

TN TITLE VI COMPLIANCE PROGRAM

ANNUAL REPORT FY 2015-2016



TENNESSEE HUMAN RIGHTS COMMISSION

LETTER FROM THE EXECUTIVE DIRECTOR

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October 31, 2016

Governor Bill Haslam
State of Tennessee
1st Floor, State Capitol
Nashville, TN 37243

Members of the General Assembly
State of Tennessee
Legislative Plaza
Nashville, TN 37243

It is my honor to provide you with 2015- 2016 Annual Report of the Title VI Compliance Program. This report was prepared pursuant to the requirements of Section 4-21-203, Tennessee Code Annotated and covers the period of July 1, 2015 through June 30, 2016.

Since 2009, when Title VI monitoring authority was transferred to the Commission, we have worked diligently to ensure compliance among all state agencies. The program is a central clearing house of discrimination complaints, a source for training and technical assistance, and thorough examiner of other state agencies' efforts to combat discrimination.

This report provides a summary of the services and accomplishments of the Title VI Compliance Program. We will continue to ensure that each executive branch department and agency promotes present and future compliance with Title VI requirements.

Thank you for the opportunity to serve.



Sincerely,

Beverly L. Watts,
Executive Director

INTRODUCTION

This report covers Title VI Compliance Program activities during the fiscal year (FY) July 1, 2015 - June 30, 2016 for compliance efforts and outcomes of each executive branch department and agency in the state of Tennessee. Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination on the basis of race, color or national origin under any program or activity receiving federal financial assistance (FFA).

In practical terms, federal agencies that distribute funds are empowered to withdraw that support if a recipient agency engages in discrimination. In fiscal year 2015-2016 the State of Tennessee received almost \$12 billion dollars of federal financial assistance in the past fiscal year, and federal funds can represent as much as 40% of the state budget any given year.

Therefore, a comprehensive statewide compliance program prevents the risk of loss of that federal funding due to discriminatory practices and is critical to maintaining high standards and ensuring continued compliance. More importantly, the Title VI Compliance Program is an expression of the State of Tennessee's commitment to justice for its citizens. It maintains the public's trust by ensuring that the state's many interactions with its citizens are always free of discrimination based on race, color, or national origin.

This year the program conducted a complete compliance review of the commission itself and began a program of training state employees in Title VI Investigation. The compliance team oversaw forty-two state agencies in the development of their Title VI implementation plans, achieving 98% compliance. The Tennessee Human Rights Commission intends to continue to build upon these successes and develop new strategies for preventing discrimination in cooperation with every other state agency. The Title VI Compliance Program staff is grateful for the role we play in the Tennessee Human Rights Commission's mission to safeguard individuals from discrimination through enforcement and education.

HISTORY, PURPOSE, AND STRUCTURE

On August 9, 2002, Governor Don Sundquist issued Executive Order 34 which created the Title VI Compliance Commission. Executive Order 34 assigned the duties and responsibilities for Title VI monitoring to the 13-member Title VI Compliance Commission. Governor Sundquist appointed nine of the 13 members as required by the executive order. All of these appointments expired in October 2008 and remained unfilled.

On June 23, 2009, Governor Phil Bredesen signed legislation transferring the duties of the Title VI Compliance Commission to the Tennessee Human Rights Commission, effective July 1, 2009. This legislation grants the Commission the authority to verify that all state governmental entities comply with the requirements of Title VI. The Compliance Program dedicated itself first to the establishment and development of guidelines for a comprehensive statewide policy to ensure compliance by the executive branch of state government. In the subsequent years the Compliance Program has matured beyond establishing guidance into active oversight.

Each state agency receiving Federal Financial Assistance is responsible for conducting the

necessary activities to remain compliant and avoid discrimination. Although this is a responsibility of the agency as a whole, each state agency selects a member of its staff to serve as their Title VI Coordinator. The designated Title VI Coordinator serves as liaison between the agency and the THRC and as a resource for the agency's Title VI related activity.

The Compliance Program is overseen by the Director of Title VI Compliance, who reports to the Executive Director of the THRC. Additionally, the unit employs a Compliance Officer and an Administrator. THRC staff provides support for and coordination among the Title VI Coordinators assigned for each state agency.

The staff of the Tennessee Human Rights Commission is now directing its efforts to increasing its effectiveness in every program area. In the coming year the Compliance Program seeks to increase the number of Compliance Reviews, create new training tools for agency coordinators, and sharpen our investigation oversight.

TITLE VI COORDINATOR DUTIES

- Producing the annual Implementation Plan to be submitted for review before October 1 every year.
- Ensuring that recipients of the agency's funds are themselves compliant with Title VI. This is done by collecting assurances prior to the award of funding, training, and periodically reviewing the subrecipients for compliance with Title VI.
- Providing Title VI training on an annual basis to all employees, subrecipients, contractors and program area liaisons.
- Investigating and resolving any complaints made by recipients alleging discrimination on the basis of race, color, or national origin by the agency.
- Collecting and maintaining racial and ethnic data demonstrating the extent to which members of minority groups are beneficiaries of the department's federally assisted programs and/or services.
- Informing the public of the agency's non-discrimination policies, procedures for investigation of complaints, and the process of obtaining grants or bidding on contracts over which the agency has oversight.

