



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10065

Adrian Benepe
Commissioner

10349

March 23, 2011

Mr. Abraham May
Executive Director
Equal Employment Practices Commission
40 Rector Street, 14th Floor
New York, New York 10006

Re: Final Determination Pursuant to the Audit of the Department of Parks & Recreation ("Parks") and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2008

Dear Mr. May:

Thank you for your February 22, 2011 comments to Parks' initial response to the Equal Employment Practices Commission's ("EEPC") Preliminary Determination concerning the above referenced audit. As previously conveyed in writing and during our meeting in December 2010, Parks has implemented all of the EEPC's requested recommendations, unless otherwise specifically indicated below. In addition, as per your request, we herein supplement our previous response.

We understand that the EEPC is seeking documentation to support Parks' position that it is in compliance with Recommendations #1, #2, and #7.

Specifically, Recommendation #1 seeks documentation that Parks has redistributed to all employees in writing the name, location, and telephone number of the Disability Rights Coordinator (or Accessibility Coordinator). A memorandum addressing this recommendation was sent to all Parks employees in January 2011 and is attached hereto as Exhibit A. In addition, Parks will continue to send similar communications throughout the year to staff advising them how they may contact the Disability Rights Coordinator.

Recommendation #2 seeks documentation that all internal discrimination complaint files included an Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form completed by the complainant or an EEO representative, or a complaint that captures the information required on this form. As we noted in our earlier response, this information has now been transferred to the complaint forms and an example is attached hereto as Exhibit B.



Recommendation #7 seeks documentation that the Parks Personnel Director has redistributed to all employees the identity and type of guidance, which is available from the Career Counselors. A memorandum addressing this recommendation was sent to all Parks employees in January 2011 and is attached hereto as Exhibit C. In addition, Parks will continue to provide this information to employees throughout the year.

We also understand that the EEPC disagrees with Parks' response to Recommendations #4, #5, #6, #8, and #10.

Recommendation #4: The agency head should sign-off on all final determinations concerning EEO Complaint resolutions to indicate that they have been reviewed and whether the recommendation, if any, has been approved and adopted. Such sign off may be in written or electronic form.

Parks initial Response: This is already the practice and has been for the past six years.

EEPC Reply: Confidential written reports for complaints EEO 08-02 and EEO 08-06 did not contain your signature to indicate that the final determinations were reviewed and approved.

Parks supplement Response: Parks does not deny that there are two instances where the complaint resolution forms do not contain my signature. However, the existence of these two unsigned reports do not represent a departure from the policy, but only two instances of human error. The policy is that the Commissioner review and sign off on the letters. Indeed, the other thirty four (34) reports during the period of the audit were signed. Parks will continue to implement the practice of the Commissioner review/signoff on the reports and to strive to avoid any further instances where reports are inadvertently not signed by the Commissioner.

Recommendation #5: Because the EEOP holds each agency responsible for retaining information about personnel actions, discretionary hiring, and applicants as required by federal, state, and local law and/or the City's official records retention schedule, the agency should maintain complete applicant logs (which include the *Division/Unit, JVN#, Civil Service Title, Office Title, Interviewers' Names, Applicants Names, Social Security Number, Ethnicity, Gender, Disability, Veteran, Interview Date, Result, Reason Selected/Not Selected, and Recruitment Source*) for all discretionary appointments.

Parks initial Response: Our Personnel division already maintains applicant logs. The logs are contained in the Vacancy Accountability and Tracking System (VAT) and are reviewed by the EEO office for all fulltime hires. The VAT contains a Discretionary Applicant Form, which contains demographic data, resumes, rating sheets, etc.

EEPC Reply: The DPR used applicant logs to retain applicant/hire information for its discretionary positions (i.e. agency code, agency, title code, job title, recruitment source, gender, ethnicity, disability status, veteran status, date, person interviewed by, and unit/work location).



Candidates were interviewed by panels and received a separate rating from each panel member. However, neither the applicant logs nor rating sheets identified the reason for selection/non-selection. Your response does not indicate that the agency records this information as practice. The Recommendation reflects this finding.

