



OFFICE OF THE INSPECTOR GENERAL
MONTGOMERY COUNTY, MARYLAND

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INSPECTOR GENERAL

EEO Complaint Filing and Investigation Processes Could Disadvantage County Employees

Equal Employment Opportunity Compliance and Diversity Management Division
and Office of Human Rights

OIG Publication # 20-010

June 4, 2020

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EXECUTIVE SUMMARY

Why We Did This Review

We conducted this review in response to complaints we received about the County's Equal Employment Opportunity Compliance and Diversity Management Division (EEO Division) and the County's Office of Human Rights. Complainants alleged that the EEO Division was not sufficiently responsive and took a long time to investigate complaints. We also received complaints reporting processing delays at the County's Office of Human Rights. We were concerned that noted deficiencies could cause some complainants to miss enforcement agency deadlines and lose their ability to seek redress for alleged harms.

What We Found

1. The deadlines for filing complaints with the Federal and State enforcement agencies had passed by the time the EEO Division informed complainants of decisions.
2. The Office of Human Rights wrongly refused to accept a complaint from a County employee who had also filed a complaint with the County EEO Division.
3. The Office of Human Rights' complaint filing process is not clearly defined for complainants and creates a false impression that they have filed complaints when in fact they have not.
4. Neither the EEO Division nor the Office of Human Rights has written policies or procedures governing their assigned responsibilities.
5. Neither the EEO Division nor the Office of Human Rights has training requirements for staff.
6. The EEO Division's website and materials do not fully explain the EEO process, resources available for filing an EEO complaint, or applicable deadlines.

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BACKGROUND

Montgomery County Code Chapter 27 prohibits employers from discriminating against employees or applicants for employment based on race, color, religious creed, ancestry, national origin, age, sex, marital status, sexual orientation, gender identity, family responsibilities, or genetic status. The Montgomery County Equal Employment Opportunity Compliance and Diversity Management Division (EEO Division) and the Montgomery County Office of Human Rights are charged, among other responsibilities, with investigating formal complaints alleging employment discrimination by Montgomery County as an employer. The offices process complaints regarding different, although somewhat overlapping, groups of employers and offer varied types of relief.

The Maryland Commission on Civil Rights (MCCR) and the United States Equal Employment Opportunity Commission (EEOC) are state and federal agencies, respectively, that can also investigate formal complaints alleging employment discrimination by Montgomery County as an employer. See Figure 1.

Figure 1: Agency Jurisdiction and Remedies

ADMINISTRATIVE AGENCY	ENFORCEMENT AGENCIES		
County EEO Division	County Human Rights	Maryland Commission on Civil Rights	United States EEOC
Covers Montgomery County Government	Covers County Private and Public Sector Employers	Covers State Private and Public Sector Employers	Covers U.S. Private and Public Sector Employers ¹
Administrative remedy	Legal Enforcement Remedy	Legal Enforcement Remedy	Legal Enforcement Remedy
Not Appealable	Appealable	Appealable	Appealable

¹ Only employers with a certain number of employees may be covered.

BACKGROUND

The EEO Division is an internal County Government office in the County's Office of Human Resources. The division is managed by the County EEO Officer and staffed with two additional employees². The EEO Division is responsible for the following activities:

- training employees and managers on equal employment and diversity management;
- submitting data to meet mandated Federal and State EEO-related reporting requirements;
- investigating EEO complaints against the County by County employees, applicants for County employment, and people doing business with the County;
- monitoring departmental investigations of EEO complaints;
- providing guidance and assistance to managers and supervisors on EEO matters; and
- resolving EEO issues/complaints between the complainant and the County using mediation and amicable solutions.

The EEO Division is not an enforcement agency, meaning it cannot enforce its orders in court. In a memorandum discussing the EEO Division, the County Council's Senior Legislative Attorney described the EEO Division as "an internal resource available to resolve discrimination complaints from County employees short of filing a formal complaint with an outside agency, such as Human Rights...The investigation and resolution of discrimination complaints before they result in litigation is a core function of the Office of Human Resources."³

According to the County EEO Officer, most of the Division's time is spent conducting investigations. Additionally, in fiscal year 2019 the EEO Division led 78 Preventing Workplace Harassment courses for County employees and nine (9) EEO and Diversity Management courses. The EEO Division also conducted an unspecified amount of training for faculty and staff at Montgomery College and conducted diversity training and administrator training for the Maryland Police and Correctional Training Commissions, located in Carroll County. County employees are required to take the Preventing Workplace Harassment course within the first 30 days of employment, and they are required to take refresher training every three (3) years. Managers and supervisors are required to take the EEO and Diversity Management course within the first year of employment, and a refresher is required every 3 years.

The EEO Officer provided that the EEO Division dealt with 184 "transactions" in fiscal year 2019. These included EEO complaints by County employees and complaints not in the jurisdiction of the EEO Division, such as labor issues and complaints by private sector employees against corporations. The EEO Officer did not indicate the number of transactions that were converted to investigations. The EEO Division reported that 19 cases were closed with a probable cause finding, and 27 cases were closed with a finding of no probable cause.

² One of these employees started in approximately March of 2020.

