

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Commission on Human Rights**



**Responses to Fiscal Year 2020-2021
Performance Oversight Questions**

**Mónica Palacio
Acting Director**

**Submission to
Committee on Government Operations
Council of the District of Columbia
The Honorable Robert C. White, Jr., Chairperson**

Friday, March 5, 2021

John A. Wilson Building
1350 Pennsylvania Ave. NW
Washington, DC 20004
(Hearing conducted virtually via Zoom)

General Questions

1. Please provide the agency's mission statement.

RESPONSE:

The DC Commission on Human Rights (COHR or the Commission) is not a separate agency. Instead, it is an adjudicative body which exists as part of the mission of the Office of Human Rights to eradicate discrimination in the District of Columbia. More specifically, the Commission serves as an impartial forum for public hearings in private sector cases under the D.C. Human Rights Act, following a probable cause determination by the Office of Human Rights (OHR). The Commission also provides an appeals process to applicants who were found ineligible for employment under the Criminal Background Checks for the Protection of Children Act. The Commission consists of members of the public nominated by the Mayor and whose functions exist with support from the Mayor and the Office of Human Rights (OHR). Currently, the Commission is comprised of 10 Commissioners and each Commissioner is appointed to a three-year term without compensation.

2. Please list all reporting requirements in the District of Columbia Code or Municipal Regulations that the agency is required to complete in FY20 and FY21, to date. For each requirement, please list the date the report was required and the date it was produced. If the agency did not produce the report on the mandated timeline, please explain why.

RESPONSE:

The Commission is not a separate agency from OHR. However, the Mayor under D.C. Code 2-1403.01(g)(1) is required to submit an annual report to the Council regarding the progress of enforcement of the Human Rights Act. To satisfy this requirement, OHR publishes and submits to the Council OHR's Annual Report. See below for more information and see OHR's responses for full information responsive to this question.

Report or Reporting Requirement	Statutory or Regulatory Authority	Requirement Deadline	Compliance Status	Most Recent Submission
Office of Human Rights Annual Report	D.C. Human Rights Act, <u>D.C. Code § 2-1403.01(g)(1)</u>	Due annually	In compliance; OHR publishes this report annually. The FY20 report will be released in Summer 2021.	June 26, 2019

3. What are the agency's top five priorities? Please explain how the agency expects to address these priorities in FY21.

RESPONSE:

The Commission is not a separate agency from OHR. For information on OHR, please see OHR's responses. Notwithstanding, in FY21, the Commission is focusing on case closures, case management systems, community partnerships and the celebration of the United Nation's International Human Rights Day.

- 4. Please describe any new initiatives or programs that the agency implemented in FY20 and FY21, to date, to improve the operations of the agency. Please describe any funding utilized for these initiative or program and the results, or expected results, of each initiative.**

RESPONSE:

The Commission is not a separate agency from OHR. For information on OHR, please see OHR's responses. Notwithstanding, in FY20 and FY21 to date, the Commission remains focused on continuity of operations with systems and IT support of OHR and implementing a new case management system.

- 5. Please list all pending lawsuits that name the agency as a party. Identify which cases on the list are lawsuits that potentially expose the District to financial liability or will result in a change in agency practices and describe the current status of the litigation. Please provide the extent of each claim, regardless of its likelihood of success.**

RESPONSE:

The Commission is not a separate agency from OHR. For information on OHR, please see OHR's responses. Notwithstanding, there are currently no pending lawsuits that name COHR as a party, other than petitions for review or appeals of COHR's administrative decisions.

- 6. Please list all settlements entered into by the agency or by the District on behalf of the agency in FY20 or FY21, to date, and provide the parties' names, the amount of the settlement, and if related to litigation, the case name and a brief description of the case. If unrelated to litigation, please describe the underlying issue or reason for the settlement (e.g. administrative complaint, etc.).**

RESPONSE:

The Commission is not a separate agency from OHR. For information on OHR, please see OHR's responses. Notwithstanding, OHR has not entered into any settlements in FY20 or FY21 involving COHR.

- 7. Please provide the number of FOIA requests for FY20, and FY21, to date, that were submitted to your agency. Include the number granted, partially granted, denied and pending. In addition, please provide the average response time, the estimate number of FTEs required to process requests, the estimated number of hours spend responding to these requests, and the cost of compliance.**

RESPONSE:

The Commission is not a separate agency from OHR. Any FOIA requests related to the Commission would have been addressed by OHR; thus, please see OHR's responses for information responsive to this question.

- 8. Please list and describe any ongoing investigations, audits, or reports on the agency or any employee of the agency that were completed during FY20 and FY21, to date.**

RESPONSE:

The Commission is not a separate agency from OHR and thus, any reports, audits or investigations relating to the Commission would have been addressed by OHR. Please see OHR's responses for full information responsive to this question. That said, OHR is not aware of any investigations, audits or reports being conducted on COHR, its members or any employee of OHR in FY20 or FY21, to date.

