UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

May 30, 2019

Return Receipt Requested
Certified Mail #: 7015 3010 0001 1267 1326

In Reply Refer To:
EPA Complaint No. 03R-19-R4

John P. Regan
City Manager
City of St. Augustine
Post Office Box 210
St. Augustine, FL 32085-0210

Re: Rejection of Complaint No. 03R-19-R4

Dear Mr. Regan:

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting a complaint filed against the City of St. Augustine (hereinafter "the City"). The allegation is that the City retaliated against an individual because of his advocacy of rights guaranteed by Title VI of the Civil Rights Act of 1964 (Title VI) by denying him a press pass to attend a conference called "Keeping History Above the Water" (KHAW). ECRCO is responsible for processing complaints alleging that applicants for or recipients of EPA financial assistance have discriminated against individuals or communities under the federal nondiscrimination laws, including Title VI and EPA's nondiscrimination regulation found at 40 C.F.R. Parts 5 and 7. EPA's nondiscrimination regulation prohibits discrimination based, in part, on a person having exercised rights protected by Title VI. After careful consideration, ECRCO has determined that it cannot accept the complaint for investigation. Accordingly, this matter is closed as of the date of this letter[1].

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1 During a telephone interview on May 16, 2019, Complainant explained to ECRCO staff that the only allegation he wanted ECRCO to investigate was that he had been denied a press pass for the KHAW conference in retaliation for his advocacy for the Title VI rights of the African American residents of St. Augustine. Although Complainant's letter included other information, Complainant told ECRCO that the additional information was intended to provide background. Accordingly, this analysis will address only the issue of the requested press pass to the KHAW conference.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

In general, ECRCO will accept, reject, or refer a complaint after considering the four jurisdictional factors discussed above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject the complaint.[2] In an effort to determine jurisdiction, ECRCO conducted a lengthy interview with the Complainant on May 16, 2019, and examined all documents provided to ECRCO.

During the telephone interview, Complainant stated that in February of 2019 he went to the KHAW website, located the online registration form, and typed a request for a press pass or "scholarship" into the section for questions. Complainant stated that he never received a response to this inquiry and that on April 22, 2019, he had a telephone conversation with "the City's City Manager, John Regan," during which he discussed the conference and the press pass. Complainant alleges that you ended the telephone call and that he interpreted this action to mean that his request for a press pass was denied. Complainant further stated that on the evening of Sunday, May 5, 2019, he sent an email to both Flagler College and the City asking again for a press pass to attend the KHAW conference. When asked by ECRCO staff who made the decision about whether he should be given a press pass or scholarship, Complainant stated that he did not know.

This account of events is contradicted by a blog Complainant posted on May 3, 2019, which was submitted as an attachment to the complaint. In this blog Complainant wrote that he spoke with you on April 22, 2019, and that you reported that your "putative efforts to obtain a press pass/scholarship" for him from Conference Coordinator Dr. Leslee Keys, Ph.D "were unavailing." Dr. Keys is not employed by the City, is a Professor at Flagler College and was one of the co-chairs of the Conference. This account, then, appears to indicate that the City did not control access to press passes and/or scholarships to the conference and that you, as the City Manager, had, in fact, intervened to try to obtain such a pass for Complainant.

Given this information, the allegation that the City denied Complainant a press pass for the KHAW conference in retaliation for his advocacy on behalf of African-American residents does

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[2] *See* ECRCO Case Resolution Manual, Section 2.6, pp. 12-13, available at: https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

not appear sufficiently grounded in fact and ECRCO cannot accept this complaint for investigation.

If you have questions about this letter, please contact ECRCO Team Lead Debra McGhee, by phone at (202) 564-4646, by email at mcghee.debra@epa.gov or by mail at 1200 Pennsylvania Avenue, NW, Mail Code 2310A, Room 2524, Washington, DC, 20460-1000.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Beverly Banister
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
US EPA Region 4

Leif Palmer
Regional Counsel
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