

Appendix 7 – Procedures for External Complaint Processing

I. Procedures for External Complaint Processing under Title VI, ADA, and related nondiscrimination statutes

A. Applicability

1. Any person, or class of persons, believing they have been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964 (Title VI), the Americans with Disabilities Act (ADA), the Washington Law Against Discrimination (WLAD; Chapter 49.60 RCW), and related nondiscrimination statutes that prohibit discrimination based on race, creed, color, national origin, familial or marital status, sex, sexual orientation, age, military status, or disability, in any program or activity administered by the Washington State Department of Transportation (WSDOT), may file a complaint with WSDOT.
2. These procedures also cover complaints of discrimination in any program or activity administered by WSDOT that relates to local agencies, contractors and other sub-recipients receiving U.S. Department of Transportation (USDOT) funding through the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), or the Federal Aviation Administration (FAA).
3. As of August 2018, the FHWA has provided new mandatory guidance for Title VI complaint processing. See *Questions and Answers for Complaints Alleging Violations of Title VI of the Civil Rights Act of 1964*; specifically, Question 2e, *How are complaints routed?*, which can be found on the FHWA Office of Civil Rights (HCR) website at the following link:
https://www.fhwa.dot.gov/civilrights/programs/title_vi/titleviqa.cfm#Toc522787058.
Pursuant to the new guidance, ALL Title VI complaints under FHWA jurisdiction, including complaints filed against sub-recipients, must now be forwarded to the FHWA before WSDOT takes any action on the complaint. See Section I.C. below for new mandatory FHWA routing instructions.
4. These procedures are administrative in nature and do not provide for punitive or compensatory damages as remedies.
5. These procedures do not prohibit a Complainant from filing a formal complaint alleging discrimination with other state, local, or federal agencies, nor do they prohibit a Complainant from retaining private counsel.
6. Retaliation for filing a complaint alleging discrimination is prohibited under 49 C.F.R. § 21.11(e).
7. Complaints filed under Title VI with WSDOT in which WSDOT is the named Respondent must always be forwarded to the USDOT modality having jurisdiction (FHWA, FTA, or FAA) for investigation.

B. Informal Complaint Resolution. [NOT APPLICABLE to Title VI Complaints under FHWA jurisdiction]

1. WSDOT will make every effort to resolve complaints promptly and at the lowest level possible.

2. Informal mediation may be used to resolve complaints at any stage of the process.
3. If a complaint cannot be resolved informally, WSDOT may conduct an investigation of the complaint.

C. FHWA ONLY - Special Instructions for routing Title VI Complaints under FHWA jurisdiction.

1. FHWA is responsible for all decisions regarding whether a complaint under FHWA jurisdiction should be accepted, dismissed, or referred to another agency.
2. WSDOT must log all Title VI complaints on receipt (see [Section II.B.](#) below for detailed instructions on complaint intake).
3. After logging the complaint, WSDOT must immediately forward all Title VI complaints under FHWA jurisdiction to:

FHWA Washington Division
c/o Civil Rights Program Manager
711 S. Capitol Way, Suite 501
Olympia, WA 98501-1284
(360) 534-9325

4. FHWA's Washington Division Office will then forward the complaint to:

Federal Highway Administration
U.S. Department of Transportation Office of Civil Rights
1200 New Jersey Avenue, SE
8th Floor E81-105
Washington, DC 20590
(202) 366-0693

for determination whether the complaint should be accepted, dismissed, or referred to another agency.

5. Once the FHWA Headquarters Office of Civil Rights (HCR) has decided whether to accept, dismiss, or transfer the complaint, HCR will notify the Complainant, the FHWA Division Office, WSDOT, and the sub-recipient (where applicable).
6. **ONLY AFTER** WSDOT has been instructed to do so by HCR should WSDOT begin investigation of a Title VI complaint under FHWA jurisdiction.

II. Investigations¹ [Our office may not begin an investigation of a Title VI complaint under FHWA jurisdiction until instructed to do so by FHWA]

- A.** Each step of the investigation process, and the basis on which the case was resolved or closed, must be thoroughly documented.

¹ For economy of language, "USDOT" will be used throughout the Investigations' section of these procedures to mean the "USDOT modality having jurisdiction (FHWA, FTA, or FAA) over the program or activity."