³ Memorandum to the County Council, May 4, 2010.

In contrast with the EEO Division, the Montgomery County Office of Human Rights is an enforcement agency able to pursue legal action to enforce equal opportunity laws. The Office of Human Rights is in the Executive Branch of County government and is led by a Director appointed by the Chief Administrative Officer. The Office of Human Rights assists the Montgomery County Commission on Human Rights⁴. The Office of Human Rights has eight full-time employees, four of whom are investigators.

The Office of Human Rights may investigate complaints of discrimination against any employer in the County, including the County Government. It may also investigate complaints about discrimination in real estate and public accommodation. The Office of Human Rights had 121 cases in process in fiscal year 2019, 92% of which dealt with employment issues.

The Montgomery County Commission on Human Right and the Office of Human Rights have overlapping jurisdiction with the U.S. Equal Employment Opportunity Commission and the Maryland Commission on Civil Rights over many employment discrimination claims arising in the County. The Office of Human Rights has exclusive jurisdiction over types of discrimination specifically prohibited by County law, but not identified in state or federal law, such as discrimination based on family responsibilities.

Agencies charged with investigating equal employment opportunity complaints have legally specified requirements and deadlines for filing complaints. Figure 2 details the filing deadline requirements for the relevant agencies discussed in this report.

Figure 2: Agency Deadlines

ADMINISTRATIVE AGENCY	ENFORCEMENT AGENCIES		
County EEO Division	County Human Rights	Maryland Commission on Civil Rights	United States EEOC
1 year to file complaint ⁵	1 year to file complaint ⁵	6 months to file complaint ⁵	300 days ⁶ to file complaint ⁵

⁴ The County’s Commission on Human Rights has 15 members, who are appointed by the County Executive and confirmed by the County Council. The members are uncompensated and are required to meet at least once per month for nine months of the year. This report may refer to the Commission on Human Rights and the Office of Human Rights together as “Human Rights.”

⁵ Measured from the most recent discriminatory action.

⁶ The initial 180 calendar day filing deadline is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis, which is the case in Maryland. The U.S. Supreme Court

Filing only with the EEO Division but waiting to file with an enforcement agency narrows a complainant's future options: time limits for filing a complaint with the Office of Human Rights or with a State or Federal enforcement agency are not extended or suspended while the EEO Office investigates a complaint⁷. By contrast, there is no additional deadline for filing with the Maryland Commission on Civil Rights, if a complaint is filed with County Human Rights within six (6) months of the alleged discriminatory action.⁸

Objectives, Scope, and Methodology

The objectives of our review were to determine (1) if lengthy EEO Division processing times have caused complainants to miss the deadlines for filing with equal employment opportunity enforcement agencies and (2) whether County employees filing equal employment opportunity complaints were reasonably informed of their rights to EEO enforcement.

Our review was conducted in accordance with the Association of Inspectors General, *Principles and Standards for Offices of Inspectors General* (May 2014). The fieldwork for this review was conducted between November 5, 2019 and April 28, 2020.

We reviewed laws and policies governing the EEO Division and the three enforcement agencies that may enforce employment discrimination laws in the County:

- The Montgomery County Commission on Human Rights;
- The Maryland Commission on Civil Rights; and
- The U.S. EEOC.

We also reviewed information on these agencies' websites regarding filing complaints. We compared the facts as reported by complainants with the deadlines of the enforcement agencies.

We interviewed employees at the EEO Division and County Human Rights and sought further information as needed. We were hindered by the EEO Division's inability to provide us with some of the information we requested. Some information was only provided after repeated requests over a period of weeks, and other information was never provided.

ruled in *EEOC v. Commercial Office Products Co.*, 486 U.S. 107 (1988) that a complainant is not required to meet a state agency's deadline in order to be entitled to the extended 300-day federal filing period.

⁷ Concurrent filings are allowed between EEO and enforcement agencies.

⁸ Maryland State Government Article § 20-1004(c)(1).

FINDINGS AND RECOMMENDATIONS

The Supreme Court stated in a 1988 case that Equal Employment Opportunity law “is a remedial scheme in which laypersons, rather than lawyers, are expected to initiate the process,” so an “easily understood” process is desirable⁹. In reviewing the County’s EEO entities, we determined that related information was confusing, not readily available, outdated, and possibly disadvantaged complainants. In fact, the material did not even explain the full breadth of resources available to aggrieved employees or the County’s objective in resolving complaints. Further, we struggled to find information about the differences between a non-enforcement agency, such as the County’s EEO Division, and an enforcement agency, such as the Montgomery County Commission on Human Rights. Not knowing this basic information could result in County employees (1) losing their opportunity to seek redress with the appropriate agency and file appeals and (2) misunderstanding the role of the EEO Division.

In examining the structure, policies, and operations of the County EEO Division and the Office of Human Rights, we found several areas of concern, not the least of which were the length of time taken by the EEO Division to investigate complaints; the EEO Division providing wrong and outdated information during employee training and orientation sessions; and the Office of Human Rights wrongly refusing to accept a complaint from a County employee.

Finding 1: The deadlines for filing complaints with the Federal and State enforcement agencies had passed by the time the EEO Division informed complainants of decisions.

