

**Subject: Judiciary of Guam (JOG) Procedures for Addressing Complaints Alleging Discrimination Claims from Clients, Customers, Program Participants or Consumers of the Judiciary of Guam and Sub-Recipients Implementing Programs Funded by U.S. Department of Justice (DOJ) Grant Programs**

**Judicial Council of Guam Approval Effective Date: January 17, 2013**

I. Purpose

The purpose of this document is to establish written procedures for employees of the JOG to follow when they receive a complaint that alleges the following:

1. Services discrimination claims from clients, customers, program participants, or consumers of JOG and/or JOG's sub-recipients.

II. Policy

Recipients of financial assistance from Office of Justice Programs (OJP), Office on Violence Against Women (OVW), and Community Oriented Policing Services (COPS) must comply with the federal statutes and regulations that prohibit discrimination in federally assisted programs or activities. All individuals have the right to receive services or benefits through programs and activities operated by JOG and its sub-recipients.

JOG will ensure that its sub-recipients comply with all applicable federal laws regarding nondiscrimination and are aware of the following statutes and regulations:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of **race, color or national origin** in programs or activities funded by OJP, OVW, or COPS (42 U.S.C. § 2000d), and the DOJ implementing regulations of 28 C.F.R. part 42, Subpart C;
- The Omnibus Crime Control and Safe Streets Act of 1968, as amended, which prohibits discrimination on the basis of **race, color, national origin, religion, or sex in the delivery of services and employment practices** in programs or activities funded by OJP, OVW, or COPS (42 U.S.C. § 3789(c) (1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
- Section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of **disability in delivery of services and employment practices** in programs or activities funded by OJP, OVW, or COPS (29 U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. part 42, Subpart G;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of **disability in the delivery of services and employment practices** in programs or activities funded by OJP, OVW, or COPS (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of **sex in education programs** funded by OJP, OVW, or COPS (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54);

- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of *age in the delivery of services* in programs or activities funded by OJP, OVW, or COPS (42 U.S.C. § 6102), and the DOJ implementing regulations at 28 C.F.R. part 42, Subpart I; and
- The DOJ regulations on the Equal Treatment for Faith-Based Organizations, which *prohibit discrimination on the basis of religion in the delivery of services and prohibit organizations from using DOJ funding for inherently religious activities* (28 C.F.R. Part 38; *see also* Executive Order 13279 and Executive Order 13559).

These laws prohibit JOG and sub-recipients from retaliating against an individual for taking action or participating in action to secure rights protected by these laws.

### III. Definitions

- ‘Complaint Coordinator’ means the person who is responsible for coordinating the series of actions found in the complaint procedures.
- ‘Complainant’ means the person who files a complaint.
- ‘Discrimination’ means to act on the basis of (i) race, color, national origin, sex, religion, disability, or age in programs and/or activities.
- ‘OCR’ means the Office for Civil Rights, Office of Justice Programs, DOJ.
- ‘EEOC’ means the U.S. Equal Employment Opportunity Commission.
- ‘Sub-recipient’ means any organization or agency to which JOG administers DOJ funds.

### IV. Complaint Procedures

#### Services discrimination

The following procedures should be used when responding to a complaint of services discrimination from a client, customer, program participant, or consumer of JOG or of a sub-recipient:

1. Any employee of JOG who receives a complaint of services discrimination subject to this policy should send the complainant to the JOG complaint coordinator, Joshua F. Tenorio, Director of Policy, Planning and Community Relations, within 15 working days of receiving the complaint. Mr. Tenorio may be reached at (671) 475-3278 or (671) 475-3544; and
2. Within 15 working days of receiving a services discrimination complaint subject to this policy, JOG complaint coordinator will seek to resolve the services discrimination complaint filed against JOG before referring it to OCR. If the services discrimination cannot be resolved through mediation, then the complaint coordinator will refer the complaint to OCR.