B. OEO managers or the investigator should advise the Data and Reporting Specialist at case “milestones” (sent to FHWA, assigned to an investigator, on-site visit scheduled, etc.) and may ask the Data and Reporting Specialist to add comments to the comments section of the complaint log at any time.

C. Complaint Intake

1. Communications alleging discrimination may be received by mail, FedEx, hand delivery, fax, email, telephone, or other means.
2. The original communication should be retained in native format (i.e., as it is received), along with proof of the delivery method. If hard copy documents are received, the documents should be date stamped on the date received, then scanned and saved electronically.
 - a. If received by mail – retain envelope. Save a copy of the envelope electronically along with the documents. Also save a copy of the WSDOT Office of Equal Opportunity (OEO)-endorsed, return receipt cards, if return receipt is requested.
 - b. If received by FedEx or other express mail service, retain a copy of the delivery confirmation or record of delivery, and save a copy electronically along with the documents.
 - c. If delivered in person – record the name of the person making the delivery, and the delivery date and time. This record of delivery should be initialed by the courier, if possible, and saved electronically along with the documents.
 - d. If received by fax – retain the fax cover sheet indicating transmission date and number of pages received and save it electronically along with the documents.
3. If the documents are received by email, the initial communication (e.g., cover email) should be saved in native format.
 - a. The initial communication, including all attachments, should also be printed out and date stamped.
 - b. If the communication concerns an EEO or DBE issue, the person receiving the communication may suggest that the complainant also complete an on-line complaint form obtainable at:
<http://www.wsdot.wa.gov/EqualOpportunity/complaints.htm>, though it must be made clear that the complainant is not required to do so.
4. If the communication alleging discrimination is received telephonically, the person receiving the call should type on a complaint intake form as much information about the alleged discrimination as possible, including:
 - a. The correspondent’s full name and contact information (telephone number, email address, mailing address);
 - b. The name of the Respondent (person or entity alleged to have discriminated; called “recipient” in some USDOT documents);

- c. A description of the allegations;
 - d. Location (city/county) where the alleged discrimination occurred;
 - e. Date(s) the alleged discrimination occurred;
 - f. The date and time the communication is received; and
 - g. The person receiving the communication.
 - h. If the person receiving the communication was unable to type this information on a complaint intake form when the call was received, they should transcribe the information onto a form as soon as possible after the call is completed.
 5. The person who receives a communication alleging discrimination should immediately forward the communication, or recorded information about the communication (if received by telephone or in person), to the Data and Reporting Specialist responsible for logging the communication. The Data and Reporting Specialist will assign a distinct, identifying case number to the communication and record relevant information about the communication in OEO's complaint tracking system (currently in SharePoint).
 6. **FHWA TITLE VI COMPLAINTS ONLY** - If the document indicates a Title VI Complaint under FHWA jurisdiction, the Data and Reporting Specialist should immediately forward the complaint to FHWA. For instructions how to route FHWA Title VI complaints, go to [Section I.C.](#) above.
 7. All Other Complaints - The Data and Reporting Specialist responsible for logging the communication will then immediately forward the communication to OEO management to identify whether the communication is a complaint, or whether the complaint is deficient, and to determine next steps.
 8. The Data and Reporting Specialist responsible for logging the communication must advise the correspondent who sent the communication as soon as possible in writing, but **no later than seventy-two (72) hours** after the receipt date, that their communication has been received and will be forwarded to FHWA [for Title VI Complaints under FHWA jurisdiction] or to management, for review. If the communication is received electronically and a read receipt is requested, the person receiving the communication should acknowledge receipt of the communication electronically.
- D. Determine whether the communication is a complaint. [The FHWA makes this determination for Title VI complaints under FHWA jurisdiction.]**
1. The following documents should not be considered complaints, unless the document is accompanied by a signed cover letter specifically asking WSDOT to take action concerning the allegations:
 - a. An anonymous complaint;
 - b. Inquiries seeking advice or information;
 - c. Courtesy copies of court pleadings;

