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 1319

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

(b) (6) Privacy

St. Augustine, FL 32085 (b) (6) Privacy

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

Dear (b) (6) Privacy

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting your complaint filed against the City of St. Augustine (hereinafter "the City"). You allege that the City retaliated against you because of your advocacy of rights guaranteed by Title VI of the Civil Rights Act of 1964 (Title VI) by denying you 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 persons, including on the basis of race, color or national origin, in violation of Title VI and other federal nondiscrimination laws and EPA's nondiscrimination regulation found at 40 C.F.R. Parts 5 and 7. EPA's nondiscrimination regulation prohibits retaliation 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].

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.,

[1] During a telephone interview on May 16, 2019, you explained to ECRCO staff that the only allegation you wanted ECRCO to investigate was that you had been denied a press pass for the KHAW conference in retaliation for your advocacy for the Title VI rights of the African American residents of St. Augustine. Although your letter included other information, you 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.

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 you on May 16, 2019, and examined all documents provided by you.

During the telephone interview, you stated that in February of 2019 you 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. You stated that you never received a response to this inquiry and that on April 22, 2019, you had a telephone conversation with the City's City Manager, John Regan, during which you discussed the conference and the press pass. You allege that the City Manager ended the telephone call and that you interpreted this action to mean that your request for a press pass was denied. On the evening of Sunday, May 5, 2019, you sent an email to both Flagler College and the City asking again for a press pass to attend the KHAW conference. When asked by my staff who made the decision about whether you should be given a press pass or scholarship, you said that you did not know.

This account of events is contradicted by a blog you posted on May 3, 2019, which was submitted as an attachment to your complaint. In this blog you write that you spoke with the City Manager on April 22, 2019, and that he "reported via telephone at 8:18 pm that his putative efforts to obtain a press pass/scholarship for me from Conference Coordinator Dr. Leslee Keys, Ph.D. were unavailing." Dr. Keys, who 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 the City Manager had, in fact, intervened to try to obtain such a pass for you.

Given this information, the allegation that the City denied you a press pass for the KHAW conference in retaliation for your advocacy on behalf of African-American residents does not appear sufficiently grounded in fact and ECRCO cannot accept this complaint for investigation.

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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.

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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 Civil Rights Official
US EPA Region 4

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