Within 15 working days of a complaint referral, the complaint coordinator will provide written notice to a complainant that JOG received the complaint and forwarded it to OCR. Through its sub-recipient monitoring process, JOG will ensure that sub-recipients have procedures in place for responding to discrimination complaints that clients, customers, program participants, or consumers file directly with them. If a sub-recipient receives a complaint alleging services discrimination, the sub-recipient may investigate the complaint and respond directly to the complaining party in writing or refer the complaint to OCR, and notify the complainant and JOG of the referral. Through its sub-recipient monitoring process, JOG will also ensure that sub-recipients notify their clients, customers, program participants, and consumers of prohibited discrimination and the procedures for filing a services discrimination complaint. JOG will also notify its clients, customers, program participants, and consumers of prohibited discrimination and its procedures for filing a services discrimination complaint by posting the policy on the Judiciary of Guam website. The website address is [www.guamcourts.org](http://www.guamcourts.org).

#### Examples of discrimination in the delivery of services

*An example of discrimination in the delivery of services based on disability would be the failure of a funded agency to provide interpreter services as a reasonable accommodation to hearing-impaired defendants if it would not impose an undue hardship on the funded agency. An example of discrimination in the delivery of services based on race would be a funded agency's practice of drug testing, without cause, all Federated States of Micronesia clients checking in with Probation.*

#### Employment discrimination

This policy is specific to services discrimination and does not include employment discrimination. The JOG is an Equal Employment Opportunity employer and has a separate discrimination complaint process and related forms. The process and forms can be found on the Internet at [www.guamcourts.org/Information/EEO](http://www.guamcourts.org/Information/EEO). Employees or job applicants alleging discrimination can file their complaints directly with the EEO Officer of the JOG, Ms. Linette M. Perez, who may be reached at (671) 475-3374 or (671) 475-3544.

Through its sub-recipient monitoring process, JOG will ensure that sub-recipients have procedures in place for responding to discrimination complaints that employees or job applicants file directly with the sub-recipient. If a sub-recipient receives a complaint alleging employment discrimination, the sub-recipient may investigate the complaint and respond directly to the complaining party in writing or refer the complaint to EEOC and notify the complainant and JOG of the referral. Through its sub-recipient monitoring process, JOG will also ensure that sub-recipients notify their employees of prohibited discrimination and the procedures for filing an employment discrimination complaint.

#### Example of discrimination in employment practices

*An example of discrimination on the basis of sex in employment practices of a funded agency is having a policy preferring males over females in recruiting entry-level Deputy Marshals unless it is designated as a Bona Fide Occupational Qualification (BFOQ).*

V. Filing a Complaint with OCR

A complainant may file a complaint of services discrimination against JOG or a sub-recipient of JOG directly with OCR. The procedures for filing a services discrimination complaint with OCR are available at its website at <http://www.ojp.usdoj.gov/about/ocr/complaint.htm>. To file a civil rights complaint, complete a Complaint Verification Information Form and Complainant Consent/Identity Release Form, which are available at <http://www.ojp.usdoj.gov/about/ocr/complaint.htm>, and return both forms to OCR at the following address:


Office for Civil Rights  
Office of Justice Programs  
U.S. Department of Justice  
810 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20531

Copies of these forms (Complaint Verification Information Form and Complainant Consent/Identify Release Form) are attached to this policy for reference.

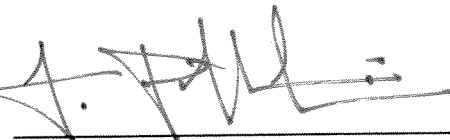
If you believe that you have been the target of discrimination, you should file a complaint with OCR as soon as possible. In most circumstances, you may have no longer than one year from the date of the discriminatory incident to file a complaint. Additional tips for filing a complaint are available at <http://www.ojp.usdoj.gov/about/ocr/complaint.htm>.

VI. Training on Discrimination Complaint Procedures

JOG will provide periodic training for agency employees on prohibited discrimination and its complaint procedures, including an employee's responsibility to promptly refer complainants to the complaint coordinator, **Joshua F. Tenorio, Director of Policy, Planning and Community Relations, (671) 475-3278 or (671) 475-3544**, pertinent discrimination complaints from or potential discrimination issues involving JOG or a sub-recipient. JOG will disseminate these procedures to agency employees by posting the procedures on the agency website at [www.guamcourts.org](http://www.guamcourts.org), providing a copy of the procedures to employees during the training sessions, and distributing the procedures to all new employees during orientation.