- d. Courtesy copies of complaints addressed to other local, State, or Federal agencies;
 - e. Newspaper articles; or
 - f. Courtesy copies of internal grievances.
2. WSDOT may still wish to take action on any of the documents in the list above. However, these documents are technically not complaints.
3. Correspondence not initially considered to be a complaint but that nevertheless potentially involves a civil rights issue should be viewed as an inquiry necessitating further review.
4. On determining that the correspondence requires further review, the OEO Director or Deputy Director will assign an Investigator to follow up on the inquiry to determine whether the correspondence should be considered a complaint.
5. For correspondence viewed as an inquiry, the Investigator should call or write the person sending WSDOT the communication for clarification and further information, and to ask if the person wishes to file a formal complaint with WSDOT.
6. After obtaining clarification and further information from the correspondent, the Investigator should consult with the OEO Director or Deputy Director before making a final determination whether the communication should be viewed as a complaint.
7. If, after seeking clarification from the correspondent, the initial communication will not be investigated as a complaint, the correspondent should be notified in writing **within ten (10) days** of the communication's receipt date. The notification should indicate that the file will be closed; the reasons for closure; and that the correspondent is welcome to re-file the communication as a complaint.
8. **Keeping in mind the exceptions listed below, a complaint is a written or electronic statement concerning an allegation of discrimination that contains a request to take action.** Complaints should be in writing and signed and may be filed by mail; private express delivery (e.g. FedEx); fax; in person; or by email. (See #s 9-11 below re alternate formats and LEP considerations; and complaints received by telephone). A complaint should contain at least the following information:
 - a. A written explanation of what has happened;
 - b. A way to contact the Complainant;
 - c. The basis of the complaint, e.g. race, creed, color, national origin, familial or marital status, sex, sexual orientation, age, military status, or disability;
 - d. The identification of the Respondent, e.g. person, contractor, company, agency, division, office, or other entity alleged to have discriminated;

- e. Sufficient information to understand the facts that led the Complainant to believe that discrimination occurred; and
 - f. The date(s) of the alleged discriminatory act(s).
9. While the above indicates a complaint should be in writing and signed, WSDOT must accept complaints in alternate formats from persons with disabilities.
 - a. The complaint may be filed on a computer disk, by audio tape, or in Braille.
 - b. The Complainant may also call WSDOT and provide the allegations by telephone. The person receiving the call will transcribe the allegations of the complaint as provided over the telephone and send a written transcript of the complaint to the Complainant for review and signature.
10. WSDOT must also ensure that persons with Limited English Proficiency (LEP) have meaningful access to the complaint process.
 - a. Complaints in languages other than English should be translated and responded to in the language in which they were sent whenever possible.
 - b. Throughout the complaint resolution process, the Investigator should be certain a LEP Complainant understands their rights and responsibilities, as well as the status of their complaint.
11. A complaint number should be assigned to the complaint if not already assigned on initial intake (see section II.C.5. above).
12. A separate complaint number should be assigned to each person alleging discrimination in the complaint. In addition, complaints from more than one person against the same recipient should generally be assigned separate case numbers to help WSDOT comply with the requirements of the Washington State Public Records Act (Chapter 42.56 RCW).
13. In some cases, complaints from more than one person raising the same allegation(s) against the same Respondent may be combined into one complaint, although this should not be done if it becomes clear that the investigation will result in personally identifiable information (PII) about any of the Complainants being included in the case file. As soon as it becomes clear that the investigation will involve treatment of specific Complainants, separate complaint numbers should be assigned to protect the personal information of each Complainant.
14. A person may file a third party complaint on behalf of another named individual(s).²
15. The complaint should then be assigned to an Investigator. The Investigator should notify the Complainant(s) immediately, identifying themselves as the Investigator assigned to the case, providing their contact information, and indicating that the Investigator will review the file to determine what additional information may be required to proceed with the case.

² A complaint filed by an attorney on behalf of a complainant is not a third party complaint.

16. The Investigator must review the complaint **within ten (10) calendar days** of receipt to determine what additional information is required to proceed with the investigation.

E. The Investigator opens an Investigative Case File. [For Title VI complaints under FHWA jurisdiction, these steps should be followed only after the FHWA instructs our office to conduct an Investigation.]