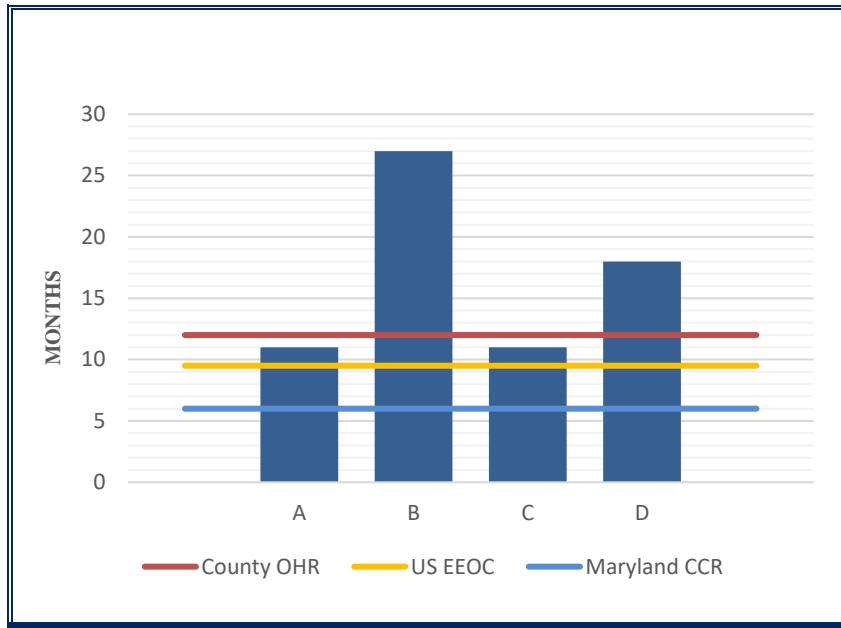
The OIG examined four complaints received from fiscal years 2017 to 2020 alleging that the EEO Division was slow to process complaints and slow to respond to complainant status inquiries. The four complainants had filed allegations with the EEO Division claiming discrimination in four different County departments.

Complainants waited between 11 and 27 months for the EEO Division to render a decision on their complaints. All four complainants contacted the EEO Division to ask for updates while awaiting a decision. Sometimes the complainants received no response, and sometimes they were told that results were forthcoming, but no results were provided. See Figure 3.

⁹ *EEOC v. Commercial Office Products*, 486 U.S. 107, 124 (1988).

FINDINGS AND RECOMMENDATIONS

Figure 3: EEO Division Processing Times Compared to Enforcement Agency Deadlines



Our review concluded that EEO Division processing times for the four complaints exceeded deadlines¹⁰ for the Maryland Commission on Civil Rights and the U.S. EEOC. For half of the complainants, the EEO Division processing time also exceeded the deadline for the County Office of Human Rights. As a result, the OIG concludes that the complainants likely lost their right to file with those agencies, as the OIG has no indication that the complainants had filed with those agencies.

The EEO Officer reported receiving 184 “transactions” in fiscal year 2019 and taking an average of 87 days to close each transaction. The “transactions” included complaints that were “not EEO related” and therefore were not investigated. Complaints that are not investigated would take minimal time to close, so they would bring the average closure time down, possibly obscuring the fact that EEO complaints that were investigated took much longer than 87 days to close. The EEO Officer did not provide us with requested information on the numbers of different types of complaints received each year.

¹⁰ The U.S. EEOC deadline is 300 days, which is 9.86 months.

Recommendation 1

The EEO Division should complete investigations in a timely manner before the deadlines of enforcement agencies expire and inform complainants of any approaching deadlines in time for them to file with the enforcement agencies.

Finding 2: The Office of Human Rights wrongly refused to accept a complaint from a County employee who had also filed a complaint with the County EEO Division.

While conducting our review, we found an instance in which a County employee, after waiting eleven months without receiving a decision from the EEO Division on their complaint, filed a separate complaint with the County Office of Human Rights. The Manager of Enforcement Programs of the Office of Human Rights notified the employee by email that the Office of Human Rights “cannot accept a claim that has also been filed in another agency or court.” The email from the Human Rights manager referenced Montgomery County Code § 27-1(b) as the basis for the decision.

A question on the Office of Human Rights’ intake form asks, “Have you filed a complaint in another agency or in court?” The employee wrote on the form, “Yes, I have filed an EEO Complaint at MCG.” “MCG” is an abbreviation for “Montgomery County Government”, and it appears on the County website and in internal County emails to all County employees.

Montgomery County Code § 27-1(b) states, in pertinent part:

Once a complaint is fully adjudicated under a similar or identical state or federal law, the complaint should not be reprocessed under this article if the effect is duplicative or cumulative.

Section 27-1 applies to complaints “adjudicated under a similar or identical state or federal law.” The County EEO Division is not a state or federal agency, and simply filing a complaint with it does not constitute the adjudication of a complaint.

The County employee was properly exercising their right to file with an enforcement agency, and the Office of Human Rights should have accepted the complaint. The County Office of Human Rights should not reject complaints based solely on people having filed with the County EEO Division.

