



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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*Washington, D.C. 20531*

January 8, 2013

Craig R. Lutcher, Chief of Police  
Milton Borough Police Department  
1 Filbert Street  
Milton, PA 17847

Re: Notice of Findings  
[REDACTED] v. Milton Borough Police Dep't (12-OCR-09261440)

Dear Chief Lutcher:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of the Milton Borough Police Department (MPD) in connection with the administrative Complaint that [REDACTED] (Complainant) has filed against the MPD. In his Complaint, the Complainant alleges that the MPD discriminated against him based on race and national origin.

The OCR has completed our review of the documentation provided by both the MPD and the Complainant and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

On July 28, 2012, the Complainant, who is Hispanic, was at a party in Milton Borough, Pennsylvania, when he and other individuals were assaulted by a male guest at the party. The Complainant suffered an injury to his eye and went to a nearby hospital and called the police. Officers from the Danville Borough Police Department responded, but told the Complainant that they did not have jurisdiction over the assault because it occurred in Milton Borough. The following morning, the Complainant went to the MPD station to report the assault. The Complainant, who speaks Spanish and has limited English proficiency (LEP)<sup>1</sup>, brought along a friend to serve as an interpreter. The Complainant reported the assault to a MPD officer, and the officer told the Complainant that he would

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<sup>1</sup> An LEP individual is an individual whose first language is not English and who has a limited ability to read, speak, write, or understand English.

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contact him the following day; the officer did not provide the Complainant with any written documentation of his report. The MPD officer never contacted the Complainant to follow up on his allegations.

Two weeks later, the Complainant went back to the MPD station, bringing along his friend to serve as an interpreter, to report that the man who assaulted him was harassing him and threatening his family. The Complainant provided the MPD officer with names of witnesses and his bill from the hospital in the amount of \$8,000.00 for treatment for the injuries that he experienced from the July 28 assault. The MPD officer again did not provide the Complainant with any written documentation of his allegations and told the Complainant that he would contact him to apprise him of the investigation. As of the time the OCR notified the MPD of the Complainant's allegations on October 26, 2012, the MPD had not contacted the Complainant or his listed witnesses. The Complainant believes that the MPD did not investigate or otherwise take any action in regard to his allegations of assault and harassment, and that the MPD failed to take action because he is Hispanic.

In the MPD's Position Statement regarding the Complainant's allegations, you acknowledged that the officer who took the Complainant's reports did not follow up on the reports and that the Complainant was not properly served. However, you stated that this was due to the individual officer's incompetence and because the MPD did not have a proper policy in place to prevent cases from getting lost in the shuffle. You noted that you conducted an audit of this officer's work back to May of 2012 and discovered a number of cases where the officer failed to follow up and shirked his duties, and said that none of these cases had anything to do with race and everything to do with the individual officer's incompetence. You further noted that you started disciplinary action against this officer that could have included termination, and that the officer elected to exercise his right to retire. You explained in your Position Statement that the MPD has re-assigned the Complainant's report of assault and harassment to another officer for investigation; in a January 3, 2013, email to OCR attorney Shelley Langguth, you stated that the investigation has revealed that the Complainant was slapped in the face but received no injury, and that a MPD officer will be filing a harassment citation on the Complainant's behalf against the individual accused of harassing and assaulting him. You also stated in your Position Statement that the MPD has drafted a written policy setting forth the procedures and responsibilities involved in the preparation, processing, and review of official reports, and you provided the OCR with a copy of this policy. According to your January 3 email to Ms. Langguth, the MPD has not received any other race or national origin-related complaints against the MPD over the past three years.

### Legal Analysis

Title VI of the Civil Rights Act of 1964 (Title VI) provides that “[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d.

Additionally, the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), under which the MPD receives DOJ funding, contains a nondiscrimination provision modeled after Title VI that prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). To prove discrimination under these statutory provisions, the evidence must establish an intent to discriminate. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. Id.

The OCR has carefully reviewed the documentation that has been submitted by both the Complainant and the MPD, and finds that the evidence is insufficient to demonstrate that the MPD failed to follow up on the Complainant's reports based on the Complainant's race or national origin, as opposed to an individual officer's dereliction of duties. The MPD promptly took action to address this individual officer's performance issues and drafted a written MPD procedure to ensure that in the future reports are properly documented and investigated by all MPD officers. There is no evidence that any MPD officer made any discriminatory statements regarding the Complainant or that the MPD has a history of race or national origin discrimination. Therefore, the OCR finds that there is insufficient evidence to demonstrate that the MPD acted with an intent to discriminate against the Complainant in violation of Title VI or the Safe Streets Act, and we are closing the administrative Complaint filed by the Complainant.

However, the OCR would like to bring the following issue to your attention. As stated in the Factual Background section of this Notice, the Complainant is LEP, and he brought a friend with him to the MPD station to facilitate communication with the MPD. In your January 3 email to Ms. Langguth, in response to Ms. Langguth's inquiry regarding how the MPD generally communicates with LEP individuals, you explained that the MPD uses an Hispanic female who is employed by Northumberland County Probation Department during all major cases, and uses bilingual community members who have expressed a willingness to assist during minor incidents. Please be advised that the prohibitions against national origin discrimination contained in Title VI and the Safe Streets Act include discrimination on the basis of LEP status. In June of 2002, the DOJ published guidance for its financial aid recipients stating that to comply with Title VI and the Safe Streets Act, recipients shall take reasonable steps to provide meaningful access to programs and activities for LEP persons. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002) [hereinafter DOJ Guidance] (attached). According to DOJ Guidance, to ensure meaningful access to services and activities, recipients shall ensure that individuals who serve as interpreters are competent in the specific act of interpretation, which involves listening to something in one language (source language) and orally converting it into another language (target language). 67 Fed. Reg. 41455, 41461. Recipients should also ensure that individuals serving as interpreters have knowledge in both languages of any

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specialized terms or concepts associated with the program or activity, understand and follow confidentiality and impartiality rules, and understand and adhere to their role as interpreters without deviating into a role as a counselor or legal advisor. Id. Where individual rights depend on precise, complete, and accurate interpretation, particularly in the context of a law enforcement interrogation, the use of certified interpreters is strongly encouraged. Id. Family members or friends of an LEP person or other third-parties should only be used in exigent circumstances or in very informal, non-confrontational contexts to obtain basic information at the request of the LEP individual. Id. at 41462. Using such informal interpreters could result in a breach of confidentiality, a conflict of interest, a violation of privacy, or an inadequate interpretation. Id.

The MPD should thoroughly review the attached DOJ Guidance and should ensure that the individuals whom it relies upon to communicate with LEP individuals are competent and appropriate under the particular circumstances. In your January 3 email, you indicated that the MPD is in the process of revising its entire policy manual, which will include a written policy on communicating with LEP individuals. The MPD should ensure that the policy that it develops is consistent with the information contained in the DOJ Guidance. The MPD may also wish to consult the website [www.lep.gov](http://www.lep.gov), which contains helpful information and guidance documents on communicating with LEP individuals, including written language assistance plans that other law enforcement agencies have developed. The OCR is always available to provide the MPD with technical assistance on developing an effective and comprehensive written language assistance plan.

Sincerely,

/s/

Michael L. Alston

Director

Attachment