COMPLIANCE PROGRAM ACTIVITIES

- Acting as a clearinghouse for Title VI complaints, ensuring that any claim of non-compliance by a state agency is thoroughly investigated and resolved.
- Conducting compliance reviews of state agencies. These focused reviews highlight and remedy shortcomings found in those agencies' practices or procedures.
- Conducting annual training of all Title VI Coordinators; ensuring competence in Title VI issues across the state.
- Collecting and reviewing Implementation Plans from all recipient agencies. These plans represent a statewide comprehensive effort to prevent discrimination in every agency activity.
- Providing policy guidance and technical assistance for recipient agencies regarding Title VI compliance.
- Providing annual Report Cards to all Commissioners and Agency heads keeping them apprised of successes and areas of potential concern.
- Directly investigating potentially discriminatory actions by public programs.

LIMITED ENGLISH PROFICIENCY

On August 11, 2000, President Bill Clinton signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (LEP). The Executive Order requires federal agencies to maintain procedures that ensure their services reach beneficiaries who have a limited command of the English language. The requirement is extended in turn to all recipients of federal financial assistance, including Tennessee state agencies.

Tennessee state agencies must have procedures in place for ensuring meaningful access to LEP individuals. Most commonly this involves the use of professional interpreter services, but can also include the use of bilingual staff.

Agencies must always evaluate the potential need for their printing their publically distributed documents in languages other than English. The THRC recommends that each agency's most distributed materials be available in Spanish.

DISCRIMINATORY PRACTICES

Departments that receive FFA must provide the public with fair and equal access to all of its programs and activities in a nondiscriminatory manner. A department that is a recipient of federal funds may not, directly or through contractual or other arrangements, on the basis of race, color or national origin:

- Deny an individual any disposition, service, financial aid, or benefit provided under the program;
- Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
- Subject an individual to segregation or separate treatment in any matter related to the receipt of any disposition, service, financial aid, or benefit under the program;
- Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;
- Treat an individual differently from others in determining whether such person satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function or benefit provided under the program;
- Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford such person an opportunity to do so which is different from that afforded others under the program; or,
- Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

IMPLEMENTATION PLANS

A major component of the Title VI Compliance Program involves implementation plan review. In FY 2015-2016, the Commission received and reviewed 42 implementation plans from departments statewide. One agency was not required to submit a plan as it did not receive FFA for the reporting period.

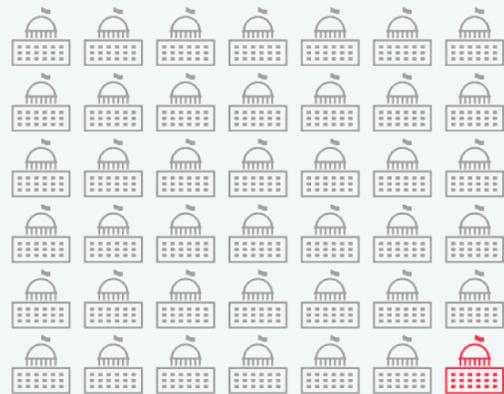
The review analyzed multiple areas of compliance, including Limited English Proficiency (LEP) policies and procedures, data collection, the monitoring of subrecipients, and whether departments train staff on Title VI. Implementation plans were forwarded back to the departments for revision after an initial review and comment phase. Upon completion of the implementation plan review process, the Commission issued a "Notice of Final Findings" to the departments.

This fiscal year 41 of the 42 departments' implementation plans were received and finalized before the October 1, 2015 deadline. One implementation plan was received one day late, and is untimely. All of the implementation plans were reviewed and revised to be in total compliance by October 30, 2015.

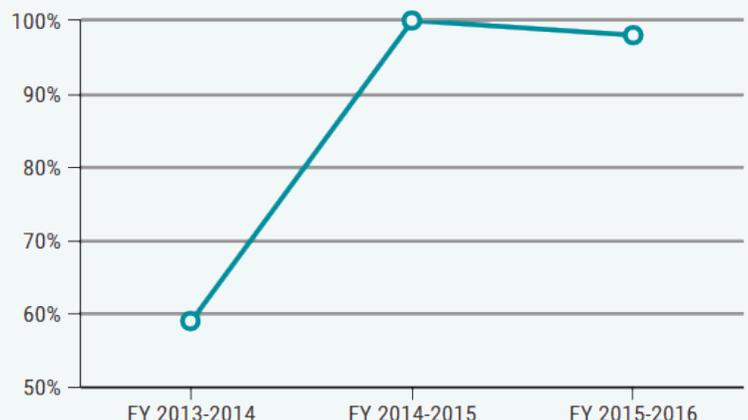
IMPLEMENTATION PLAN SECTIONS

- Overview
- Description of federal programs or activities
- Organization of the Civil Rights Office and duties of the Title VI Coordinator
- Data collection and analysis, including total number of complaints received
- Definitions
- Discriminatory practice
- Limited English Proficiency (LEP)
- Complaint procedures
- Compliance review of subrecipients
- Compliance/noncompliance reporting
- Title VI training plan
- Public notice and outreach
- Evaluation procedures of Title VI implementation
- List of responsible officials

IMPLEMENTATION PLAN COMPLIANCE FY 2016



IP COMPLIANCE OVER TIME



IMPLEMENTATION PLANS, CONT.