Recommendation 2

(a) The County Office of Human Rights should train its employees not to reject complaints because they were previously filed with the EEO Division.

(b) The County Office of Human Rights should amend its intake form so that the question about whether the complainant has previously filed with another agency more closely aligns with § 27-1 of the County Code.

Finding 3: The Office of Human Rights' complaint filing process is not clearly defined for complainants and creates a false impression that they have filed complaints when in fact they have not.

The OIG received two complaints in fiscal year 2020 from people stating they did not receive a response from the Office of Human Rights after submitting the intake form. Both people apparently thought that they had filed complaints. One person wrote the OIG that they had submitted a complaint with the Office of Human Rights and had been told that they would be contacted by a complaint specialist "in a couple of days". After not being contacted by the Office of Human Rights for approximately two weeks, the person emailed the intake form to the Office of Human Rights and asked for an update on the status of the complaint. The Office of Human Rights replied that they did not have a record of the intake form prior to the email.

Another person complained to the OIG that they did not receive a response from the Office of Human Rights after submitting a complaint via mail and email. This person had not received a response after one month.

In researching the issue, we found that the agency does not consider the filing of an initial intake form to constitute the filing of a complaint. The Office of Human Rights' complaint intake form states at the top that it:

"... is for intake/inquiry only; it is not a filed complaint. An investigator or staff member will contact you if your inquiry is accepted for investigation by this agency."

The Manager of Enforcement Programs at the Office of Human Rights stated that the issues presented on the form are considered and if approved are used to draft a formal complaint. At that stage, the complainant is asked to discuss the issues presented and to sign a complaint. The Manager asserted that under the County Code, complaints must be sworn to or affirmed under penalty of perjury. If the issue is rejected, then the agency sends the individual a rejection letter. The manager stated that it takes approximately two weeks to make a decision on a matter received through the intake process.

Communications received by OIG complainants from the Office of Human Rights when they inquired about the status of their “complaints” made no attempts to clarify that individuals in fact had not filed complaints. They also did not explain the Office of Human Rights’ process or anticipated outcomes.

Confusion about whether a complaint has been filed has legal ramifications. EEO laws require the filing of complaints within a specified period after the alleged act occurred. Filing outside of these limits could cause aggrieved persons to lose their ability to seek redress. In addition, filing a complaint timely with one EEO enforcement agency can preserve the right to pursue a complaint through another enforcement agency. For example, filing a complaint with the County Office of Human Rights within 6 months of the alleged discriminatory act satisfies a filing requirement for the Maryland Commission on Civil Rights and therefore qualifies the complainant for relief.

Recommendation 3

The County Office of Human Rights should more clearly explain its process for when reported issues become formal complaints. It should further be consistent in its communication with individuals who are awaiting a determination on their grievances to ensure there is no confusion about the status of their filings.

Finding 4: Neither the EEO Division nor the Office of Human Rights has written policies or procedures governing their assigned responsibilities.

In conducting this review, we requested policies or procedures governing the work of the EEO Division and the Office of Human Rights, but we were not provided with any. Our requests for these documents were primarily ignored by the EEO Officer. The Manager of Enforcement Programs at the Office of Human Rights told us that Human Rights does not have written policies or procedures, but that the office follows County laws and regulations.

A lack of policies and procedures can lead to inconsistent treatment of cases, and staff not knowing how they should handle challenging situations and making incorrect assumptions. In addition, without policies and procedures, there is an increased risk that the activities of the County’s EEO agencies will not align with the County’s objectives related to providing equal employment opportunity, racial equity, and social justice.

The Office of Human Rights’ lack of policies and procedures creates a risk not only for County employees, but also for all people who live in the County and/or work for employers in the County, since the Office of Human Rights receives complaints about discrimination by any employer in the County and about discrimination in County real estate and public accommodation.

Recommendation 4

(a) The EEO Division should draft, maintain, and train EEO staff on written policies and procedures that govern the full extent of their responsibilities.

(b) The Office of Human Rights should draft, maintain, and train the Office of Human Rights staff on written policies and procedures that govern the full extent of their responsibilities.

Finding 5: Neither the EEO Division nor the Office of Human Rights has training requirements for staff.

The EEO Division and the Office of Human Rights have no stated training requirements for staff.

The EEO staff reported that prior to the training budget being cut in 2015, EEO staff attended training provided by the EEOC.

Office of Human Rights staff also stated that the training budget for that office had been cut and reported sometimes attending training sessions offered by the EEOC or the Maryland Association of Human Rights workers. They also stated that the County Council's Senior Legislative Attorney occasionally provides them explanations of new County laws.

According to the Manager for Enforcement Programs, the Office of Human Rights staff belongs to the Maryland Association of Human Rights Workers, and they regularly receive a publication entitled *Public Housing Advocate*. Whether this information is shared or discussed is unconfirmed.