1. After being assigned the case, the Investigator will open an Investigative Case File to hold all documents received or generated in connection with the case.
2. The Investigator determines whether the complaint was timely filed, although for Title VI complaints under FHWA jurisdiction, FHWA will make this decision.
 - a. Complaints must be filed within 180 days of the last date of the alleged discrimination, unless the time for filing is extended (see 49 C.F.R. § 21.11(b) [Title VI] and 49 C.F.R. § 27.123(b) [ADA]).
 - b. If the Investigator believes the complaint is untimely, the Investigator should refer the complaint to the OEO Director or OEO Deputy Director for a final decision on closure of the complaint.
 - c. If it is ultimately determined that the complaint was not timely filed, the complaint may be closed without conducting an investigation. The Complainant may, however, request a waiver of the 180-day filing requirement.
 - d. The Complainant must be notified immediately that the complaint is being closed, and the reasons for closure.
3. The Investigator determines whether WSDOT has jurisdiction, although for Title VI complaints under FHWA jurisdiction, FHWA will make this decision.
 - a. Complaints filed under Title VI with WSDOT in which WSDOT is named as the Respondent should be forwarded to USDOT for investigation.
 - b. A referral letter should be sent to USDOT along with the complaint and other documents.
 - c. The Complainant must be notified immediately that the complaint has been referred to USDOT and that WSDOT has closed the complaint.
 - d. If it becomes clear that WSDOT lacks jurisdiction over a complaint, the complaint should be referred to the appropriate enforcement authority.
 - e. A “dismissal” letter, instead of the standard acknowledgment letter described above, should be sent to the Complainant **within ten (10) business days** of receiving the complaint informing the Complainant that the complaint has been received, that the allegations fall outside WSDOT’s jurisdiction and, where applicable, that the complaint has been referred to another agency.
4. The Investigator determines whether additional information is required.

- a. FTA and FAA ONLY: If additional information is required, the Investigator should contact the Complainant **within ten (10) calendar days of receipt** of the complaint to request the additional information.
- b. FHWA ONLY: If additional information is required, the Investigator should contact the Complainant within ten (10) calendar days of the referral from FHWA to request the additional information.
- c. The Complainant will be given **fifteen (15) calendar days** to respond to the request for additional information.
- d. FTA and FAA ONLY: If the complaint is complete and no additional information is needed, the Investigator will send the Complainant a letter of acceptance **within ten (10) calendar days** of receipt.
- e. FHWA ONLY: If the complaint is complete and no additional information is needed, the Investigator will send the Complainant a letter indicating that WSDOT will be conducting an investigation within ten (10) calendar days of receiving the referral from FHWA.

F. WSDOT Responsibilities

1. **FHWA ONLY:** Title VI complaints under FHWA jurisdiction filed directly with WSDOT against its sub-recipients should be logged by the Data and Reporting Specialist, and forwarded immediately to FHWA.
2. FTA and FAA: Title VI complaints filed directly with WSDOT against its sub-recipients should be processed by WSDOT in accordance with the USDOT approved complaint procedures as described in 23 C.F.R. § 200.9(b)(3).
3. Complaints filed with WSDOT under Section 504 of the Rehabilitation Act of 1973 (Section 504) or the ADA should be investigated by WSDOT in accordance with approved complaint procedures as described in 49 C.F.R. § 27.13(b).
4. For Title VI complaints with FHWA jurisdiction, the OEO will make every effort to complete the investigation within thirty (30) days, but no longer than sixty (60) days, from the date the referral was received from FHWA.
5. For Title VI with FTA or FAA jurisdiction; complaints filed under Section 504, the ADA; or any other federal or Washington state non-discrimination statute, the OEO will make every effort to complete the investigation within thirty (30) days, but no longer than sixty (60) days, from the date the complaint was received by WSDOT.
6. Title VI complaints: Pursuant to 23 C.F.R. § 200.9(b)(3), a copy of the complaint, together with a copy of WSDOT's report of investigation, shall be forwarded to the USDOT division office within sixty (60) days of the date the complaint was received by WSDOT, or the referral was received from FHWA (for Title VI complaints under FHWA jurisdiction), for final determination.

G. Investigative Process. **[For Title VI complaints under FHWA jurisdiction, these steps should be followed only after the FHWA instructs our office to conduct an Investigation.]**

1. The Investigator should conduct an unbiased investigation. In addition, the Investigator should not express opinions or conclusions to the public, the

Complainant, or the Respondent, concerning matters under investigation unless specifically authorized to do so.

