



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

November 22, 2011

VIA CERTIFIED MAIL

Christopher Burnett
Executive Director
Criminal Justice Division
Texas Office of the Governor
P.O. Box 12428
Austin, TX 78711

Re: Compliance Review of Criminal Justice Div., Tex. Office of the Governor
Docket No. 11-OCR-0357

Dear Mr. Burnett:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of federal financial assistance from the Office of Community Oriented Policing Services, the Office on Violence Against Women, the OJP, and OJP components comply with federal civil rights laws. As you know, recipients of federal financial assistance have an obligation not to discriminate against protected classes of people either in employment or in the delivery of services.

In carrying out the OCR's civil rights enforcement responsibilities, the OCR is conducting a broad compliance review of all State Administering Agencies (SAA) in accordance with federal regulation 28 C.F.R. § 42.206. The focus of this review is to determine both compliance with applicable federal civil rights laws and SAA monitoring procedures for ensuring the compliance of subrecipients. Of particular interest to the OCR is SAA compliance with the federal regulations that the DOJ issued in January of 2004, Equal Treatment for Faith-Based Organizations, 28 C.F.R pt. 38. The regulations advise SAAs not to discriminate either in favor of or against faith-based organizations. The regulations also instruct funded faith-based organizations not to discriminate in the delivery of services or benefits based on religion or to use federal funds for inherently religious activities.

As part of that review, the OCR evaluated the Criminal Justice Division (CJD or Division), Texas Office of the Governor and issued a compliance review report regarding the CJD's compliance with applicable federal civil rights laws as an SAA for certain DOJ programs. *See* Criminal Justice Div., Tex. Office of the Governor, No. 06-OCR-0086, Office for Civ. Rts. Compl. Rev. Rep. (U.S. Dep't of Justice Feb. 6, 2007) (copy enclosed). In that report, the OCR

included four recommendations for corrective action; the CJD implemented each recommended action item. *Id.* at 7. Because, as of 2007, the Division was in substantial compliance with its civil rights obligations, the OCR administratively closed that matter.

As a follow-up to the OCR's earlier compliance review, pursuant to federal regulation 28 C.F.R. § 42.206, on June 17, 2011, the OCR initiated a desk audit of the CJD to evaluate its current compliance with applicable federal civil rights obligations. In connection with that evaluation, we issued a Data Request to the Division; the Division responded to that request for information on August 19, 2011. The OCR would like to thank you and your staff for assisting the DOJ during its desk audit.

I. Recommendations

After reviewing the materials provided by the CJD, and in regard to the limited scope of this desk audit, the OCR concludes that the Division should take the following corrective action measures to ensure that is in substantial compliance with pertinent civil rights requirements.

- *Modify CJD's Comprehensive Certification and Assurances Form (Assurances Form).*
The OCR recommends that the Division amend its Assurances Form as follows:
 - In paragraph 14.A., after the citation to Executive Order 13279, include a reference to "Ex. Order 13559 (fundamental principles and policymaking criteria for partnerships with faith-based and neighborhood organizations)."
 - Replace paragraphs 14.D. and E. with the following language or substantially similar language:

Recipient will provide an Equal Employment Opportunity Plan (EEO) to the OCR and the CJD, if required to submit one; otherwise, it will provide a certification to the OCR and the CJD that it has a current EEO on file, if required to maintain one. For public grantee agencies receiving less than \$25,000, or public grantee agencies with fewer than 50 employees, regardless of the amount of the award, no EEO is required. Information about civil rights obligations of grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.
 - The CJD may also consider including in the Assurances Form the following language or substantially similar language regarding language assistance services:

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, a recipient

must take reasonable steps to ensure that LEP persons have meaningful access to its programs. Meaningful access may entail providing language assistance services, including oral interpretation and written translation, where necessary. In conducting its programs and activities, the recipient is encouraged to consider the language service needs of LEP persons whom it serves or encounters. Additional assistance and information regarding LEP obligations can be found at <http://www.lep.gov>.

- The Division may also wish to add a sentence to the Assurances Form stating that, in accordance with federal civil rights laws, the subrecipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.
- Modify CJD's Request for Applications and Guide to Grants. The OCR recommends that the Division replace the phrase "proselytizing or sectarian worship" in its Request for Applications and Guide to Grants with the phrase "inherently religious activities, such as prayer, worship, religious instruction, or proselytization."
- Refine Monitoring Protocol. The OCR recommends that the Division refine its desk and site review monitoring materials to ensure that it evaluates with greater specificity the various civil rights requirements that apply to all DOJ-funded subrecipients (e.g., whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; and whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972). In an effort to assist the CJD in revising its monitoring materials, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Division's review.
- Revise Policy No. CJD 2.70, Civil Rights Complaints (Oct. 2, 2006). The OCR recommends that the Division revise its discrimination complaint policy to include the following elements:
 - designating a coordinator who is responsible for overseeing the complaint process;
 - notifying appropriate subrecipient employees and beneficiaries of prohibited discrimination in funded programs and activities and the CJD's policy and procedures for handling discrimination complaints;
 - training CJD program staff members on their responsibility to refer discrimination complaints or potential discrimination issues involving subrecipients to the Division's complaint coordinator for processing as soon as the alleged discrimination comes to their attention;

Christopher Burnett, Executive Director
Criminal Justice Div., Tex. Office of the Governor
November 22, 2011
Page 4 of 4

- ensuring that subrecipients have procedures in place for responding to discrimination complaints that employees and beneficiaries file directly with the subrecipient; and
- ensuring that subrecipients notify their employees and beneficiaries of prohibited discrimination and the procedures for filing a complaint of discrimination.

To assist the CJD in developing a comprehensive complaint policy, the OCR has enclosed a procedure for the Division's review that was adopted by another State Administering Agency. Additional information about the applicable laws, complaint forms, and the investigative process can be found at <http://www.ojp.usdoj.gov/ocr/crc>.

II. Conclusion

Please outline your plan of action for each recommendation within thirty calendar days of the post date of this letter, which is a public document. Please do not hesitate to contact Attorney Advisor Christopher P. Zubowicz at 202.305.9012 or christopher.zubowicz@usdoj.gov if you need assistance. We are also happy to provide technical assistance related to any of the issues addressed in this letter.

Thank you again for your cooperation during the desk audit. We look forward to continuing to work with you and your staff.

Sincerely,

/S/

Michael L. Alston
Director

Enclosures