This lack of training or continuing education appears outside the industry norms. For comparison, the U.S. EEOC has the following training requirements for its EEO counselors and investigators:

- 32 hours prior to assuming duties
- 8 hours of continuing training each fiscal year

As another example, the American Association for Access, Equity and Diversity, an association of professionals working in the areas of affirmative action, equal opportunity, and diversity, also has training requirements for recertification as a Certified Affirmative Action Professional, including:

- 48 hours are required for initial certification
- 36 hours are required for recertification every three years

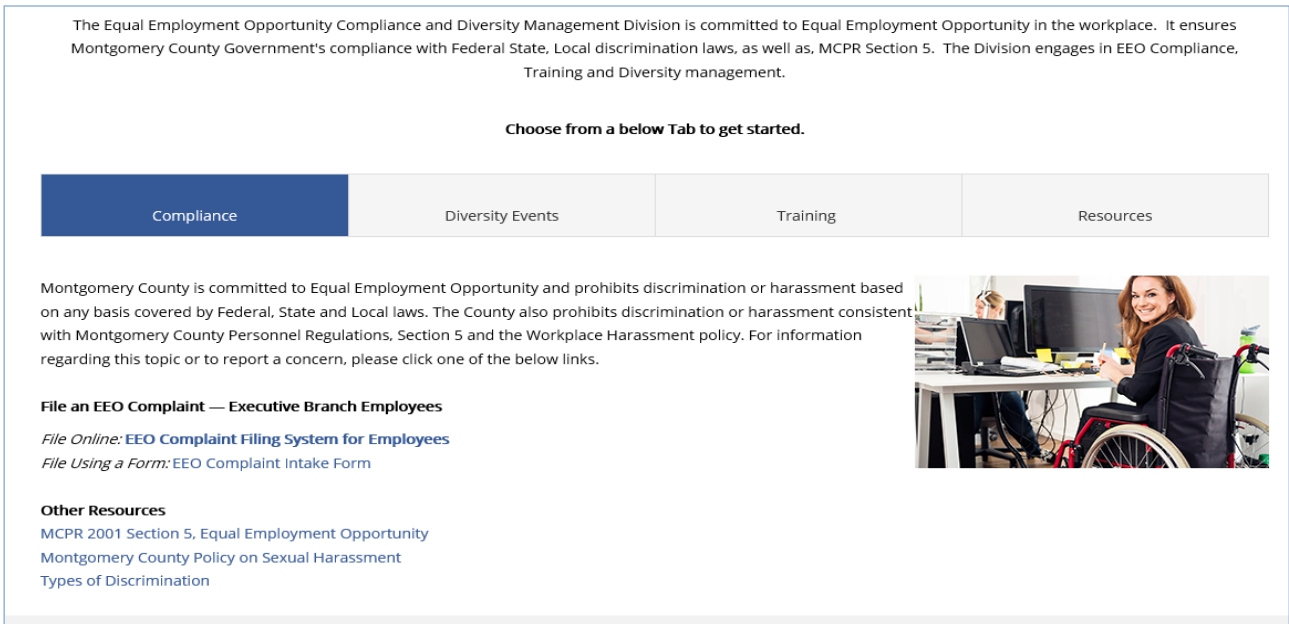
Recommendation 5

The EEO Division and the Office of Human Rights should establish requirements for mandatory training for staff investigating EEO complaints.

Finding 6: The EEO Division’s website and materials do not fully explain the EEO process, resources available for filing an EEO complaint, or applicable deadlines.

In reviewing the EEO Division’s website¹¹, arguably the first stop for employees wishing to file an EEO related complaint, we noted no information about who may file a complaint, the process, timelines, or other avenues for redress. (See Figure 4) The site instead directs users to click on imbedded links for information or to report a concern. The links associated with filing a complaint direct users to complaint forms that do not explain the agency’s role, nor that of other EEO agencies and their deadlines.

Figure 4: EEO Division Website



The links listed under the “other resources” section direct users to the Montgomery County Personnel Regulations governing EEO (MCPR 2001 Section 5, Equal Employment Opportunity), Montgomery County Policy on Sexual Harassment and a page explaining the different types of discrimination. Similarly, the information under the tab labeled “Resources” directs users to information about ADA accommodations and types of discrimination. The website does not provide users with specific and sufficient information needed to make informed decisions about where to file complaints, available resources, or timelines.

¹¹ <https://www.montgomerycountymd.gov/HR/EqualEmploymentOpportunity/EEO.html>, last accessed April 28, 2020.

FINDINGS AND RECOMMENDATIONS

In contrast to the EEO Division's website, the Maryland Department of Budget and Management (DBM) and Maryland Courts websites provide much more detailed information about EEO filing options. DBM's website:

- Informs employees of their right to file with enforcement agencies
- Provides the names of the enforcement agencies, and
- Provides links to the agencies' websites.

The Maryland Courts website also informs employees of their right to file with the Maryland Commission on Civil Rights and the EEOC and explains that those agencies have deadlines. Additionally, it states that those filing deadlines "are not affected by internal investigations."

The Maryland DBM complaint form, which is shown in Appendix B, provides information about the right to file with enforcement agencies and the deadlines for doing so. The form also includes an affirmation to be signed by the complainant, stating,

I affirm that I have read the above notice concerning my rights to file a complaint with federal, state, and local civil rights enforcement agencies at anytime before or after I file an internal complaint with the EEO Office, and am aware of my filing deadlines for those agencies.