The most common areas of non-compliance in previous fiscal years have been in LEP policies, Complaint Procedures, Training, Data Collection and timeliness. In each instance the Human Rights Commission issued a finding of non-compliance and listed the findings in the agency report cards.

Over time each of the findings were addressed through direct consultation with the Title VI Coordinators and agency heads. The Compliance program has refined the implementation plan guidelines, and provided technical assistance and annual training to Title VI coordinators across state agencies. This has resulted in much greater compliance. In fiscal year 2014-15 we achieved 100% compliance. This past year the Tennessee Department of Safety and Homeland Security had one finding of timeliness, as the Implementation Plan was delivered one day past the deadline. For FY 2015-2016 the program has achieved 98% compliance. We have now clarified the guidelines further with a goal of obtaining continued high levels of compliance.

IMPLEMENTATION PLAN FINDINGS



COMPLAINT PROCESS

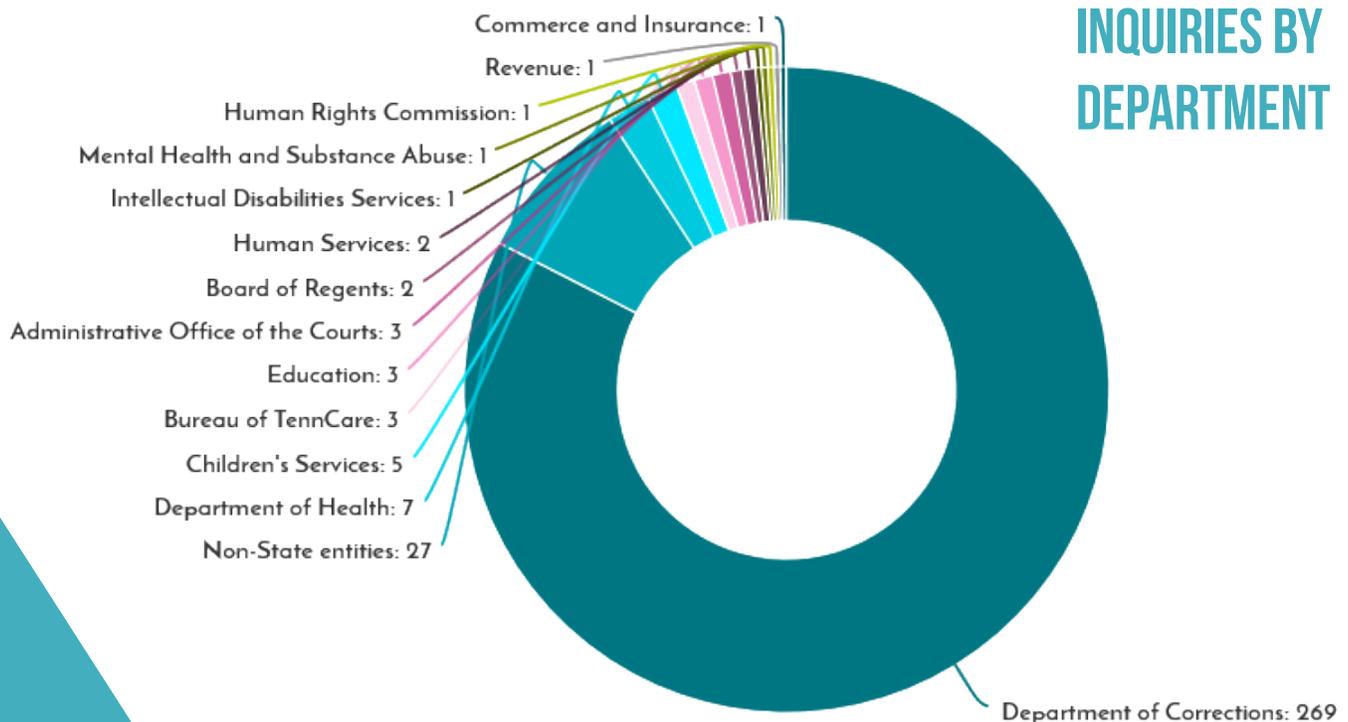
Any person alleging discrimination on the basis of race, color or national origin under any program or activity receiving FFA must file a complaint within 180 days of the alleged discriminatory conduct. Complaints may be filed either with the Commission or directly with the department, or its subrecipient, that is responsible for the alleged discriminatory conduct. Any person may file a complaint directly with the federal department or agency that provides funding to any state department in Tennessee.