Parks supplemental Response: While Parks does not dispute that the documents that are created by the VAT process do not explicitly state the reason why a candidate was selected or not, Parks does believe that the documents that are part of the VAT process effectively conveys such information in acceptable manner. Moreover, nothing in the Citywide EEO Policy requires that the applicant log state a reason for the determination. The documents that make-up the VAT process include the job postings and amendments thereto, the identification of the panel and their titles, the matrix or questions to be asked of candidates, the resumes, the Discretionary Applicant forms, Panel Attestation forms and related memoranda, ratings forms. Moreover, the Parks EEO Officer must approve the VAT at each stage. With regard to an expressed "reason" for the selection, we discussed this at our meeting in December. Pursuant to the VAT process, the selecting official is presented with candidates that are considered by the interview panel to be the top candidates and the selecting official must choose one of those candidates, or explain in writing why a different candidate was selected. If one of those candidates is selected it is because the selecting official has determined that he or she is the most qualified and the other recommended candidates, although capable of performing the job are not as qualified. As noted, the Citywide EEO Policy does not require that a reason be stated in the log and under the VAT process, no practical or prudent purpose would be served to provide a further explanation and any such explanations would primarily serve as fodder for a possible litigation regarding the selection. However, a written explanation is required if the selecting official seeks to select a candidate not recommended by the panel, since such a deviation from the VAT process warrants a documented reason. Moreover, for those employees who believe that the interview and hiring process was unfair in some manner, or they are merely curious as to why they were not selected, they can contact a career counselor or the Personnel Office to obtain information, including interview scores, to assist the employee in future job applications or in seeking redress for any discrimination or retaliation against them.

Recommendation #6: Since the EEO requires that each agency assess its criteria for selecting persons for mid level to high level discretionary positions to determine whether there is adverse impact upon any particular racial, ethnic, disability, or gender group, the DPR should conduct an assessment of its selection criteria for discretionary titles. The DPR can use, and may modify, the Disparate Impact Analysis Program (an on-line Internet based application) recommended by DCAS/DCEEEO by accessing: <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>. To the extent that adverse impact is discovered, the agency head should determine whether the criteria being utilized are job related. If the criteria are not job-related, the agency head should discontinue using those criteria.



Parks initial Response: We will explore this recommendation, but it is important to note that “mid to high” level positions are usually governed by the VAT process (see above) and include strict scrutiny by the EEO office.

EEPC Reply: Your response does not indicate that the results of the past assessment (of the manner in which mid level to high level candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group) were conclusive as to whether there was adverse impact on any particular racial, ethnic, disability, or gender group. Nor does it indicate whether the agency head, Human Resource Director and EEO Office used the results to determine a recruitment strategy for positions where underutilization existed.

Parks supplemental Response: Parks agreed that we would explore using the recommend software. However, it must be noted that Parks conducts analyses that are far more than what would be achieved by using the Disparate Impact Analysis Program. Pursuant to the *Wright v. Stern* Stipulation whereby Parks conducts an annual adverse impact study¹ of the selections made for certain job titles (which would be considered mid to high level positions) and if in the aggregate the analysis shows a selection rate for African-American and Hispanic candidates (combined) that is less than eighty percent of the selection rate for Caucasian candidates, Parks will conduct a content validity study of one job title amongst those subject to the adverse impact study. So far, Parks has performed two content validity studies, although, in one instance Parks did not concede that the selection rate for African-Americans and Hispanics was less than eighty percent of the selection rate for Caucasians. The content validity studies to-date, have been for the titles of Parks & Recreation Manager and Recreation Center Manager. Another content validity study is planned for Deputy Chief of Operations. Parks intends to implement the some of the suggested interview questions resulting from these studies in future job postings for such titles. Furthermore, to the extent that such studies or any other assessment suggests the need to review Parks’ recruitment strategy for positions where underutilization is found, Parks will, if necessary, revise its applicable recruitment strategies.

Recommendation #8: Since the City’s Equal Employment Opportunity Policy holds managers and supervisors accountable for effectively implementing EEO-related policies and ensuring non-discrimination within their departments or units, the agency’s managerial performance evaluation form should contain a rating for EEO – which covers responsibilities and processes for assuring that people are appropriately employed, effectively and efficiently utilized, and dealt with in a fair and equitable manner.

Parks initial Response: This was previously negotiated and was implemented four years ago.

¹ Parks did not agree in the Stipulation that it is appropriate under the Uniform Guidelines to aggregate job titles or racial groups in performing an adverse impact study



EEPC Reply: The managerial performance evaluation form submitted to the EEPC by DPR contains an EEO Section with a *notation* of whether the supervisor/manager has violated EEO Policy, failed to cooperate with the EEO Officer or promptly report any allegations of discriminatory conduct, or provided exceptional service in support of the EEO Office. The agency head's accountability statement in Agency Specific EEO Plan encouraged manager/supervisors to support a work environment that values fairness, equity and respect and holds them accountable for implementing the policy and ensuring the agency does not harass or discriminate against employees and applicants for employment. However, their evaluations did not contain an EEO rating which covers these responsibilities.