The County EEO Officer told the OIG that "The Division affirmatively informs all employees, contractors and interns, as well as the public, of their right to file with a FEPA agency." Fair Employment Practice Agencies (FEPAs) are agencies that the EEOC contracts with to process discrimination allegations. The Maryland Commission on Civil Rights and the County Office of Human Rights are both FEPAs.

When asked, the EEO Officer provided that the EEO Division initially advises employees that they may file with other agencies "during the mandatory PWH [Preventing Workplace Harassment] course. It is also stated in the powerpoint [*sic*] presentation which is provided to participants, available in the Division and available upon request." The EEO Officer further reported that "It is also stated in our closure letter and discussed during intake or during the course of the investigation upon inquiry of the Complainant."

Perhaps more telling of the Division's stance on providing information to prospective complainants, the EEO Officer stated, "We avoid giving 'legal advice' regarding litigation or steering employees away to FEPA agency."

We attempted several times to obtain a copy of the PowerPoint presentation given during the PWH training and "available upon request" from the EEO Division but were unsuccessful. We instead located a "standard presentation template" for the course that the Office of Human Resources provided to the Council in 2018. The template does not refer to a right to file complaints with other agencies, but it does contain a slide entitled, "Who Investigates." In addition to naming the police, this slide correctly refers to the U.S. EEOC.

However, the EEO presentation slide incorrectly names the “Maryland Commission on Human Relations.” The Maryland Commission on Human Relations became the Maryland Commission on Civil Rights in 2011. The slide also incorrectly names the “Montgomery County Human Relations Commission”. The Montgomery County Human Relations Commission became the Montgomery County Human Rights Commission in 2001.

Similarly, the personnel regulations provided to new employees as recently as the January 6, 2020 orientation do not name the County Office of Human Rights; instead, they refer to the “County Human Relations Commission”. Although the Regulations have been amended seven times since 2008, most recently in 2018, the Regulations provided in the January 2020 orientation are those amended in 2008.

Not giving accurate information to employees impedes their ability to find the appropriate agencies and may be more damaging than not providing any information at all.

Regarding the EEO Officer’s assertion that notifications are made through closure letters, notifications after closure may be too late for complainants to meet filing deadlines, as shown in our finding, above. In addition, the OIG obtained an example of a closure memorandum, and it did refer to filing with “the Montgomery County Office of Human Rights, the Maryland Commission on Civil Rights, and/or the Equal Employment Opportunity Commission”; however, the memorandum was addressed to a supervisor and not to the employee. Although the memo requests the supervisor to “notify the parties,” it would be better for the EEO Division to notify employees directly to ensure they receive the information.

Further, the EEO Officer’s response that complainants are informed of their options “during intake or during the course of the investigation upon inquiry of the complainant” is not an assurance that all complainants are equally informed of their rights or that prospective complainants receive the information. The complainants might not inquire or might inquire too late to meet filing deadlines.

The OIG does not believe that informing people that they could file with enforcement agencies is considered providing “legal advice.” The State of Maryland and the Maryland Courts provide this information to their employees, and this information is consistent with federal and Maryland requirements to post notices in the workplace that explain how an employee or applicant can file a complaint with the EEOC or the Maryland Civil Rights Commission.

The EEO Division’s work to ensure that the County abides by equal employment opportunity laws is in the interest of both the County and County employees. However, its work to resolve complaints outside of litigation could be viewed to be more in the interest of the County than County employees. The EEO Officer’s response that they “avoid... steering employees away to FEPA agency” is perhaps most informative as to why the Division does not provide prospective complainants and complainants with all available options.

FINDINGS AND RECOMMENDATIONS

There is no legal requirement that the EEO Division inform prospective complainants that they also have the right to file with outside agencies¹². However, given the EEO Division's role in EEO compliance, training, and diversity management, we concluded that this information should be included on the EEO Division's website, similar to how it is on the State Department of Budget and Management's website.

Recommendation 6

(a) The EEO Division should inform County employees and complainants through its website and other written materials of their right to file complaints with specific named enforcement entities and the specific deadlines for filing with those entities.

(b) The EEO Division should correct information in the materials it provides to employees at orientation and training sessions.

¹² There are federal and Maryland requirements to post notices in the workplace stating that employment discrimination is illegal, and these notices explain how an employee or applicant can file a complaint.

OIG COMMENTS TO CHIEF ADMINISTRATIVE OFFICER RESPONSE

The County Chief Administrative Officer's response to our report is included in its entirety in Appendix A. The response notes concurrence with all of the OIG's recommendations. Nothing in the response caused us to alter our report.

We will monitor the actions taken in response to our recommendations, paying particular attention to recommendations 1, 6a and 6b regarding the EEO Division, and recommendations 2b and 3 regarding the Office of Human Rights, because these recommendations directly affect the communication of information to complainants. We expect the results of stated corrective actions and plans to be included in the Internal Auditor's report on corrective actions which is expected in September in accordance with County Code §2-25A (Council Bill 11-19).

We have the following comments related to the specific responses to recommendation 1:

OIG RECOMMENDATION 1: The EEO Division should complete investigations in a timely manner before the deadlines of enforcement agencies expire and inform complainants of any approaching deadlines in time for them to file with the enforcement agencies.