- 9. Please provide a list of all studies, research papers, reports, and analyses that the agency prepared or funded during FY20 and FY21, to date. Please submit a hard copy to the Committee of any study, research paper, report, or analysis that is complete.**

RESPONSE:

The Commission did not prepare any studies, research papers, reports or other analyses in FY20 or FY21 to date. For information on OHR, please see OHR's responses.

Commission on Human Rights

- 10. Please provide a current list of all Commissioners, including:**

- a. The date of their first meeting as a Commissioner**
- b. Any Commission officer positions or subcommittee memberships held in FY20, or FY21 to date, and the date they assumed those positions;**
- c. The number of hearings or meetings attended by each Commissioner in FY20 and FY21, to date;**
- d. The Ward in which they reside; and**
- e. A brief description of the demonstrated background or interest in human rights that justified their appointment to the Commission pursuant to D.C. Code § 2-1404.03.**

RESPONSE:

Please see **Attachments A and B.**

- 11. Please provide any rules of procedure adopted or used by the Commission in FY20 and FY21, to date.**

RESPONSE:

The Commission used the following rules of procedure in FY20 and FY21 to date:

- The DC Human Rights Act, D.C. Code § 2-1401.01 *et seq.*
- The D.C. Municipal Regulations, 4 DCMR § 200 *et seq.*, 300 *et seq.*, 400 *et seq.*
- Superior Court Rules of Civil Procedure
- COVID Standing Orders (see **Attachment C**)

12. How many cases of unlawful discrimination were heard by the Commission in FY20 and in FY21, to date? Of those, please list the number of cases that alleged discrimination in:

- a. Employment;**
- b. Real estate transactions;**
- c. Public accommodations; and**
- d. Educational institutions.**

RESPONSE:

In FY20, there were 24 cases pending before the Commission on October 1, 2019. 14 of those cases were closed in FY20 and 4 cases have been closed to date in FY21:

Employment	6
Real Estate Transactions/Housing	3
Public Accommodations	2
Educational Institutions	0
Criminal Background Check	7
Fair Criminal Records Screening Act	0

13. How many conciliation agreements were deemed orders of the Commission in FY20 and FY21, to date?

RESPONSE:

D.C. Code § 2-1403.06 provides that a conciliation agreement shall be an order of the Commission upon agreement of the parties. In FY20 and FY21, to date, OHR closed a total of five (four in FY20; one in FY21 to date) cases through conciliation. No conciliation agreement was deemed an order of the Commission.

14. What percentage of cases had a hearing scheduled not less than 10 days or not more than 30 days after service of process in FY20 and FY21, to date?

RESPONSE:

After OHR makes a finding of probable cause, mandatory conciliation is scheduled with OHR. If the conciliation does not result in a settlement, the case is certified to the Commission for a public hearing. Following the certification, the Commission will reach out

to parties to schedule the pre-hearing events outlined under 4 DCMR § 400 *et seq.*, including an initial conference and the date for an evidentiary hearing. The Commission endeavors to schedule the initial conference with the parties within 15 days of certification.

15. How many respondents failed to answer a complaint before the Commission in FY20 and FY21, to date?

RESPONSE:

One Respondent failed to answer the complaint in FY20 after the case was certified to the Commission on Human Rights.

16. In how many cases was an allegation of an unlawful discriminatory practice substantiated by the Commission in FY20 and FY21, to date?

RESPONSE:

In FY20 and to date in FY21, the Commission substantiated findings of discrimination in 8 cases.

17. Please list the number of cases in FY20 and FY21, to date, were the following remedies ordered:

- a. Injunctive relief;
- b. Compensatory damages; and
- c. Civil penalties.

RESPONSE:

Please see table below.

Injunctive Relief	0
Compensatory Damage	1
Civil Penalties	1

18. Please provide the total amount of compensatory damages ordered and the total amount of civil penalties ordered by the Commission in FY20 and FY21, to date.

RESPONSE:

In FY20 and to date in FY21, the Commission has awarded a total of \$2,000 in compensatory damages.

19. In how many cases was an order or decision of the Commission appealed in FY20 and FY21, to date? In how many of those cases was the order or decision overturned?

RESPONSE:

In FY20, three Commission cases were appealed to the D.C. Court of Appeals and are currently pending.

20. In how many cases did the Commission certify a matter to another agency due to the failure of a respondent to comply with a Commission order?

RESPONSE:

In FY20, one case was certified to the Office of the Attorney General for enforcement where the Respondent failed to comply with the Final Decision and Order of the Commission.

21. The Office of Human Rights' FY20 Performance Accountability Report (PAR) indicates that 47% of cases in FY20 were pending for over 15 months, and explains that the Commission did not reach its target figure of 20% because of personnel changes.

