

AMERICANS WITH DISABILITIES ACT: Coordination gaps complicate City response

December 2016



Portland City Auditor
Audit Services Division

Cover

Collage of disability symbols and photos from various agencies



Production / Design

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Public Information Coordinator



December 13, 2016

TO: Mayor Charlie Hales
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Steve Novick
Commissioner Dan Saltzman
Dante James, Director, Office of Equity and Human Rights

SUBJECT: Audit Report – *Americans with Disabilities Act: Coordination gaps complicate City response* (Report #476)

In this audit we found the City's current practices make accommodation requests difficult for individuals with disabilities. Clarifying roles and responsibilities between the Office of Equity and Human Rights and the individual bureaus responding to requests and complaints would be beneficial. The City also needs to identify, collect, and analyze data to improve access and services.

We will follow up in one year with the Commissioner-in-Charge and the Director of the Office of Equity and Human Rights for a status report detailing steps taken to address our audit recommendations.

We appreciate the assistance we received from the community, the Office of Equity and Human Rights, and other City bureaus as we conducted this audit.

Mary Hull Caballero
City Auditor

Audit Team: Drummond Kahn
Kristine Adams-Wannberg

Attachment



AMERICANS WITH DISABILITIES ACT:

Coordination gaps complicate City response

Summary

The purpose of the Americans with Disabilities Act is to ensure that individuals with disabilities have the same access and opportunities as those without disabilities. Removal of physical barriers is one way to achieve equal access to programs, services, and activities. The Act also requires governments to adopt and publish grievance procedures for resolving complaints.

We assessed whether the City meets the process requirements in Title II of the Americans with Disabilities Act, specifically those related to accommodation requests and complaints. We found that the City's current approach makes accommodation requests difficult for individuals with disabilities, and the process varies by bureau. More consistent data collection and analysis would help the City be more responsive to requests and complaints submitted by individuals with disabilities.

We recommend that the City clarify roles and responsibilities between the Office of Equity and Human Rights and the individual bureaus responding to requests and complaints. The City needs to identify, collect, and analyze data about requests and complaints to improve access and services to individuals with disabilities.

Background

Civil rights protections under the Americans with Disabilities Act apply to an individual who:

- Has a physical or mental impairment that substantially limits a "major life activity"
- Has a record of such an impairment
- Is regarded as having such an impairment

The Act provides for legal remedies if a government does not comply with reasonable requests to accommodate an individual's disability. Private parties may bring lawsuits to compel compliance or seek damages. Individuals may file complaints with federal administrative agencies or the U.S. Department of Justice.

The City's approach to the Americans with Disabilities Act is both centralized and decentralized:

The Office of Equity and Human Rights provides centralized services

It has a half-time manager position dedicated to Citywide matters related to the Act. Other programs in the Office also assist at times. The Civil Rights Title VI and Americans with Disabilities Act Title II Program Manager is responsible for planning, developing, coordinating, managing, implementing, and evaluating the program and compliance efforts. A few examples of this work include providing technical assistance, such as helping bureaus with policy development, and resolving grievances. The Office produces the *ADA Coordinator Program Guide*, providing some direction on the Act's requirements. The Office also staffs the Portland Commission on Disabilities, an all-volunteer body that advises the City on disability matters, and convenes the bureau coordinators group that works on the Act. In 2015, the Office facilitated a significant City effort in developing the ADA Title II Transition Plan, which identified physical barriers in City facilities.

City Bureaus provide decentralized services

Each bureau is responsible for responding to individual accommodation requests from the public. Each bureau's capacity to respond is affected by staff resources and experience. In general, bureaus that routinely receive requests appear to respond more effectively than bureaus that receive requests less often.

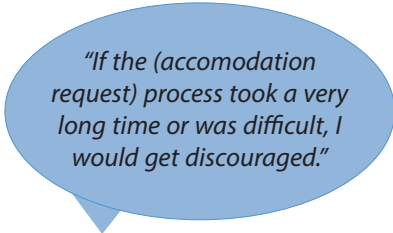
Audit Results

City's approach to accommodation requests is difficult to navigate and varies by bureau

There is no single, easily accessed location or resource for individuals with disabilities to request an accommodation or make a complaint. It takes a certain level of knowledge of City government to figure out a starting point.

The City has a "Request ADA Accommodation" button on its main webpage, which is linked to the Office of Equity and Human Rights and a list of bureau contacts. Internet users are instructed to communicate their accommodation requests by calling or emailing the appropriate person listed for each bureau.

There is no single, easily accessed location where common concerns or questions are answered, such as City rules about service animals or disabled parking. This forces community members to guess where to call or email rather than easily finding information.



"If the (accommodation request) process took a very long time or was difficult, I would get discouraged."