- **CAO Response to recommendation 1:**

We concur that investigations and findings should be completed within 180 days of the receipt of the complaint. The Office of Human Resources (OHR) will seek to reduce this closure time to 90 days. Regarding the need to inform complainants of approaching deadlines established by Fair Employment Practice Agencies (FEPA) in order to preserve a complainant's right to file, OHR created an External Agency Resource document relating to external compliance agencies (FEPA). This document is provided to the complainant with a Notice of Charge, which acknowledges acceptance of the Complaint and opens the investigation [footnote omitted].

Additionally, while the OIG report indicates that FEPA information is only provided in the closure letter to the supervisor, it is, in fact, provided to both the Respondent and Complainant.

OHR also implemented an electronic filing system in 2019. This system provides ease of filing to employees, an ability to check the status of a complaint, the issuance of updates to parties, and tracking of all stages of the investigations to remedy any delay or process issues. OHR is currently utilizing the system and will continue to make enhancements to increase ease of use and functional efficiencies.

- **OIG Comment to CAO Response to recommendation 1:**

We appreciate that OHR will seek to reduce closure time to 90 days and has taken steps to provide information to complainants about external compliance agencies.

Regarding the information provided at the end of the process, we did not state that FEPA information is only provided in the closure letter to the supervisor. We stated that we obtained a closure memorandum that was addressed to a supervisor, and that memorandum requested that the supervisor notify the parties. As we stated, “notifications after closure may be too late for complainants to meet filing deadlines,” and this is why we ask that this information be provided at the early stages of the complaint process.

APPENDIX A: CHIEF ADMINISTRATIVE OFFICER (CAO) RESPONSE



OFFICE OF THE COUNTY EXECUTIVE


Marc Elrich
County Executive

Andrew W. Kleine
Chief Administrative Officer

MEMORANDUM

June 1, 2020

TO: Megan Davey Limarzi
Inspector General

FROM: Andrew W. Kleine  for
Chief Administrative Officer

SUBJECT: Response to Confidential Final Draft Report, *EEO Complaint Filing and Investigation Processes Could Disadvantage County Employees*, OIG Publication # OIG-20-XX,

Thank you for your May 15, 2020, memorandum forwarding the confidential final draft report, *EEO Complaint Filing and Investigation Processes Could Disadvantage County Employees*, OIG Publication # OIG-20-XX.

Recommendation 1: The EEO Division should complete investigations in a timely manner before the deadlines of enforcement agencies expire and inform complainants of any approaching deadlines in time for them to file with the enforcement agencies.

CAO Response: We concur that investigations and findings should be completed within 180 days of the receipt of the complaint. The Office of Human Resources (OHR) will seek to reduce this closure time to 90 days. Regarding the need to inform complainants of approaching deadlines established by Fair Employment Practice Agencies (FEPA) in order to preserve a complainant's right to file, OHR created an External Agency Resource document relating to external compliance agencies (FEPA). This document is provided to the complainant with a Notice of Charge, which acknowledges acceptance of the Complaint and opens the investigation¹.

¹ The document is also available or referred to in the following locations:

1. EEO Website, Compliance Section, External Agency Resources list
<https://www.montgomerycountymd.gov/HR/Resources/Files/EEO/ExternalComplianceAgenciesResourcesList.pdf>
2. EEO Website, Compliance Section, What happens after I file a complaint?
https://www.montgomerycountymd.gov/HR/Resources/Files/EEO/EEO_WhatHappensAfterComplaintIsFiled.pdf
3. EEO Website, Training, Training Documents: "Preventing Workplace Harassment" powerpoint
<https://www.montgomerycountymd.gov/HR/Resources/Files/EEO/PreventionOfWorkplaceHarassment.pdf>
This powerpoint is also currently provided at the New Employee Orientation Program.

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Additionally, while the OIG report indicates that FEPA information is only provided in the closure letter to the supervisor, it is, in fact, provided to both the Respondent and Complainant.

OHR also implemented an electronic filing system in 2019. This system provides ease of filing to employees, an ability to check the status of a complaint, the issuance of updates to parties, and tracking of all stages of the investigations to remedy any delay or process issues. OHR is currently utilizing the system and will continue to make enhancements to increase ease of use and functional efficiencies.

Recommendation 2a: The County Office of Human Rights should train its employees not to reject complaints because they were previously filed with the EEO Division.

CAO Response: We concur with this recommendation. The Director of the Office of Human Rights will mandate that each investigator participate annually in at least one training class that involves processing of claims.

Recommendation 2b: The County Office of Human Rights should amend its intake form so that the question about whether the complainant has previously filed with another agency more closely aligns with § 27-1 of the County Code.

CAO Response: We concur with this recommendation. The current intake form asks if the claimant has filed with another administrative agency. Human Rights will modify its form to note that claimant is not barred from filing a claim with the Office of Human Rights merely due to a claim filed with OHR's EEO Division.

Recommendation 3: The County Office of Human Rights should more clearly explain its process for when reported issues become formal complaints. It should further be consistent in its communication with individuals who are awaiting a determination on their grievances to ensure there is no confusion about the status of their filings.