INQUIRIES

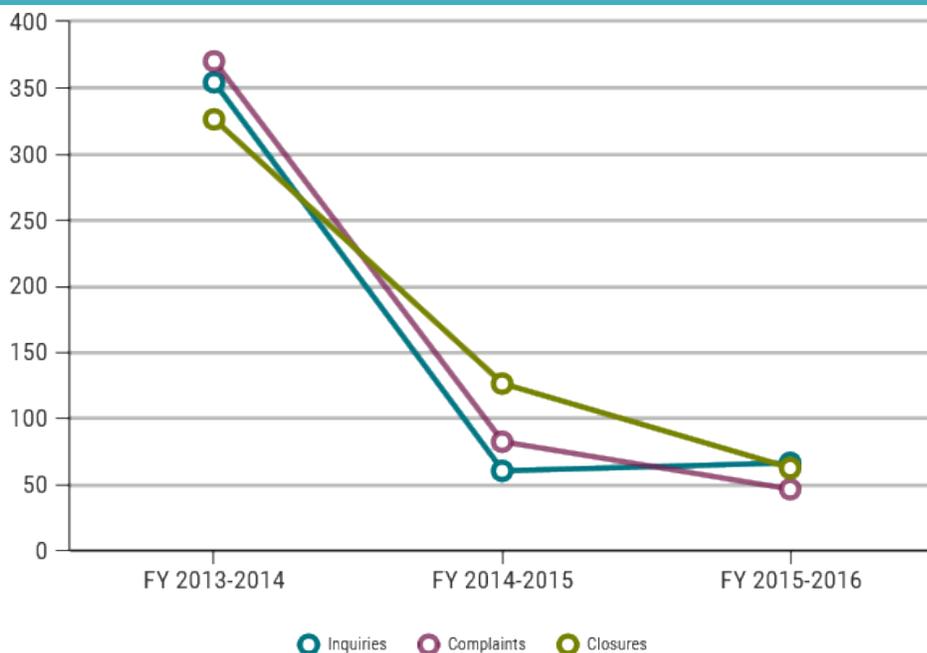
All written inquiries alleging violations of Title VI by a state agency are reviewed by the Compliance Program staff. Each inquiry is examined to determine if the allegations meet the jurisdictional requirements to be classified as a complaint. To be considered a complaint the inquiry must allege discrimination on the basis of race, color, or national origin, by a state agency or its subrecipient. The allegations must also involve events occurring within the last 180 days.

Inquiries that meet the requirements are assigned for investigation. Allegations that do not constitute a Title VI claim, but do make a formal complaint against a state agency, are referred to the appropriate state agency for a response. Those inquiries falling outside of either category are administratively closed.

Historically the majority of inquiries are directed at the Department of Corrections from imprisoned persons. This past fiscal year the Commission reviewed 326 inquiries, 269 of which concerned the Department of Corrections.



COMPLAINT PROCESS, CONT.



INQUIRIES, COMPLAINTS, AND CLOSURES OVER TIME

COMPLAINTS: SUBMITTED DIRECTLY TO THE COMMISSION

During the period covering July 1, 2015 - June 30, 2016, the Title VI Compliance Program received 326 inquiries. Of these, 200 inquiries were not jurisdictional and 126 were accepted as complaints. There were 62 total closures for the fiscal year. Complaints ranged from allegations of discriminatory practices by state employees to the denial of services under specific, federally funded programs and activities.

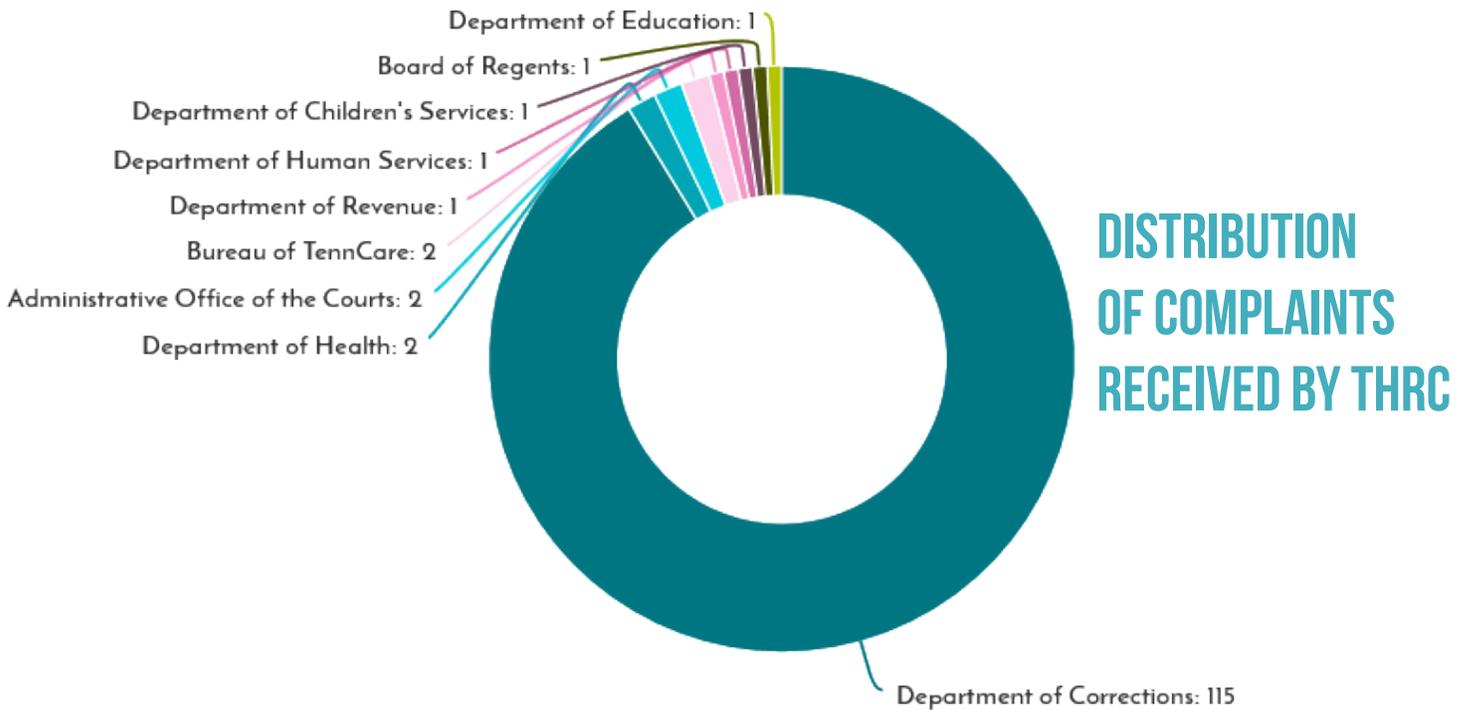
Complaints that may be jurisdictional under Title VI are typically assigned to the executive branch department that administers the program or activity referenced in the complaint, but in certain cases where the allegations are unusually complex or when more than one state agency has oversight authority over the respondent, the Commission may choose to directly investigate. In the last fiscal year, Commission staff conducted two direct investigations, one that was in cooperation with the Tennessee Department of Transportation Civil Rights Office.

