



Equal Rights Center’s Testimony Regarding the Performance of the DC Office of Human Rights

Testimony Submitted Online on February 20, 2024 and Abridged Version Read at the Public Hearing on February 21, 2024

The Equal Rights Center (ERC) appreciates the opportunity to testify for the DC Council performance oversight hearing of the Office of Human Rights (OHR).

The ERC is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations in its home community of Greater Washington, D.C. and nationwide. For many years, the ERC has conducted intakes with individuals alleging housing discrimination in DC, investigated individual claims and systemic forms of housing discrimination, pursued enforcement of the Fair Housing Act (FHA), the DC Human Rights Act (HRA), and other local anti-discrimination laws as needed, and conducted education and outreach about fair housing protections and requirements. The ERC, as a complainant or non-attorney representative for individual complainants, has filed more than 50 housing discrimination complaints with OHR in the last three years.

OHR’s administrative complaint process provides DC residents with an opportunity to report and challenge housing discrimination. In theory the administrative complaint process is relatively straightforward—after a complaint is filed, OHR conducts an intake and then docketed the Charge of Discrimination. It will then hold a mediation session between all parties to the complaint. If mediation fails, the complaint moves into investigation. At the conclusion of an investigation, OHR issues a Letter of Determination stating whether there is probable cause or no probable cause that discrimination occurred. If OHR finds probable cause, either one further attempt at conciliation is made before the case is forwarded to the Human Rights Commission or the parties elect to move the case to DC Superior Court. While the complaint process is relatively straightforward, it unfortunately can be quite challenging and time-consuming for individuals to navigate it.

More Individuals Are Filing Fair Housing Complaints, but the Backlog of Cases is Growing

The ERC commends OHR on the increase in fair housing complaints docketed in the last two years. In FY2021, the agency docketed only forty fair housing complaints – a number that is clearly not reflective of the frequency of housing discrimination in the city.¹ In the last two fiscal years, OHR docketed 72 and 61 fair housing complaints respectively, a significant increase that may be the result of OHR’s expanded enforcement provisions in the last few years.

¹ Office of Human Rights. *FY2021 DC Office of Human Rights Annual Report*. 3 Oct 2022. lims.dccouncil.gov/downloads/LIMS/51391/Introduction/RC24-0223-Introduction.pdf

As the number of complaints grows though, we have significant concerns about OHR’s ability to keep pace. Ten ERC clients currently have open complaints that are more than a year old, with the oldest ones dating back to 2021. **Delays in the administrative complaint process continue and appear to have worsened, especially at the intake stage.** Five ERC clients waited about six months from the initial filing of their complaint last year to the docketing of the charge.

These concerns about OHR’s administrative complaint process are unfortunately not new. **Many complainants over the years have shared that the complaint process is time-consuming, resource intensive, and confusing—to the extent that it deters them from filing or following through on complaints.** Even in our role as an organization highly experienced in filing OHR complaints and assisting residents through the process, we experience repeated difficulties and delays. As a result, ERC staff frequently grapple with how best to counsel clients who have experienced real harm due to illegal discrimination, as we are often skeptical of the likelihood that they will be able to obtain timely and meaningful relief through the process that OHR is responsible for administering.

OHR has stated it plans to use Fact Finding Conferences during investigations in order to decrease the growing backlog of complaints.² While the ERC appreciates OHR’s intent to address the complaint backlog, we are concerned that **Fact Finding Conferences could make the complaint process more emotionally draining and difficult to navigate for complainants.** The ERC helps individuals file fair housing complaints at five local, state, and federal government agencies in its service area. Of those, only two agencies have used Fact Finding Conferences. In a Fact Finding Conference, the investigator holds a meeting with both the person who filed the complaint and the housing provider against whom a complaint was filed. The investigator asks questions of and takes statements from both parties while they are together. Our experience has been that victims of discrimination generally find it difficult to clearly articulate their experiences in such a high-stress environment, especially when there can be such a significant power imbalance between them and the housing provider. One ERC client that participated in a Fact Finding Conference called the experience more traumatic than her experience of housing discrimination. We appreciate that OHR has stated Fact Finding Conferences would be voluntary and would further encourage OHR to maintain its current investigation process for all fair housing complaints.