Individual with a disability

It is not clear whether an individual with an accommodation request or complaint should contact the Office of Equity and Human Rights or contact a bureau. Bureau coordinators had varied understanding of what should occur. Because of overlapping responsibilities, some questions without clear answers are:

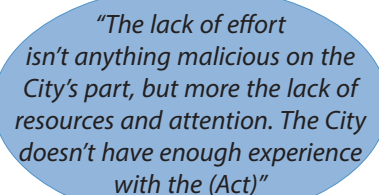
- Who is responsible for taking the lead on addressing accommodation requests and complaints?
- Who should document the City's response to an accommodation request?
- Which office is responsible for collecting data and ensuring its quality?
- Who should identify overall trends and improve responses to them?
- Who should identify areas of best practice and provide training?

While some bureaus, such as Parks and Recreation and Transportation, have more experience in addressing disability needs and requests, other bureaus have less experience, more modest resources, or lack a dedicated disability coordinator. Individual coordinators vary in experience as well. This causes an uneven response to accommodation requests across the City. For example, the Parks Bureau offers adaptive and inclusive recreation programs as part of their services, and they are accustomed to addressing disability issues. Other bureaus with less-frequent requests said they are less certain of the process to respond to them. This could be an area of legal risk to the City if processes are significantly different.

Bureaus are responsible for addressing accommodation requests, such as getting a sign-language interpreter or determining the need for accessible spaces in a parking garage, with limited technical support. A bureau coordinators group met monthly to share information, lost traction, and is now being restructured. The group started reconvening in summer 2016. According to Equity and Human Rights, few coordinators are in positions where they can influence bureau policies.

Bureau coordinators commonly said they would welcome more training and tools from Equity and Human Rights, but that office lacks the staff to provide training Citywide.

Only half of the Equity and Human Rights Program Manager's time is dedicated to disability matters, allowing for technical assistance on some Citywide and bureau policy development, but not the capacity to provide regular basic or specialized training on particular services.



"The lack of effort isn't anything malicious on the City's part, but more the lack of resources and attention. The City doesn't have enough experience with the (Act)"

Interview with City employee

We reviewed centralized disability organizations in two other local governments. The other jurisdictions had more staff and provided training to bureaus. In contrast, Portland did not. The comparison can be found in the appendix.

According to our interviews with community members, City responses to accommodation requests or complaints may take longer than the public expects, leading to frustration or burnout for the requester. For individuals with disabilities, interviewees said that a delayed process could limit access to City services and create a sense of marginalization. Because most of the Americans with Disabilities Act is based on a request or a complaint to start the process, such delays in City responses may make it harder for changes to occur.

More consistent policies and procedures could help disabled individuals and City staff

Policies and procedures to handle accommodation requests and complaints help ensure that requests are handled consistently and fairly. City policy defined some steps for bureaus to address complaints, but it is not comprehensive and some of it is out of date.

We found that bureaus have some common practices to review accommodation requests and complaints. These practices include identifying jurisdiction over the issue, gathering background information, and developing options to address the accommodation. However, practices can vary from bureau to bureau. Staff attributed the lack of formal policies and procedures to the individual nature of each request or complaint. Variance by disability is understandable, but variance by bureau in responding to a similar disability is not helpful to the public.

Current practices should be consistent and documented in the City's *ADA Coordinator Program Guide*. This is particularly important when there is turnover among bureau coordinators. In addition, the Guide should specify which materials should be retained to document the City's actions in case of future legal issues. It would also be helpful to document alternative ways bureaus have addressed accommodation requests and complaints.

Limited data hinders the City's ability to anticipate needs

The City does not keep data related to accommodation requests or complaints in a central location. According to Equity and Human Rights, prior efforts to establish a more centralized tracking method were poor. Collecting and sharing information on accommodation requests would allow the City to identify trends, prioritize needs, and improve services. For example, if bureaus receive multiple requests

for similar accommodations, they can coordinate work and make the process more responsive. In addition, the lack of consistent record-keeping could increase the City's legal liability under the Act.

We assessed the effectiveness of the complaint process when people believe the City has not appropriately responded to requests for accommodation. The Office of Equity and Human Rights is responsible for investigating complaints. There were only a few complaints received in the last five years where the City had jurisdiction and where there was a formal request. These ranged from not having a sign language interpreter to concerns about disabled parking. We reviewed the five closed cases where there was a formal request and where the City had jurisdiction. We found very little documentation of communication, for example, between the complainant and the City and discussions within the City on how to resolve the issue. As a result, management is less able to determine the effectiveness of the complaint process.

Recommendations

We recommend the Mayor direct the Office of Equity and Human Rights to take the following action:

The Office of Equity and Human Rights' Americans with Disabilities Title II program, with input from the Portland Commission on Disability, the disability community, and City bureaus, should identify and document roles, responsibilities, and processes. The updated roles should be approved by the City Council and any budget and staffing adjustments should go through the City's annual budget process.

