



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
Inspector General

September 30, 2016

MEMORANDUM

TO: Jenny R. Yang
Chair

Deidre M. Flippen, Director
Office of Research, Information and Planning

FROM: Milton A. Mayo, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Milton Mayo, Jr.", with a long horizontal stroke extending to the right.

SUBJECT: Management Advisory on EEOC's Open Government Activities
(OIG-2012-2016-AEP)

C: Cynthia G. Pierre
Mona Papillon

MANAGEMENT ADVISORY

Update on Status of the EEOC's Open Government Activities

BACKGROUND

On January 21, 2009, President Barack Obama issued the "Memorandum on Transparency and Open Government," instructing the Director of the Office of Management and Budget (OMB) to issue an Open Government Directive. On December 8, 2009, the OMB issued M-10-06, known as the "Open Government Directive" (OGD). This directive requires executive agencies to take specific actions to implement the three principles of transparency, participation, and collaboration that form the cornerstone of open government. The OGD requires that executive departments and agencies take steps toward creating a more open government by:

- publishing government information online,
- improving the quality of government information,
- creating and institutionalizing a culture of open government, and
- creating a policy framework to facilitate open government.

On July 15, 2011, the Office of Inspector General issued a Management Advisory on EEOC's Open Government Activities, OIG-2011-01-AEP. In that Management Advisory, we reported that the Agency had developed a draft Open Government Plan and created an Open Government initiative web site. We also reported that EEOC planned to:

- develop online charge-status of private sector charges of discrimination,
- increase the amount of information available in machine readable format; consider methods to increase dialogue with the public, and
- explore ways to make information contained in its Office of Equal Opportunity reports and its policies available to other federal agencies.

We concluded that the EEOC should: (1) maintain the approval of an Open Government Plan as a high priority, and (2) regularly communicate EEOC's Open Government progress with all Agency staff.

The following additional executive orders and OMB memoranda added to the OGD requirements and guidance:

- The Executive Order 13642, "Making Open and Machine Readable the New Default for Government Information."
- The OMB Memorandum M-13-13, "Open Data Policy, Managing Information as an Asset" provides requirements and guidance for open data. Large government agencies (EEOC is not included) are required to collect or create information in a way that supports information processing and dissemination (e.g., using machine readable and open formats and data standards).
- The Digital Accountability and Transparency Act of 2014 (DATA Act) directs the OMB and Department of the Treasury to establish government wide financial data standards or definitions for federal funds made available to or expended by federal agencies and

entities receiving such funds. This was done in order to reduce the need for massive system changes across federal agencies in order to collect this information and will allow agencies to focus on managing the data.

OBSERVATIONS (Fiscal Year 2012-Fiscal Year 2016)

In addition to the previously mentioned items, EEOC has completed the following Open Government efforts, and made substantial progress in others:

Completed and Repeating Efforts

1. **Open Government Plan:** In July 2014, EEOC issued Version 3.0 of its Open Government Plan. This plan describes activities and actions that meet key OGD requirements. The Open Government Directive instructs agencies to update their Open Government Plans every two years with updated plans posted to their Open Government webpages by September 15, 2016. According to EEOC's Office of Research, Information and Planning (ORIP), EEOC is working with their Open Government partners to update and post Version 4.0 of the EEOC Open Government Plan. However, as of September 30, 2016, EEOC has not posted an updated plan.
2. **On-line charge status (EEOC's Flagship Initiative):** EEOC completed this project in March 2016, and this new process allows charging parties to view the status of their charges online for the first time.
3. **On-line intake:** According to the Deputy Chief Operating Officer, budget constraints in FY 2012 put the project on hold. They report the project is again a high priority for EEOC. Funding became available in FY 2016. EEOC plans to launch the private sector on-line intake in early FY 2017.
4. **Freedom of Information Act (FOIA):** The OGD calls for agencies to reduce significant FOIA backlogs by ten percent each year. In FY 2015, the implementation of a new FOIA tracking system was completed. The Agency brought the system online on September 21, 2015. Training for users took place in October 2015. However, according to the EEOC's Assistant Legal Counsel who manages FOIA, EEOC has not reduced its FOIA backlog due to lack of personnel and an increasing (30%) number of FOIA requests received by Headquarters in FY 2016. Additionally, the Agency notes that progress towards meeting the OGD goal is hampered by increased responsibilities contained in the June 30, 2016, revisions to the FOIA.
5. **Increase dialogue with the public:** EEOC increased dialogue by asking for public comments on proposed survey and data collection instruments (e.g., private sector employer survey (EEO-1)). In addition, the Commission asks for public input on sub-regulatory guidance (e.g., retaliation in the workplace and national origin discrimination).
6. **Plain language:** EEOC now posts documents to EEOC.GOV using plain language. For example, the agency has posted, in plain language, the questions and answers regarding

the consideration of arrest records in hiring practices. It has also posted a small business fact sheet on the Genetic Information Nondiscrimination Act.

7. **Government to government electronic transactions:** EEOC requires federal agencies to submit various EEO-related data. In 2015, the Federal Sector EEOC Portal (known as FEDSEP) became the official portal for federal agencies. Federal agencies can now electronically access the appeals and hearings related documentation they have submitted to EEOC.

In addition, the EEOC Management Directive 715 data (federal agency EEO program reporting data) and the EEOC Form 462 data (federal agency report of discrimination complaints) are collected and submitted electronically.¹

Substantial Progress

1. **Posting of data:** EEOC increased posting of data, including more posting of EEO-3, EEO-4, and EEO-5 data—labor force data from unions, state and local governments, and school districts. EEOC continues to post data in aggregated format for major geographic areas and by industry group for private sector employers (EEO-1) data. However, work remains to ensure data is accurate and posted in a regular and timely manner.
2. **Digital Charge System:** EEOC is establishing a portal for secure electronic transmittal and receipt of charge-related documents, along with use of a digital charge file contained with EEOC's Information Management System (IMS). As of January 2016, all 53 EEOC offices offer the opportunity for respondent employers to interact online with the EEOC thru a Respondent Portal. Charging parties can also review respondent's documents. EEOC plans further digitization.
3. **The Open Government webpage:** The EEOC's web site continues to summarize the Open Government Directive, EEOC's efforts regarding information and data, and links to EEOC's Open Government Plan (<https://www.eeoc.gov/open/index.cfm>). However, the Dashboard Report called for in the Open Government Directive and contained on the Open Government webpage, does not adequately measure progress and impact. EEOC planned to update the Dashboard Report by September 15, 2016. However, as of September 30, 2016, the Dashboard Report was not updated.

¹ MD-715 requires each agency to report annually on the status of activities undertaken pursuant to its equal employment opportunity program under Title VII and activities undertaken pursuant to its affirmative action obligations under the Rehabilitation Act. Agency reports must also include a plan that sets forth steps it will take in the future to correct deficiencies or further improve efforts undertaken pursuant to this Directive.

4. **Open data efforts:** The DATA Act requires the government to standardize all of its financial information for analysis across contracts, programs and agencies. In May 2017, agencies are to begin reporting financial data according to the new standards. EEOC intends to meet the May 2017, date to begin reporting financial data according to the new standards. EEOC is also working with the data.gov staff to ensure prompt posting on data.gov.

If you have any questions, please contact Larkin Jennings at larkin.jennings@eoc.gov or 202-663-4391.