Disparate Impact is a Critical Tool to Address Discrimination, Yet DCOHR Refuses to Use It

The challenges with the complaint process highlight the heavy enforcement burden put onto individual victims of housing discrimination. With fair housing complaints frequently taking one to three years to reach a resolution, individual complainants are required to relive the discrimination they experienced over and over as their complaints slowly progress through each stage. **As such, it is critical that the District’s civil rights enforcement agencies, including OHR, do everything in their power to fight discrimination at a systemic level.**

The Fair Housing Act and the DC Human Rights Act allow for fair housing claims based on a disparate impact theory. Policies and practices by housing providers that appear neutral could be considered discriminatory under a disparate impact analysis if they have a disproportionate

² OHR. *Responses to Fiscal Year 2021-2022 Performance Oversight Questions*. Feb 18 2022, p. 5.

impact on a group of people protected by federal and local fair housing laws. **Disparate impact provides a powerful tool to address systemic forms of discrimination because it makes it possible to identify and challenge more pernicious, difficult to see cases of discrimination.** For example, because over 90% of the city’s voucher holders are Black, discrimination towards voucher holders in DC is also race-based discrimination.³ Additionally, overly broad criminal record screenings of rental applicants may be discriminatory on the basis of race and/or national origin as the screenings are disproportionately likely to serve as a barrier to renters of color.

Given historic and ongoing discrimination that has yielded stark residential segregation throughout the city, the District should use all the tools at its disposal to promote integration and equity in housing.⁴ **Yet Director Hnin Khaing has stated during OHR’s most recent performance oversight hearings that the agency does not accept disparate impact claims** because they are resource intensive and the agency lacks the staff capacity necessary to investigate such claims.⁵ In order to effectively address the systemic discrimination that plagues the District, OHR must take the necessary steps so that the agency can accept fair housing complaints based on a disparate impact analysis. Should OHR need additional resources or staff in order to investigate disparate impact claims, the ERC urges DC Council to address this budgetary gap.

OHR Should Launch Director’s Inquiries to Confront Systemic Discrimination

Relatedly, OHR could more proactively address housing discrimination and reduce the burden on victims of discrimination by conducting Director’s Inquiries. OHR did not open any fair housing Director’s Inquiries in FY2023. Yet blatant housing discrimination occurs in the District with frequency, especially on the basis of source of income. Discrimination against housing voucher holders is serving as a mechanism of racial segregation in the District and must be stamped out.⁶ As a community, we cannot expect voucher holders to shoulder the burden of addressing discrimination on their own and we cannot address a systemic problem through individual complaints. **OHR should fully use its authority to launch Director inquiries in order to respond to rampant source of income discrimination.**

Lastly, while we have raised several concerns about OHR’s performance in today’s testimony, we also want to stress the critical role OHR plays in enforcing the District’s progressive civil rights laws. We understand that this is a tough budget year, but any budget cuts to OHR would be devastating. The agency has only been funded at fully operational levels in the last few years, meaning that **any budget cuts would significantly hinder the agency’s mission and make it more difficult for DC residents to meaningfully report housing discrimination.**

³ Adjami, Nick. “Source of Income Discrimination Perpetuates Racial Segregation.” 19 Aug. 2020, www.equalrightscenter.org/voucher-discrimination-perpetuates-segregation/.

⁴ Metropolitan Council of Governments, *Metropolitan Washington Regional Fair Housing Plan: District of Columbia*, 2023, p. 27-29, mwcog.org/documents/2023/04/04/metropolitan-washington-regional-fair-housing-plan/.

⁵ Committee on Public Works and Operations, *Performance Oversight Hearing of the Office of Human Rights*, February 9, 2023, <https://www.youtube.com/watch?v=oRW2-XYMtTM>

Committee on Government Operations and Facilities, *Performance Oversight Hearing of the Office of Human Rights*, February 24, 2022, https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=7151.

⁶ Adjami, Nick. “Source of Income Discrimination Perpetuates Racial Segregation.” 19 Aug. 2020, www.equalrightscenter.org/voucher-discrimination-perpetuates-segregation/.

Thank you for this opportunity to testify. The ERC welcomes any opportunity to work in collaboration with OHR and DC Council to ensure that victims of discrimination are able to seek relief for the harm they've experienced.