When investigations are assigned to departments, the investigating departments are required to keep the Commission apprised of the progress of the investigation, provide status reports and copy the Commission on correspondence to complainants related to complaint closure. In some instances, allegations were jurisdictional to the THRC, but were not valid under Title VI. In those instances, the investigation was assigned to investigators in the appropriate divisions of the Commission (i.e. Housing or Employment).

The Commission will not consider a complaint that is assigned to another department as closed until it receives written notification from the department that the complaint has been resolved. Inquiries that are not covered under Title VI and are not otherwise jurisdictional to the Commission are forwarded to the relevant department for review and action where appropriate.

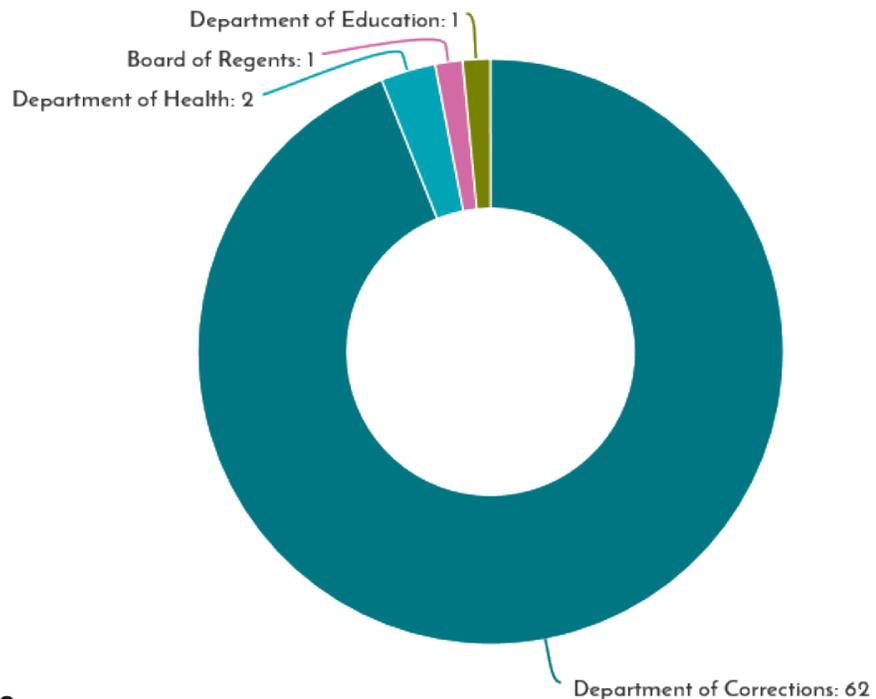
COMPLAINT PROCESS, CONT.

As in all previous fiscal years, the greatest number of Title VI Complaints has been directed against the Tennessee Department of Correction by individuals currently imprisoned in a correctional institution. Of the complaints during FY 2015-2016, 122 alleged race as a basis of discrimination and four alleged national origin.



The Commission closed 66 cases received during the fiscal year. None resulted in a finding of non-compliance. In FY 2015-2016 the Compliance Program began tracking the investigation time of all complaints assigned for investigation. The average time from allegation to resolution for the past fiscal year was 118 days.