- a. Does the Commission anticipate ongoing personnel changes that would impede timely adjudication?
- b. What steps has the Commission taken to reduce adjudication times in FY21?
- c. What additional support, if any, does the Commission require to improve this stage of its workflow?

RESPONSE:

The Commission experienced significant staff turn-over in FY19 and FY20 with the departure of the former Chief Judge, the selection and onboard of a new Chief Judge and the retirement of a senior judge in FY19, leaving only one judge at the Commission. A new chief judge was hired in November 2019. Subsequently, the one judge resigned in January 2020 leaving only the Chief Judge to handle all matters. Shortly thereafter, in March 2020, the public health emergency and hiring freezes then delayed the hiring of judges and staff. In October 2020, a second judge was hired. The Commission is in the process of recruiting to fill a Fellowship position in partnership with Georgetown Law School. The third judge position is expected to be filled in the next few months. Having a full complement of three judges will reduce the adjudication times in FY21.

22. Has the Commission encountered evidence that employers of individuals with disabilities believe they are not obligated to provide reasonable accommodations for such disabilities under the D.C. Human Rights Act?

RESPONSE:

The Commission has not encountered evidence that employers of individuals with disabilities believe they are not obligated to provide reasonable accommodations under the DCHRA. The Commission has encountered that employers are not fully aware of when they must provide accommodations and what it means to participate in the deliberative process.

23. To what degree is counsel or other authorized assistance readily available and affordable to parties before the Commission?

RESPONSE:

The availability of counsel is a significant barrier to litigants. Litigants before the Commission must find their own counsel and there does not currently exist a referral service. Although these are fee shifting cases – meaning that prevailing parties are entitled to attorney fees – this is complex litigation. Therefore, there can be substantial upfront costs that an attorney must pay (i.e. depositions), without knowing such costs will be reimbursed. These issues make it less desirable for attorneys to take these cases on a contingency basis. However, consistent with D.C. Code § 2-1403.12(b), an attorney from OHR, in pursuit of the public interest, appears on behalf of OHR and presents the case in support of the complaint. This does not mean that OHR represents the complainant in the case but OHR does present its findings. ~~This is an important distinction and sometimes difficult for parties to remember.~~

24. Please provide the list of qualified hearing examiners prepared by the Commission, along with the number of hearings presided over by each examiner in FY20 and FY21, to date.

RESPONSE:

At full capacity, the Commission is staffed with three administrative law judges who serve as the independent hearing examiners. In FY20 and FY21, the judges were:

- Judge Toya Carmichael (resigned Jan. 2020)
- Chief Judge Erika Pierson
- Judge Brandes Ash

The Commission holds several hearings throughout the year but with respect to a full evidentiary hearing, there was one held by Judge Carmichael in FY20.

25. At present, D.C. Code § 2–1404.02 only offers the benefits of an administrative adjudication before the Commission to individuals who can demonstrate probable cause to believe they have suffered discrimination in employment, real estate transactions, public accommodations, or educational institutions. Has the Commission’s limited jurisdiction impacted the ability of District residents to remedy discrimination? If so, in what ways?

RESPONSE:

The opportunity to pursue administrative remedies with the Commission has not negatively impacted the ability of District residents to remedy discrimination. Rather, the administrative process under the D.C. HRA works to the benefit of District residents and others who suffer discrimination. This is because a complainant has multiple opportunities to attempt resolution of their case through mandatory mediation and conciliation at OHR, and the parties have the benefit of OHR’s investigation and a probable cause determination before proceeding to a full merits hearing before the Commission. Even at the Commission process, there remains an added opportunity to resolve the case before a full evidentiary hearing. In the hearing process, OHR, in pursuit of the public interest, presents the case in support of the complaint. Despite these benefits, an election of remedies under the HRA permits a litigant to choose to file their case with the Office of Human Rights *or* in D.C. Superior Court. *See*

D.C. Code 2-1403.16(a) (one year to file in court unless the complainant has filed a complaint with OHR). Thus, a litigant can avail themselves of remedies that may not be available before the Commission, such as punitive damages.

26. Please describe the status of the Commission's case management and remote hearing systems, including any changes to those systems made in FY20 and FY21, to date, and any outstanding needs or deficiencies with those systems.

RESPONSE:

Case Management System. The Commission's case management system (CMS) is provided by a third-party vendor called Synergy. In April 2020, Synergy informed the Commission that due to costs it will discontinue hosting the CMS on Synergy's servers. OCTO agreed that it was able to host the CMS on its servers and has been working with Synergy since April 2020 to migrate the CMS. However, there have been multiple vulnerability issues identified by OCTO which has prevented the Commission from going live with the CMS, although it is fully operational internally (outside filers are currently unable to access the CMS). If these issues cannot be resolved, the Commission will consider a substitute case management system.

Remote Hearings. The Commission is fully operational remotely and is holding virtual hearings using WEBEX.