We also recommend the Office of Equity and Human Rights improve the *ADA Coordinator Program Guide* to ensure consistency and continuity in bureau policies and practices and to identify documentation and data needs. Equity and Human Rights should also improve its website so it is more useful to individuals with disabilities.

Objective, Scope, and Methodology

The objective of this audit was to determine if the City meets the process requirements in Title II of the Americans with Disabilities Act, specifically related to accommodation requests and complaints.

To accomplish this objective, we obtained information on the Act. We assessed the City's current administrative practices against the standards in the Act to determine if legal requirements were being met. We reviewed the *Standards for Internal Control in the Federal Government* and assessed the City's processes for Title II requests and complaints against these standards. We identified best practices for government websites and reviewed information on the Office of Equity and Human Rights' website.

We interviewed members of the Portland Commission on Disability, staff in Equity and Human Rights, Office of Neighborhood Involvement, Police Bureau, Portland Fire & Rescue, Environmental Services, Parks and Recreation, Water Bureau, Office of Management and Finance, and the City Attorney's Office. We also identified the types of information about accommodation requests and complaints the City retains and documents.

We interviewed individuals with disabilities who volunteered to share their experiences. We interviewed the City and County of San Francisco and the City and County of Denver for information about their centralized disability programs.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX

Question	Portland (Commission)	San Francisco (Mayor-Council)	Denver (Mayor-Council)	Is Portland Similar?
Do the central office and bureaus both receive requests and complaints?	Yes	Yes	Yes	Yes
Do bureaus respond to requests and complaints?	Yes	Yes	Yes, but the central office generally responds to requestor	Yes
When request comes in, bureaus regularly notify the central office?	No	No	It depends on where the request originated	Yes
Does the central office regularly see bureau responses to request or complaints?	No, only if the issue has escalated	Yes	Yes, and central office responds to requestor.	No
Does the central office provide training?	No – None currently	Yes – both basic and advanced	Yes – both basic and advanced	No
Does the central office provide specialty code reviews (e.g. building, parking)	No	Yes	Yes	No
Are disability issues normally a minor part of the bureau coordinator's other duties?	Yes	Yes	Yes	Yes
Do coordinators have sufficient authority in organization to effect change?	It varies by bureau	It varies by department	It varies by department	Yes
Is performance information kept is Citywide?	No	No	No	Yes
Estimate of requests/ grievances per month coming through central office.	Most calls are information and referral. 10-20 calls per month related to a request or initial complaints/ concerns.	1,000 calls per month – most are information and referral. Of those, 2 accommodation requests per month and 5 grievances	About 133 calls per month, of those about a third are requests or complaints.	No, jurisdictions vary in number received.
How many positions are in the central disability program?	0.5	8	2.5 (See Note.)	No
Current concerns	Mental health, personal care	Mental health, emotional support animals	Juvenile mental health, jails	Yes

Source: Audit Services analysis of interviews and web materials

Note: This jurisdiction is the process of requesting additional staff.

RESPONSE TO THE AUDIT



Office of Mayor Charlie Hales
City of Portland



OFFICE of EQUITY and HUMAN RIGHTS CITY OF PORTLAND

Realizing Equity. Enhancing the City of Portland.

November 29, 2016

Mary Hull Caballero
City Auditor
1221 SW Fourth Ave, Room 140
Portland, OR 97204

Dear Auditor Hull Caballero:

We would first like to express our gratitude to the Auditor's Office for conducting the audit *Americans with Disabilities Act: Coordination gaps complicate City response*. To our knowledge, it is the first time the City Auditor's Office has directly taken the needs of, and service to, the People with Disabilities of Portland under review. The Mayor's Office and the Office of Equity and Human Rights (OEHR) would like to thank you for the hard work of your office and for providing us the opportunity to review and respond.

Since the Americans with Disabilities Act was signed into federal law, the City of Portland, like many other cities, has had a history of under-resourcing systems of compliance. Whereas most of the City's compliance related efforts have been done through responsive, but casual one-on-one interactions, rigorous compliance requires an institutionalized systemic approach, resources, dedication, and robust accountability mechanisms. As identified in the audit, OEHR and ADA Title II program play a centralized role: establishing policy, procedure, guidance; identifying tools; supporting capacity building; and providing technical assistance at a City-wide level. Bureaus are responsible for implementing policy, practice, and procedures within bureau specific operations and functions and for providing decentralized services by responding to requests, complaints, and providing services in an accessible manner.

The Mayor's Office and OEHR considers the audit to be fair and has reached reasonable conclusions. Efforts by the ADA Title II Program, the bureaus, and this audit highlight that while much has been accomplished, we face many barriers to this work and much more needs to be done.