2. Scope of the Investigation

- a. An investigation should be confined to the issues and facts relevant to the allegations in the complaint, unless evidence shows the need to extend the issues.
- b. A future compliance review of the Respondent may be appropriate when issues identified during the investigation cannot be covered within the scope of the investigation.
- c. After WSDOT has accepted a complaint for investigation, the Investigator should open an Investigative Case File if one has not been opened already (see Section II.D.1. above).
 - (1) The purpose of the Investigative Case File is to establish a methodology for the systematic compilation and storage of all documents, records, and information associated with the complaint. This is done in such a manner that the Case File:
 - (a) Includes and organizes all documentation generated or obtained relevant to the complaint;
 - (b) Identifies all documentation used to support the Findings made by the OEO; and
 - (c) Allows a reader of the Findings to easily verify the facts and reasoning on which the Findings are based.
 - (2) WSDOT is responsible for all Investigative Case Files regardless of whether the agency possesses the physical documents. WSDOT will provide copies of Investigative Case Files in accordance with RCW 42.56 (Washington State Public Records Act) and related federal statutes.
 - (3) Closed Investigative Case Files must be retained **for six (6) years from the date of closure**, after which they will be destroyed in accordance with WSDOT's customary document retention policy.

3. The Investigator should develop an Investigative Plan (IP).

- a. The IP is a working document intended to define the issues and lay out the blueprint to complete an investigation.
- b. The IP is an internal document for use by the investigator to keep the investigation on track and focused on the issues and likely sources of evidence or corroboration.

4. Request for information and cover letter.

- a. The investigator should prepare a Request for Information (RFI) and make contact with the Respondent **within ten (10) days from the date the complaint was accepted for investigation** to advise the Respondent of the complaint and

to determine the appropriate representatives of the Respondent to interview and receive the RFI.

- b. A cover letter should be prepared and sent with the RFI explaining the complaint under investigation. The cover letter should include the Investigator's name, contact information, and information regarding any scheduled meetings.
 - c. The Respondent should be given **thirty (30) calendar days** from the date of WSDOT's RFI to provide WSDOT with the requested information and documents. WSDOT may modify the timeframe depending on the extent of the data requested or other special circumstances.
5. Interviews
- a. Interviews should be conducted with the Complainant, Respondent, and appropriate witnesses during the investigative process.
 - b. A written record of both telephone and in-person interviews must be created and kept in the Investigative Case File.
6. Failure by the Respondent to provide access to information.
- a. Respondents should provide investigative access to all books, records, accounts, electronic media, audiotapes, and other sources of information or facilities necessary to determine compliance.
 - b. Failure by a Respondent to cooperate fully can be grounds for a determination of noncompliance on the part of the Respondent.
7. On-Site Visits
- a. **All ADA complaints involving the public right-of-way require an on-site review.**
 - b. On-site visits for Title VI complaints – where FHWA has jurisdiction, these steps should only be followed upon instruction by FHWA.
 - (1) After the Investigator has received and reviewed the documents requested in the RFI from the Respondent, a determination should be made as to whether an on-site visit is needed.
 - (2) A thorough investigation can often be conducted without an on-site visit to the Respondent's facility. If all the following conditions are present, an on-site visit is usually unnecessary:
 - (a) Individuals are not the primary source of information needed (e.g. interviews are unnecessary or can be done by telephone);
 - (b) All needed information can be specified precisely in the RFI and can be easily provided by the Respondent;
 - (c) The Respondent can provide written documentation to verify its position in its response to the RFI; and
 - (d) There is good reason to conclude that the Complainant is the only person affected by the alleged discrimination.

- (3) If the Investigator determines that an on-site visit is necessary, an on-site notification letter should be sent to the Respondent advising the Respondent of the planned visit.
- (4) Upon completion of the on-site visit, but before returning to the home office, the Investigator should review the information and cross-check it with the IP and RFI to ensure that all needed information has been collected.
- (5) Missing information should be gathered during an exit conference. The exit conference provides the Investigator with an opportunity to clarify any questions that may have arisen during the site visit, and to request any additional information.

