



NEW YORK CITY DEPARTMENT OF CORRECTION  
Martin F. Horn, Commissioner  
Office of the Commissioner

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March 07, 2006

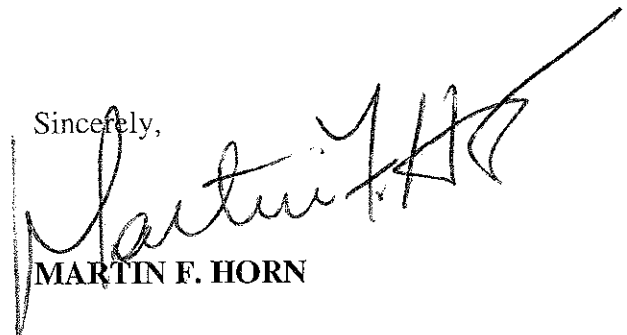
Ernest F. Hart, Esq.  
Chair  
Equal Employment Practices Commission  
City of New York  
40 Rector Street, 14<sup>th</sup> Floor  
New York, New York 10013

Dear Mr. Hart:

Attached is the agency's response to the Preliminary Determination Pursuant to the Audit of the Department of Correction (DOC) and its compliance with the City's Equal Employment Opportunity Policy from July 1, 2001 and ending December 31, 2003. Please include our response and this cover letter in the body of the final report if one is issued.

Finally, in submitting this response, I want to express my appreciation to you and your entire staff for the cooperation extended to my staff at the Department of Correction. If you have any questions regarding this response, please contact Bradley Averill, Deputy Warden, Internal Audit Unit at (212) 266-1065.

Sincerely,



MARTIN F. HORN

Encl.

## NEW YORK CITY DEPARTMENT OF CORRECTION RESPONSE

### EEPC's Preliminary Determination Pursuant to The Audit of DOC and its Compliance with the City's Equal Employment Opportunity Policy from July 1, 2001 and ending December 31, 2003

#### ➤ EEO Complaint and Investigation System

1. DOC provided 10 files designated as "discrimination complaint files" to EEPC for review. Of those files, two (#20030133 and #20030134) were duplicate anonymous complaints. One file (#20030136) was a request for religious accommodation.

*None of the internal complaint files contained the Commissioner's signature on the confidential written reports. Corrective action is required.*

Recommendation: In accordance with the City's Discrimination Complaint Procedures Implementation Guidelines (DCPIG, 1993, available at the DCAS website) the agency head should sign each confidential written report to indicate it has been reviewed and whether the recommendation(s) if any, have been approved and adopted. (DCPIG, sec. 12b)

#### **RESPONSE:**

The Commissioner does indeed sign off on all complaints that conclude with a recommendation that appropriate action be taken against an individual, or that some general corrective action be taken. All investigations that are substantiated are forwarded to the Commissioner with recommendations; and in the instances where an allegation is not substantiated, but a recommendation is made in the best interest of the Department, such as, having the Commanding Officer or his/her designee address roll call, it is also forwarded to the Commissioner. The Commissioner then reviews and signs off on the recommendations. It should be noted that one of the ten cases reviewed by EEPC did contain the Commissioner's notation that he concurred, and provided instructions for action to be taken. We will ensure that all future approvals contain his signature as well. Additionally, the agency head reviews all complaints via the monthly reports that include all cases which are opened, closed, and dismissed. The Commissioner affixes his initials to these reports reflecting his review and approval. We have revised our procedure to ensure that a copy of the document is provided to the EEO office after the Commissioner affixes his initials.

2. None of the discrimination complaint files provided contained discrimination complaint intake forms.

Recommendation: All discrimination complaint files should include a Discrimination Complaint Form completed by the complainant or the EEO investigator. (DCPIG, sections 5 and 12a (1993))

**RESPONSE:**

The Department respectfully disagrees with both the finding and the recommendation above. First, it should be noted that three complaint files contained Discrimination Complaint Forms. The other seven files contained a written complaint.

Additionally, the Department disagrees that a Discrimination Form is required in every case.

The DCPIG (section 5) indicates that “while the **preference** is for the complaint to be typed on the Complaint Form, **any communication** that is given to the EEO Officer or Counselor that identifies the respondent(s) with reasonable specificity and provides the essence of the circumstances which gave rise to the alleged discrimination, **may be deemed an acceptable complaint.**” Section 12a indicates that if a complaint is not submitted on the City’s Discrimination Complaint Form, the EEO Officer or Counselor “should ensure that the information required on the City’s Discrimination Complaint Form is **captured** either **by having the complainant(s)**, or his/her agent **amend the original complaint, or** file the complaint using the City’s Discrimination Complaint Form.”

The above language clearly indicates that the complaint does not have to be on the Discrimination Complaint Form, as long as the necessary information is captured in the complaint.

The DOC does routinely utilize the Discrimination Complaint Form when complaints are made in person, and utilizes an Intake Complaint Form when complaints are made telephonically. However, when complaints are received by way of a notification letter, which captures all pertinent details, this letter is used as a valid file document. Whenever a notification letter is received with incomplete information the investigator ensures that inquiries are made to ensure the proper inclusion of all components that are identified in the Discrimination Complaint Form are captured in the confidential written report. This process guarantees consistency with the required thoroughness in all complaints. The Department properly lodges and records all complaints in a central registry (logbook).