  
\_\_\_\_\_  
Perry C. Taitano  
Administrator of the Courts

Date: 4/4/13

  
\_\_\_\_\_  
F. Philip Carbullido  
Chief Justice, Supreme Court of Guam  
Chairman, Judicial Council of Guam  
Date: 4/25/13



**COMPLAINT VERIFICATION INFORMATION**

Your name, address, and telephone number(s):

Name, address, and telephone number(s) of person(s) who discriminated against you:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name, address and telephone number(s) of agency or organization involved in your complaint:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are there other persons or organizations involved in this discrimination case? \_\_\_\_\_  
If yes, please give the names, addresses and telephone numbers below:

NAME	ADDRESS	TELEPHONE
_____	_____	_____
_____	_____	_____

Which of the following describes the nature of the discrimination involved?

\_\_\_ Race/Color \_\_\_ National Origin \_\_\_ Religion \_\_\_ Sex \_\_\_ Disability \_\_\_ Age

Does your charge of discrimination involve:

a. Your job or seeking employment? \_\_\_ Yes \_\_\_ No **OR**

b. Your using facilities or someone providing services/protection to you (or others)?  
\_\_\_ Yes \_\_\_ No

If yes, which of the following apply:

- \_\_\_ Hiring
- \_\_\_ Work Assignment
- \_\_\_ Promotion
- \_\_\_ Demotion
- \_\_\_ Discipline
- \_\_\_ Layoff/Recall
- \_\_\_ Retaliation
- \_\_\_ Termination
- \_\_\_ Other (Specify) \_\_\_\_\_

If yes, which of the following apply:

- \_\_\_ Brutality
- \_\_\_ Harassment
- \_\_\_ Language
- \_\_\_ Applying rules/laws differently
- \_\_\_ Access to buildings/programs
- \_\_\_ Retaliation
- \_\_\_ Different standards/opportunities/programs
- \_\_\_ Segregation
- \_\_\_ Other (Specify) \_\_\_\_\_

What month(s), day(s), and year(s) did the most recent discrimination against you take place?

Beginning: Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_  
Ending: Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

Explain in detail what happened and how you were discriminated against. State who was involved and show how other persons were treated differently from you. (Also attach any written materials or documentation pertaining to your case.)

---

---

---

---

---

Has the opposite sex or have persons of other races, national origin, religions, or disabilities been treated differently from you in this particular matter? If yes, please explain and identify:  Yes  No

---

---

---

Why do you believe this occurred? \_\_\_\_\_

---

---

What other information do you think might be helpful to our investigation? \_\_\_\_\_

---

---

---

---

---

---

If this complaint is resolved to your satisfaction, what remedy do you seek? \_\_\_\_\_

---

---

---

---

(Continue any question on additional sheets if necessary)

Please list below any persons (witnesses, fellow employees, supervisors, or others) whom we might contact for additional information to support or clarify your complaint:

Name	Address	Telephone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Have you filed a case or complaint with any of the following? (Check the appropriate items.)

- |   |   |
|---|---|
| <input type="checkbox"/> Civil Rights Division, U.S. Dept. Of Justice | <input type="checkbox"/> State or local Human Relations Commission  |
| <input type="checkbox"/> U.S. Equal Employment Opportunity Commission | <input type="checkbox"/> State Law Enforcement Planning Agency      |
| <input type="checkbox"/> Other Federal Agency                         | <input type="checkbox"/> Attorney (Note the name and address above) |
| <input type="checkbox"/> Federal or State Court                       | <input type="checkbox"/> Other (specify) _____                      |

For any item checked above, please provide the following information:

Name of Agency: \_\_\_\_\_  
Date Filed: \_\_\_\_\_  
Case or Docket Number: \_\_\_\_\_  
Date of Trial or Hearing: \_\_\_\_\_  
Location of Agency or court: \_\_\_\_\_  
Name of Investigator: \_\_\_\_\_  
Status of Case: \_\_\_\_\_

Additional comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_ SIGNED: \_\_\_\_\_

(Please also complete and submit the Identity Release Statement)

Please mail this form and the completed Identity Release Statement to the following address:

Office for Civil Rights, Office of Justice Programs  
U.S. Department of Justice  
810 7<sup>th</sup> Street, N.W.  
8<sup>th</sup> Floor  
Washington, D.C. 20531

COMPLAINANT CONSENT/IDENTITY RELEASE FORM

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Complaint number(s): (if known) \_\_\_\_\_

*Please read the information below, check the appropriate box, and sign this form.*

I have read the Notice of Investigatory Uses of Personal Information by the Department of Justice (DOJ). As a complainant, I understand that in the course of an investigation it may become necessary for DOJ to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of DOJ to honor requests under the Freedom of Information Act. I understand that it may be necessary for DOJ to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant I am protected by DOJ's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by DOJ.

CONSENT/RELEASE

CONSENT - I have read and understand the above information and authorize DOJ to reveal my identity to persons at the organization or institution under investigation. I hereby authorize the Department of Justice (DOJ) to receive material and information about me pertinent to the investigation of my complaint. This release includes, but is not limited to, personal records and medical records. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.

CONSENT DENIED - I have read and understand the above information and do not want DOJ to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

\_\_\_\_\_

SIGNATURE

DATE



## **NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION**

### **NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES**

Complainants and individuals who cooperate in an investigation, proceeding or hearing conducted by DOJ are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

- A recipient may not force its employees to be represented by the recipient's counsel nor may it intimidate, threaten, coerce or discriminate against any employee who refuses to reveal to the recipient the content of an interview. An employee does, however, have the right to representation during an interview with DOJ. The representative may be the recipient's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

- The laws and regulations which govern DOJ's compliance and enforcement authority provide that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual because he/she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under DOJ's jurisdiction, or has asserted rights protected by statutes DOJ enforces.

- Information obtained from the complainant or other individual which is maintained in DOJ's investigative files may be exempt from disclosure under the Privacy Act or under the Freedom of Information Act if release of such information would constitute an unwarranted invasion of personal privacy.

*There are two laws governing personal information submitted to any Federal agency, including the Department of Justice (DOJ): The Privacy Act of 1974 (5 U.S.C. § 552a), and the Freedom of Information Act (5 U.S.C. § 552).*

**THE PRIVACY ACT** protects individuals from misuse of personal information held by the Federal Government. The law applies to records that are kept and that can be located by the individual's name or social security number or other personal identification system. Persons who submit information to the government should know that:

- DOJ is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and, in some instances, religion against recipients of Federal financial assistance. DOJ also is authorized to conduct reviews of federally funded recipients to assess their compliance with civil rights laws.

- Information that DOJ collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. DOJ staff may need to reveal certain information to persons outside the agency in the course of verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. DOJ also may be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act. (See below)

- Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. Except in the instances defined in DOJ's regulation at 28 C.F.R. Part 16, DOJ will not release the information to any other agency or individual unless the person who supplied the information submits a written consent. One of these exceptions is when release is required under the Freedom of Information Act. (See below)

- No law requires a complainant to give personal information to DOJ, and no sanctions will be imposed on complainants or other individuals who deny DOJ's request. However, if DOJ fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

- The Privacy Act permits certain types of systems of records to be exempt from some of its requirements, including the access provisions. It is the policy of DOJ to exercise authority to exempt systems of records only in compelling cases. DOJ may deny a complainant access to the files compiled during the agency investigation of his or her civil rights complaint against a recipient of

Federal financial assistance. Complaint files are exempt in order to aid negotiations between recipients and DOJ in resolving civil rights issues and to encourage recipients to furnish information essential to the investigation.

- DOJ does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a recipient that violates the laws, or unless such information is required to be disclosed under FOIA or the Privacy Act. DOJ will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under FOIA, the Privacy Act, or otherwise required by law.

THE FREEDOM OF INFORMATION ACT gives the public access to certain files and records of the Federal Government. Individuals can obtain items from many categories of records of the Government - not just materials that apply to them personally. DOJ must honor requests under the Freedom of Information Act, with some exceptions. DOJ generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job. Also, any Federal agency may refuse a request for records compiled for law enforcement purposes if their release could be an "unwarranted invasion of privacy" of an individual. Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a "clearly unwarranted invasion of privacy."