COMPLAINT CLOSURES BY DEPARTMENT



COMPLAINTS: SUBMITTED TO OTHER DEPARTMENTS

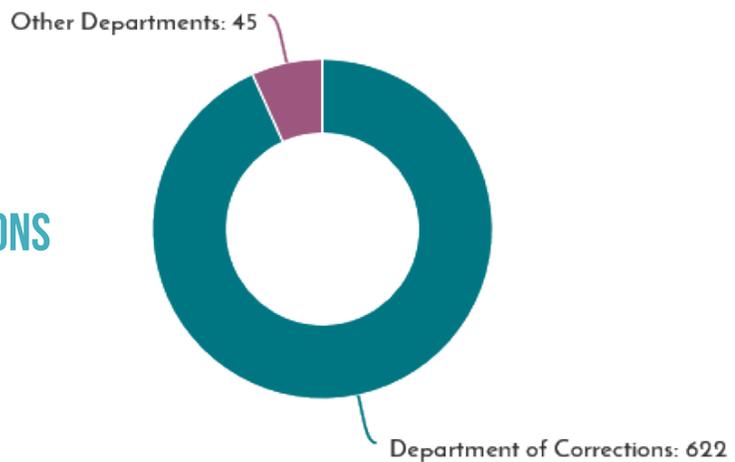
All state agencies are required to report any Title VI complaints received to the Tennessee Human Rights Commission. Agencies are required to investigate and resolve each complaint received. The Compliance Program may review those investigations at any time, but will always do so when conducting a compliance review.

The total number of complaints received by departments statewide is determined by the data reported in each department's implementation plan. According to the data provided, individuals filed complaints with 11 out of 41 or 27% of the departments receiving federal funds. The chart below summarizes the complaints received directly by the departments during this reporting period. No state agency has reported a Title VI investigation resulting in a finding of non-compliance in the past fiscal year.

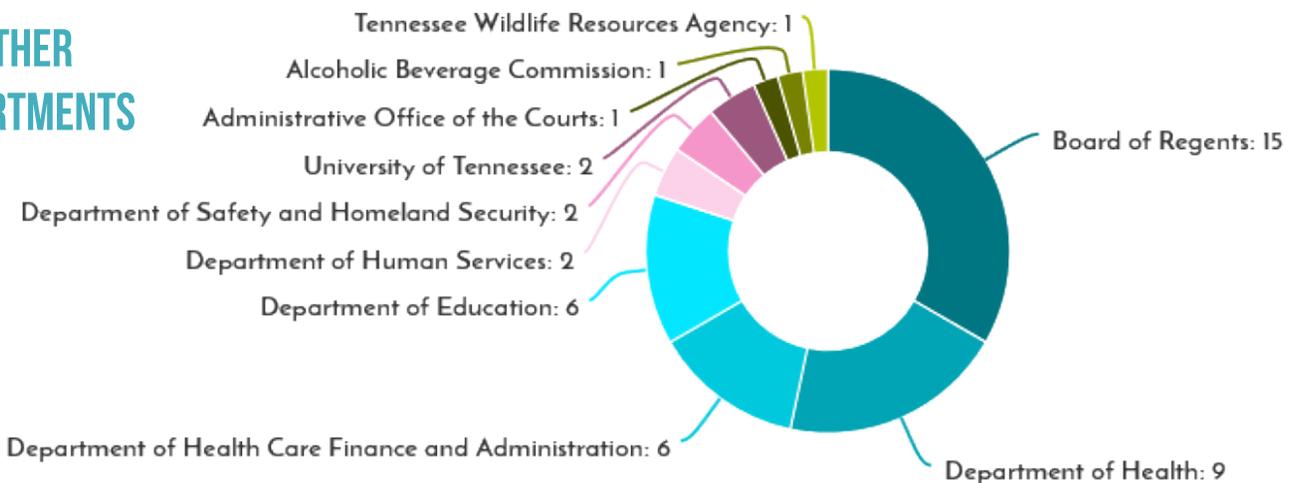
As with complaints submitted directly to the Tennessee Human Rights Commission, the Department of Corrections receives the greatest number of Title VI Complaints. All such Complaints are filed internally by persons currently imprisoned under the care of the Department of Corrections.

DISTRIBUTION OF COMPLAINTS RECEIVED BY DEPARTMENTS

DISTRIBUTION INCLUDING DEPARTMENT OF CORRECTIONS



ALL OTHER DEPARTMENTS



COMPLIANCE REVIEWS

One of the responsibilities of the Tennessee Human Rights Commission is to verify that all state governmental entities comply with Title VI of the Civil Rights Act of 1964. According to the Tennessee Human Rights Act (Tenn. Code Ann. §4-21-203), the Commission is authorized to periodically and systematically, review, evaluate and report on Title VI compliance efforts and outcomes for each state department and agency. Since the inception of the program, the division has completed 11 compliance reviews, including one in FY 2015-2016.

The on-site compliance reviews are conducted to determine the extent to which an agency or state entity is in compliance with Title VI as it relates to program objectives, complaint procedures and referral processes, and the actual execution for processing complaints. This review also serves as a mechanism for the Commission to provide technical assistance and make recommendations regarding corrective action, where appropriate.