While it is our position that no corrective action is necessary, the Department will, however, modify its procedures to ensure that all folders contain a blank Discrimination Complaint Form prominently placed in the front of the folder that the investigator will refer to, to ensure that all necessary information is included in the notification document. If the notification letter is incomplete the Discrimination Complaint Form will be utilized and completely filled out. Additionally, we have

revised our procedures regarding Supervisory review of closed files to ensure that required complaint information is properly recorded.

**3. The EEO professionals' confidential written reports were not prepared in accordance with the DCPIG: i.e., divided into three sections entitled "Finding of Facts," "Discussion and Conclusion," and "Recommendation." Corrective action is required.**

Recommendation: All confidential written reports should be divided in either three sections in accordance with section 12b of the DCPIG, or five sections, consisting of: Background, Investigation, Documentation, Conclusion, and Recommendations.

#### **RESPONSE:**

The NYCDOC EEO Office presently divides written reports into the following sections: Background, Investigation, Documentation, Conclusion and Recommendations. This structure was adopted at the recommendation of DCAS which has confirmed their endorsement of this approach. As a result we will continue to utilize this structure. It should be noted that three of the confidential written reports provided to EEPC were prepared using the five sections recommended by DCAS. It should also be noted that the sections used in the other seven confidential written reports were similar to EEPC's required sections.

The five sections have been institutionalized in the EEO Office by incorporating them into our EEO Policy Manual, a copy of which is provided to new investigators and is utilized in their training in operational procedures.

All folders are reviewed first by a Supervising Investigator, secondly, by the Deputy Director, and finally, by the Deputy Commissioner. While we do not concede that corrective action is necessary, procedures have been revised that require this review to ensure that confidential written reports are properly structured. Additionally, all investigators have been provided with a copy of the structure that the investigative report is to mirror, and the Investigators were also informed of the structure in a staff meeting.

#### ➤ **EEO Training**

**4. According to the Deputy Commissioner of EEO, the EEO Trainers have not been trained by DCAS' OCEEEO. Corrective action is required.**

Recommendation: All EEO trainers should receive DCAS' training for EEO Professionals.

**RESPONSE:**

All EEO instructors are either trained directly by DCAS or by those who attended DCAS training. It is our position that this fully meets the requirements of EEO Policy.

➤ **Selection and Recruitment**

**5. The Deputy Commissioner of EEO informed EEPAC auditors that the Director of Personnel is solely responsible for developing recruitment strategies and selecting recruitment media for the agency. Corrective action is required.**

Recommendation: To ensure fair employment practices, the Commissioner should direct the Personnel Director to include the Deputy Commissioner of EEO in development of recruitment strategies and selection of recruitment media. (Sect. IV, EEOP)

**RESPONSE:**

The auditor's finding above is incorrect and therefore no corrective action is necessary. The Senior Deputy Commissioner chairs a committee for recruitment strategies and selection of recruitment media. This committee includes but is not limited to Deputy Commissioner of EEO, Assistant Commissioner of Personnel and Chief of Administration. It is a collaborative effort of all committee members to ensure that recruitment strategies and selection of recruitment media continue to attract a diverse number of candidates for employment. The DOC stands proud of its employment history which presently consists of over eighty percent (80%) minority and greater than forty two percent (42%) women. The Department is in full compliance and no corrective action is warranted.

➤ **Special contingencies**

**6. DOC uses DCAS's managerial performance evaluation form, which includes a rating for EEO. However, 77% of supervisors interviewed indicated that their performance evaluations did not include a section where they were rated on EEO performance; in addition, 90% of the supervisors interviewed indicated that they were not informed that EEO performance would be part of their overall performance evaluation and would be considered in determining eligibility for promotions and merit increases. Corrective action is required.**

Recommendation: Supervisors should be informed that they will be rated on EEO Performance. (Sect. VE, EEOP)

**RESPONSE:**

All promotional training consists of an EEO class, which addresses supervisor responsibilities in this vital area. Documented discussions concerning a supervisors role in EEO are also held at the command level. A memorandum is provided to all managers and supervisors annually, reminding them of their duties and responsibilities under EEO laws. Corrective action will consist of the DOC amending the Directive on managerial performance evaluations for uniformed personnel and adding this component.

**7. During the audit period, 6367 of 10,818 employees received EEO training; 59% of the overall workforce. However, the agency specific plan of FY '02 projected that the entire staff would receive training. Corrective action is required.**

Recommendation: DOC should either adhere to the goals projected in its Agency Specific EEO Plan, or develop a more practical EEO training plan for all new and existing employees. (Sect. IV, EEOP)

**RESPONSE:**

DOC has always set an EEO training goal of 100% of all staff annually. Each year we do train all new employees and promotees, as well as provide refresher training to existing employees as the schedule permitted. While we have preferred to set an aggressive target, we have revised our agency plan as suggested, to reflect our goal of continuing to train all new employees and promotees, and providing refresher training as necessary.