Parks supplemental Response: Nothing in the Citywide EEO Policy requires that managerial performance evaluations include a section for specifically rating managers/supervisors on their support of a work environment that values fairness, equity and respect holds them accountable for implementing the policy and ensuring the agency does not harass or discriminate against employees and applicants for employment. Nevertheless, Parks agrees that it is important to consider whether managers/supervisors have violated EEO Policy, failed to cooperate with the EEO Officer or promptly report any allegations of discriminatory conduct, or provided exceptional service in support of the EEO Office and believes that the space provided for EEO to make a notation is more than adequate to serve this purpose.

Recommendation #10: Because the EEOP requires the EEO Officer to report directly to the agency head (or if approved by DCAS, to a direct report to the agency head), appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding decisions that impact the administration of the agency's EEO program must be maintained.

Parks initial Response: This recommendation was implemented after the December Audit meeting. The memorandum reflects the existence of a meeting, but does not memorialize the communications of the meeting.

EEPC Reply: In order to maintain the integrity of the DPR's EEO Program, appropriate documentation of decisions that impact the administration of the agency's EEO program must be maintained.

Parks supplemental Response: Nothing in the Citywide EEO Policy requires documentation of decision that impact the administration of the agency's EEO program. Nevertheless, Parks agrees that it is advisable to document decisions that substantially impact the administration of any agency program. However, the decision as to whether and how much documentation is appropriate is a managerial one. Since the December meeting, there have been three (3) meetings between the Commissioner, the EEO Officer and the Agency General Counsel. The EEO Officer has drafted a memorandum for each meeting memorializing decisions that were made that impact the administration of the Agency's EEO program. In addition, minutes are



kept from the Advisory Committee meetings which are held quarterly. The Advisory Committee is comprised of the EEO Officer, the General Counsel, the Commissioner and three African American and/or Hispanic Parks employees and addresses employment discrimination and retaliation concerns.

Finally, we understand that the EEPC seeks clarification regarding Parks' responses to Recommendations #3 and #9.

Recommendation #3: Since the EEOP states that all complaints, requests, mediation efforts, investigations, requests for accommodation and their outcome must be documented by the EEO Office, it is the Commission's position that all internal discrimination complaint files should contain written indication of corrective action(s) taken as a result of the determination.

Parks initial Response: The written action is already contained in the reports. Therefore, this recommendation is most relevant to follow-up. We already have the practices of a written nine month follow-up with complaints and will follow-up with either the Disciplinary Division or Management as recommended.

EEPC Reply: Complaints EEO 08-02, EEO 08-03, EEO 08-10, and EEO 08-11, did not contain documentation that corrective action was taken as a result of the EEO Officer's investigation. Your response states that a practice is in place, but does not address the recommendation that these and all complaint files should contain written indication of the corrective action(s) (i.e. documentation of training, reprimand, etc.) that occurred as a result of a determination.

Parks supplemental Response: The Investigation Report contains a "Recommendation section" which has any proposed corrective action. As a result of the EEPC's recommendation, we also follow up with either the Parks' Advocate's Office or the appropriate management division to confirm that the corrective action(s) took place and are documented in the report. The four (4) reports that lacked documentation of corrective action are not emblematic of a failure to provide the recommended documentation. Nonetheless, the EEO Office will strive to ensure that all reports have documented the corrective action taken.

Recommendation #9: At least twice a year during normal staff meetings, managers and supervisors must emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings must be documented.

Parks initial Response: While this affirmation is contained in the on-line EEO/Harassment Training, we will prepare an affirmation for distribution.

EEO Reply: Your response does not indicate whether managers and supervisors will be directed to emphasize their commitment to the agency's EEO policies and affirm the right of each

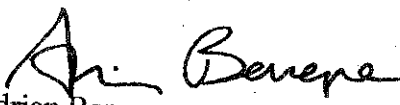


employee to file a discrimination complaint with the EEO office during staff meetings at least twice a year.

Parks supplemental Response: To clarify our initial response, Parks will require managers and supervisors to affirm their commitment to the Agency's EEO policies and to affirm the right of each employee to file a discrimination complaint with the EEO office during staff meetings at least twice a year. There is no requirement in the Citywide EEO Policy that managers and supervisors submit written affirmations.

We were pleased with the minimal exceptions that were discovered and have implemented, or in the process of implementing all of your recommendations, with the exception of a portion of Recommendation #5, as discussed above. However, Parks believes that its existing practices comply with the purpose of Recommendation #5 and that with Parks' supplemental response we have demonstrated that a reason for selection/non-selection is clear upon an inspection of the relevant VAT documents. Thank you again for your efforts. If there are any questions, please contact Ricardo Granderson at 212-360-2782.

Respectfully Submitted,


Adrian Benepe

Cc: Ricardo R. Granderson, Alessandro Olivieri, David Stark, Robert Garafola

