F.2d 993, 995-96 (11th Cir. 1989)

(applying *Turner's* four-factor analysis in evaluating the reasonableness of a prison's policy to infringe on an inmate's constitutional right and finding that a prison's denial of a Satanic inmate's request for a copy of *The Satanic Bible* was reasonably related to legitimate penological interests); *Doty v. Lewis*, 995 F. Supp. 1081, 1085, 1086-87 (D. Ariz. 1998) (same). The reasoning of the cited courts applies to the instant Complaint, supporting the decision of the Respondent to deny the Complainant's access to *The Satanic Bible* and dismissing the Complainant's religious discrimination claim based on the right to free exercise of religion.

The Complainant also asserts a discrimination claim based on a Fourteenth Amendment equal protection analysis. He states that the Respondent treated his request for a sacred text differently than similar requests for sacred texts from Christian inmates. Even if the OCR accepted the truth of this assertion in the absence of any supporting evidence, "[t]here is nothing in the Constitution which requires prison officials to treat all inmate groups alike where differentiation is necessary to avoid an imminent threat of institutional disruption or violence." *Carpenter*, 946 F. Supp. at 531 (citing *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 136 (1977)). Moreover, prison officials need only show that a potential danger exists to support the reasonableness of a challenged prison regulation. *Id.* (citing *Brown v. Johnson*, 743 F.2d 408, 413 (6th Cir. 1984)). Based on the OCR's conclusion that the Respondent had legitimate penological interests in denying the Complainant's request for a copy of *The Satanic Bible*, the Complainant's discrimination claim based on an equal protection analysis also fails. *See id.*

## **Finding**

Applying the foregoing analysis of constitutional standards to the Safe Streets Act and the Equal Treatment Regulation, the OCR finds that the Respondent did not discriminate against the Complainant based on religion by denying his request for a copy of *The Satanic Bible*.

This Letter of Finding serves as notice that the OCR is administratively closing this Complaint. The Complainant does not have the right to appeal this decision. *See* 28 C.F.R. § 42.205. The Respondent should take note, however, that it may be liable under federal law if it retaliates in any way against the Complainant for having filed this Complaint.

Harold W. Clarke, Director  
Virginia Department of Corrections  
August 12, 2013  
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This Letter of Finding is a public document, which the OCR will post on its website with redactions to protect the privacy of the Complainant.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston  
Director