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We want to take the opportunity to respond to some of the key findings and recommendations.

Audit recommendation:

The Office of Equity and Human Rights' Americans with Disabilities Title II program...should identify and document roles, responsibilities, and processes...improve the ADA Coordinators Program Guide to ensure consistency and continuity in bureau policies and practices.

Response:

The ADA Title II Program is in the process of updating and expanding a Guidance Manual, designed for both City staff and the Bureau ADA Coordinators. The manual will include more detailed descriptions of the roles and responsibilities of the ADA Title II Program, the City, and the individual bureaus, including the roles, responsibilities, and recommended skills, abilities, and position of the bureau coordinator. Guidance on best practices and standard operating procedures should ensure better consistency, continuity, in bureau policy and practices.

Audit recommendation:

OEHR work to "identify documentation and data needs" and the City "identify, collect, and analyze data about requests and complaints to improve access and services to individuals with disabilities."

Response:

Based on lessons learned from passed centralized documentation and tracking efforts, OEHR is developing a centralized reporting mechanism that would allow bureaus to submit and record accommodation requests and complaints. This has the potential to allow for better tracking and analysis by the bureau and the ADA Title II Program. Furthermore, it may help to establish more consistent practices of request and complaint management throughout the bureau.

Audit recommendation:

OEHR should also improve its website so it is more useful to individuals with disabilities.

Response:

OEHR is in the process of launching a redesigned website that will serve as an information and technical assistance base for both the City staff and for the public. However, this program is not an information and referral program for People with Disabilities to broad resources across the City and jurisdictions.

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Summary Statement

As stewards of the ADA Title Policy and Program, OEHR remains dedicated to creating and strengthening existing policy, procedure, and guidance in a manner usable and easily implementable by bureaus; to better establish best practices and facilitate a more standardized response across bureaus, thereby increasing consistency in positive community experiences across the city. The City's decentralized form of government presents challenges to establishing jurisdiction-wide systems, especially when considering the breadth of diverse functions and operations in bureaus. Therefore, it is the bureaus' responsibility to: organize internal efforts; implement and integrate policy and best practices into the operations of the bureau; and be accountable to this work.

Finally, we would like to provide clarification on the Audit background as it refers to OEHR facilitating the ADA Title II Transition Plan in 2015. Starting in 2011, the ADA Title II program, while under the Office of Management and Finance, facilitated and managed the citywide assessment and Plan in collaboration with bureau and community partners. OEHR adopted the program, completed the project, and submitted the ADA Title II Facilities Transition Plan Report to Council in 2014. Portland Parks and Recreation presented a supplement of Parks Facilities to the Plan in 2015. The Performing Arts Centers supplement is in its final stages of development and the Portland Bureau of Transportation Public Right of Way Transition Plan is still in early stages; these are slated to be the final supplements to the Plan.

Moving forward, the City expects to make significant progress on these recommendations and on the work already underway. However, in order to effectively undertake the proposed recommendations and reasonably meet identified needs, ADA Title II compliance activity must be appropriately resourced and prioritized both within OEHR and within each bureau to do this work. All levels of City organization must be more accountable to this work and respective roles: OEHR leading and guiding the work; bureaus implementing policy and providing accessible programs and services. We hope the audit further encourages much needed action and support to ensure that the ADA Title II Program and all City bureaus continue to provide accessible programs, services, and activities.

The Mayor's Office and OEHR agree with and are committed to implementing the Auditor's recommendations and working with Mayor-elect Wheeler's team in understanding the importance of these steps to make the City more inclusive of our communities with disabilities. We will recommend that more resources be dedicated to this work and be a priority for Mayor-elect Wheeler in the upcoming budget cycle.

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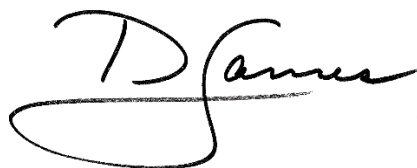
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Please accept our personal thanks for Audit Services' hard work, especially the work of Kristine Adams-Wannberg. The Mayor's Office and OEHR staff truly enjoyed working with her and found her to be diligent, accommodating, and professional.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Hales". The signature is fluid and cursive, with the first name "Charlie" written in a larger, more prominent script than the last name "Hales".

Charlie Hales
Mayor, City of Portland

A handwritten signature in black ink, appearing to read "Dante James". The signature is cursive, with a large, stylized "D" at the beginning and "James" written in a smaller, more compact script.

Dante James
Director, Office of Equity and Human Rights

cc: Kristine Adams-Wannberg, Senior Management Auditor

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complate City response*

Report #476, December 2016

Audit Team: Kristine Adams-Wannberg

Mary Hull Caballero, City Auditor
Drummond Kahn, Director of Audit Services

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