CAO Response: We concur with this recommendation. The Office of Human Rights will prepare a checklist and/or flow chart of the various processes to provide to claimants and respondents. This information will be placed in the front lobby, as well as on its website. The Office will also take further steps to ensure communications to individuals who are awaiting a determination on their grievances are consistent to ensure there is no confusion about the status of their filings.

Recommendation 4a: The EEO Division should draft, maintain, and train EEO staff on written policies and procedures that govern the full extent of their responsibilities.

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4. EEO Website, Training, Training Document: "EEO Compliance for Managers and Supervisors"
<https://www.montgomerycountymd.gov/HR/Resources/Files/EEO/EEOComplianceForManagersAndSupervisors.pdf> and
<https://www.montgomerycountymd.gov/HR/Resources/Files/EEO/EEOInvestigativeTraining.pdf>

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CAO Response: We concur with the recommendation. With the implementation of the electronic filing system referenced in response to Recommendation 1 above, OHR's EEO Division is in the process of updating its previous standard operating procedures to conform to the new system.

Recommendation 4b: The Office of Human Rights should draft, maintain, and train the Office of Human Rights staff on written policies and procedures that govern the full extent of their responsibilities.

CAO Response: We concur with the recommendation. The Office of Human Rights will develop appropriate internal policies and procedures to augment existing regulations and ensure that Human Rights staff are trained on these policies and procedures.

Recommendation 5: The EEO Division and the Office of Human Rights should establish requirements for mandatory training for staff investigating EEO complaints.

CAO Response: We concur with this recommendation. I have directed both the Director of OHR and the Director of Human Rights to develop a training plan for their staffs and ensure the plans are implemented.

Recommendation 6a: The EEO Division should inform County employees and Complainants through its website and other written materials of their right to file complaints with specific named enforcement entities and the specific deadlines for filing with those entities.

CAO Response: We concur with this recommendation, and OHR has already taken steps to address the recommendation. Specifically, as noted above, OHR created an External Agency Resource document relating to external compliance agencies (FEPA). The External Agency Resource document provides:

- the name and contact information for each FEPA agency,
- the weblink for each FEPA agency, and
- filing deadlines for each FEPA agency.

The External Agency Resource document informs employees that they are not prohibited from dual-filing of both an internal EEO complaint and an external complaint with a FEPA agency. The document provides specific notification that employees have a right to work in an environment that is free of harassment and retaliation and can engage in EEO-protected activity.

Recommendation 6b: The EEO Division should correct information in the materials it provides to employees at orientation and training sessions.

CAO Response: We concur with this recommendation. The OHR Director will take additional steps to ensure that materials provided to employees at orientation and training sessions are current and accurate.

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Thank you again for the opportunity to respond to the Draft's recommendations. If you have questions, please contact Fariba Kassiri, Deputy Chief Administrative Officer, at 240-777-2512 or Fariba.Kassiri@montgomerycountymd.gov.

cc: Fariba Kassiri, Deputy Chief Administrative Officer
Berke Attila, Director, Office of Human Resources
James Stowe, Director, Office of Human Rights
Marc Hansen, County Attorney
Bill Broglie, Internal Audit Manager

APPENDIX B: MD DEPT. OF BUDGET AND MANAGEMENT FORM

The following form is part of the complaint form on the Maryland DBM website.

NOTICE CONCERNING YOUR RIGHTS TO FILE A COMPLAINT WITH CIVIL RIGHTS ENFORCEMENT AGENCIES.

Any employee or applicant for employment who believes that he or she has experienced discrimination has a right to file a formal complaint with the federal or State agency listed below. *A person does not give up this right when he or she files a complaint with the Fair Practices Office.* The following federal and State agencies enforces laws against discrimination:

- **Maryland Commission on Civil Rights**
St. Paul Street, 9th Floor
Baltimore, Maryland 21201
Phone: 410-767-8600
- **United States Equal Employment Opportunity Commission**
10 South Howard Street, 3rd Floor
Baltimore, Maryland 21201
Phone: 410-962-3932

STATUTORY TIME PERIODS FOR THE TIMELY FILING OF CHARGES OF DISCRIMINATION (MEASURE FROM THE OCCURRENCE OF A DISCRIMINATORY ACTION):

1. State Fair Practices Offices – within 30 days after 1st knowing or reasonably knowing (SPPA § 5-211 (b))
2. Maryland Commission on Civil Rights – Six months - (State Government Article Title 20, Annotated Code of Maryland).
3. United States Equal Employment Opportunity Commission – 300 DAYS-Unless a proceeding involving same acts is instituted first before the Maryland Commission on Civil Rights.

Confidentiality – Information obtained as part of an investigation conducted under this SPPA § 5-214 is confidential within the meaning of Title 10, Subtitle 6 of the State Government Article.

AFFIRMATION

I affirm that I have read the above notice concerning my rights to file a complaint with federal, state, and local civil rights enforcement agencies at anytime before or after I file an internal complaint with the EEO Office, and am aware of my filing deadlines for those agencies.

Complainant's Signature

Date

(Please provide a copy of this form to the Complainant)