Compliance Reviews involve extensive reviews of documentation, as well as interviews with the subject agency's staff. The THRC review staff first notifies the subject agency that they are under review and requests documentation of any changes since their last Implementation Plan. Compliance staff will then visit one or more offices of the subject agency, and interview staff members of the subject agency. The reviewers may also view additional documentation during the on-site visit. The review staff will examine a variety of the agency's activities including:

01 RECORD KEEPING

All agencies are required to maintain records of any Title VI related activity, their sources of federal funding, and demographic data on all program beneficiaries and members of any boards or commissions.

02 SUBRECIPIENT MONITORING

Agencies are required to obtain assurances from all subrecipients that they will comply with Title VI as well as conduct periodic reviews.

03 COMPLAINT INVESTIGATIONS

Review staff will confirm that any alleged violations of Title VI have been thoroughly investigated.

04 TRAINING

Review staff will confirm that all agency employees have been trained annually on Title VI and that those employees retain a basic understanding of the agency's anti-discrimination policies. Agencies are also required to ensure that any subrecipients receive Title VI training every year.

05 LEP POLICY

Every state agency must have working procedures in place for providing meaningful access to persons with Limited English Proficiency. All state employees are expected to know the procedures.

06 PUBLIC INFORMATION AND OUTREACH

Review staff will confirm that agency publications or applications include appropriate anti-discrimination language and inform beneficiaries of how to report potential discrimination. Agencies are further required to ensure that outreach efforts reach all racial populations.

FY 2015-2016 COMPLIANCE REVIEW

During FY 2015-2016, the division conducted one compliance review, of the Tennessee Human Rights Commission. The compliance review resulted in the issuance of two findings:

1. Some newer staff members believed that the Title VI Compliance Program would be involved in resolving Title VI Complaints made against the Commission itself.
2. One staff member was unsure of some aspects of the Commission's LEP policy.

THRC corrected the findings by adding additional training content that clarified to all employees the division of responsibilities with regard to Title VI complaints made against the Commission itself, and providing refresher training for the employee who was unsure about LEP policy.

The Title VI Compliance Program determined that THRC is now in full compliance. More detailed findings and outcomes from the review can be made available on request.

TRAINING

The Title VI Program provided technical assistance to state departments and agencies on Title VI compliance, issued implementation plan guidelines and conducted several training sessions on Title VI compliance requirements to various entities.

The annual training for state Title VI Coordinators was held on July 29, 2015. Information presented during this session included an overview of the fundamentals of Title VI compliance for new coordinators, an explanation of the Implementation Plan guidelines for FY2015-2016, and guidance on the process of investigating Title VI complaints. At a briefing prior to the training, THRC issued 42 "Report Cards" to all state agency department heads. Each report card included observations and suggestions regarding the subject agency's Title VI compliance efforts.

On November 30, 2015, the Title VI Program conducted training on Title VI investigation in cooperation with the Department of Human Resources. Twenty investigators from various agencies were represented, and were taught the fundamental techniques and appropriate procedures for the investigation of Title VI complaints.

The Title VI Compliance Program attended a regular training session of civil rights officers of the Tennessee Board of Regents institutions. The Title VI Compliance Director gave a presentation and answered questions on addressing Limited English Proficiency, violations of Title VI at the institutional level, and data collection.

TECHNICAL ASSISTANCE

The Title VI staff responded to 39 requests for technical assistance from state departments and agencies on Title VI compliance. Topics of concern included complaint investigation, providing appropriate signage, and capturing racial data in services. Typically these requests are resolved within twenty four hours. Often, program staff directly assisted Title VI Coordinators by attending employee Title VI training sessions, composing non-discriminatory language for agency publications, and helping draft presentations.

In March 2016 the Tennessee Department of Safety and Homeland Security (TDOSHS) was informed of new reporting requirements from the Federal Motor Carriers Safety Administration (FMSCA). The FMSCA provides Safety with federal funds for the administration of commercial driver's programs. The FMSCA issued guidelines for a new Title VI Compliance report. The THRC Title VI Compliance Program assisted TDOSHS in crafting the new report and adjusting existing procedures to meet the FMSCA standards. The new Report was accepted by FMSCA on June 15, 2016.

NATIONAL DEVELOPMENTS

On July 22, 2016 the US Department of Education announced a series of new actions designed to combat religious discrimination in schools. They are updating their websites and complaint form as well as developing new technical assistance for schools seeking to address religious harassment. Furthermore they will be expanding surveys of bullying in schools to include information related to religious based bullying. Title VI bars discrimination based on race, color, and national origin. Although it does not explicitly address religious discrimination or religious identification, it does include perceived ethnic characteristics associated with religious membership. The Department of Education hopes to confront this type of discrimination which is often experienced by Hindu, Jewish, Muslim, and Sikh students.

NATIONAL DEVELOPMENTS, CONT.