8. Analyzing the evidence

- a. The preponderance of evidence standard (evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it) is the standard used when determining compliance or violation.
- b. The information and data collected depend upon the issues involved in the case. Properly collected and analyzed information is central to compliance investigations.
- c. The importance of developing a thorough and complete IP of the information needed to determine compliance cannot be overemphasized.
- d. Evidence standing alone does not prove a violation. It must be related to the policies and procedures of the Respondent and issues under investigation. To ensure the value of the collected and analyzed evidence, the Investigator should:
 - (1) Note when the document was received and from whom;
 - (2) Keep the original copy of the document clean and free from marks, tears, etc.;
 - (3) Photocopies of the documents should be made for mark up;
 - (4) Keep the documents received in a safe place so that they will not get lost or inadvertently removed by co-workers; and
 - (5) Document the circumstances under which the evidence was collected - Remember why the evidence was collected; what questions elicited the evidence; and whether any statistical techniques were applied to the evidence, and if so, what they were.
- e. When reviewing data, the Investigator should:
 - (1) Have a clear and thorough understanding of what the document says; seek clarification where needed; never read meanings into the evidence, but accept it at face value;
 - (2) Determine relevance; know what you are looking for; recognize the presence or absence of needed information;
 - (3) Verify the evidence – cross-check the evidence; identify conflicting information and resolve the conflict, if possible;

- (4) Assemble the evidence – develop an information flow pattern; establish a logical continuity; and
 - (5) Draw conclusions – let the evidence speak for itself; test conclusions by considering possible rebuttal arguments from both Respondent and Complainant.
9. Exit Interview
- a. The exit interview is conducted separately for the Complainant and the Respondent. The exit interview provides an opportunity for the Investigator, as well as the Respondent and the Complainant, to clarify any questions that may have arisen during the investigation, and to provide any additional information.
 - b. The Investigator should explain that this exit interview may not be an end to the investigation. The Investigator should also explain the process WSDOT will follow, if a violation is found.
 - c. The Investigator may have already reached a conclusion as to whether the Respondent is in compliance or noncompliance with USDOT’s requirements. Should this happen, it is important that the Investigator not communicate that opinion during the exit interview.

H. Preparing the Investigative Report (IR)/Report of Investigation (ROI)

1. The Investigator should prepare an IR/ROI setting forth all the relevant facts obtained during the investigation. The IR/ROI should include a finding for each issue and recommendations where necessary. A copy of the IR/ROI should never be given to the Respondent or Complainant.
2. References should be used throughout the IR/ROI to direct the reader to the appropriate supporting documentation in the Investigative Case File. For large case files, it is suggested that the IR/ROI include a table of contents or index of documents and a key referencing by tab the evidence in the file relied upon in making any determination.
3. Upon review of the Investigator’s IR/ROI, the OEO Director or Deputy Director may determine that additional evidence is necessary.
4. If the OEO Director or Deputy Director accepts the IR/ROI without any additional evidence, WSDOT will forward the IR/ROI and a copy of the Investigatory Case File to USDOT for review and final determination.
5. The OEO will notify Complainant and Respondent of WSDOT’s findings, and indicate that the findings are subject to review and concurrence by USDOT.
6. Once USDOT has made its final decision and issued a Letter of Findings (LOF), WSDOT will notify Complainant and Respondent of USDOT’s determination. The USDOT decision is final and not subject to administrative appeal.
7. If the Complainant or the Respondent is not satisfied with the USDOT’s decision, the Complainant or Respondent may file an action in U.S. District Court.

III. Closing the file

- A.** If the FHWA or OEO managers determine that the complaint will not be investigated, the managers will notify in writing the Data and Reporting Specialist responsible for logging the complaint.
1. The Data and Reporting Specialist will prepare the appropriate documentation to close a case and mark the case as closed in SharePoint.
 2. The Data and Reporting Specialist will, where appropriate, inform the Complainant in writing that the case has been closed and why.
 3. If the case was closed because of deficiencies in the complaint, the Complainant should be informed that they are welcome to re-file the complaint if they can remedy the deficiencies.
- B.** Once all action on the case has been completed and USDOT has issued a final determination, the case may be closed.
1. All documents relevant to the case, including the initial complaint documents, documents compiled during the investigation, and any final determination, should be forwarded to the Data and Reporting Specialist for archiving.
 2. The Data and Reporting Specialist should attach all documents electronically to the case file in SharePoint, and mark the case as closed on the SharePoint complaint tracking log.