More information on the Department's actions can be found here:

<http://www.ed.gov/news/press-releases/us-department-education-takes-actions-address-religious-discrimination>

On August 16, 2016 the Departments of Justice, Health and Human Services, Housing and Urban Development, Homeland Security and Transportation released joint guidance to all state agencies involved in emergency preparedness, response or recovery services. The guidance describes the best practices to avoid discrimination in the distribution of services in times of emergency and avoid violation of Title VI. The guidance focuses on the sharing of emergency information in languages other than English and engaging diverse populations in emergency planning.

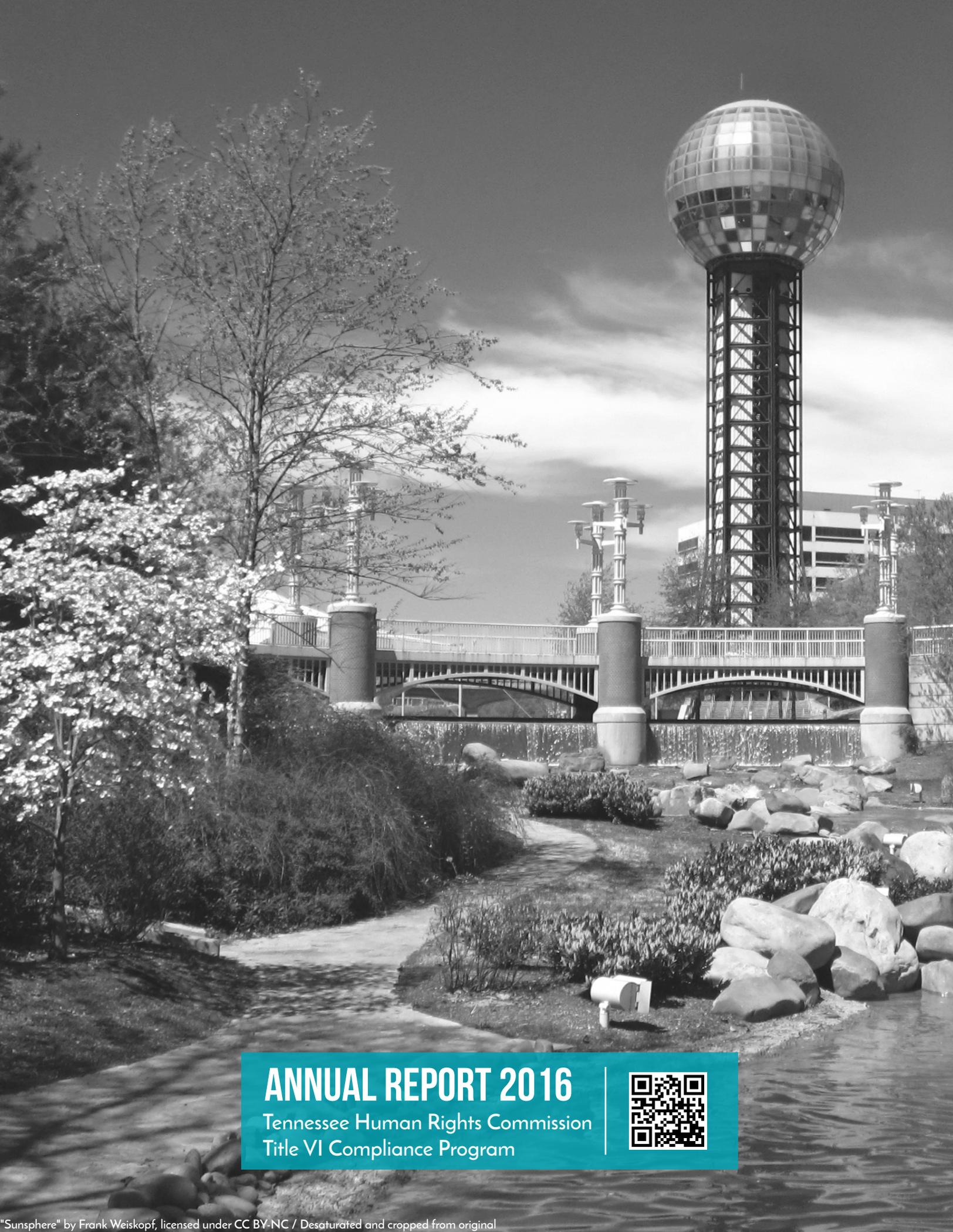
The full text of the guidance can be found here:

<https://www.justice.gov/crt/file/885401/download>

In September of 2016 the US Commission on Civil Rights released a report critical of the environmental justice record of the Environmental Protection Agency. Executive order 12898 enacted by President Clinton states: "In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin." The report found that the EPA had a history of long delayed or incomplete investigations of environmental justice claims and never issued a formal finding of discrimination. The report also concluded that the EPA issued coal ash disposal regulations that disproportionately impacted minority communities. The report reinforces renewed attention on environmental concerns as they relate to Title VI.

The full text of that report can be found here:

http://www.usccr.gov/pubs/Statutory_Enforcement_Report2016.pdf



ANNUAL REPORT 2016

Tennessee Human Rights Commission
Title VI Compliance Program

