

ADA Title II Complaint Process

What is a Complaint?

A complaint is an allegation of discrimination (program, service, activity, or administrative act; impact, treatment, or noncompliance; action or inaction) that contains a request for the receiving bureau or office to act, that has been reduced to a written document, in any form or format. Often, ADA Title II complaints may actually be requests for access or modifications. If that is the case, bureaus may move the complaint into established processes for managing requests with the permission of the complainant or opt to manage the request for access as an informal resolution to the lodged complaint.

Step 1: Receive a complaint directly through your program/bureau or through 311 referral.

1. If you receive a complaint directly from a Community Member, you have two options:
 - a. Open the [ADA Title II complaint form](#) and fill it out with the community member
 - b. OR Tell the community member to [email PDX311](#) out the complaint form or call PDX311 to have a representative fill it out for them.

Note: When possible, choose option 1 and fill out the form with the CM so we aren't bouncing them around from person to person.

Why does the complaint need to go through 311?

Sending the complaint through 311 creates a Request which acts as a case number for the complaint. The case number attaches to Zendesk which then provides a tracking system for the entire city. This will eliminate the need for individual bureaus to provide data to OEHR for reporting back on compliance to City Council.

Keep in mind, the old way of doing this put the burden on the Community Member to figure out who they need to communicate with. 311 maintains a robust internal knowledge base that allows them to easily refer community to appropriate city staff, which reduces the frustrating experience of being bounced through to multiple people.

2. If you receive a complaint from 311 directly:

You will receive two email messages:

- a. The first email will be between you, 311, and OEHR staff who are available to help you manage the complaint should you need it.

[City of Portland] "311: ADA and Discrimination" assignment: ADA Accommodation Request

S **SpongeBob (311 Support) <311@portlandoregon.gov>** 🔄 ⏪ ⏩ ⋮
To: Gregor, Joshua; Cheron, Nickole; Simeone, Jonathan; Rios-Rodriguez, Alma; Wienholz, Christina **+3 others** Wed 1/11/2023 1:52 PM

##- Please type your reply above this line -##

This request ([#38123](#)) has been assigned to group '311: ADA and Discrimination', of which you are a member.

 **SpongeBob**
Jan 11, 2023, 1:52 PM PST

How would you like to make your request? I will continue with the online form

Confidentiality

Confidentiality Waiver I do *not* waive confidentiality.
I would like to request that the City... Provide accommodations for a City activity, event or program

Event Details

Name of activity, event or program **underwater ramp program**
Date of event **Wed, 02/02/2033 - 00:00**
Event host **Office of equity in human rights disability division**

Event Accommodations

What type of accommodations are you requesting? **An accessible entrance to the event and routes to restrooms**

Contact Information

Your Name **SpongeBob**
Your Email **spongebob@hotmail.com**
Phone **(555) 555-5555**
Would you prefer that we contact you by phone or email? **Email**
Who are you making this request or complaint for? **Myself**

You are an agent. Add a comment by replying to this email or [view ticket in Zendesk Support](#).

Ticket # 38123
Status Open
Requester SpongeBob
CCs -
Group 311: ADA and Discrimination
Assignee Christina Wienholz
Priority Normal
Type Incident
Channel By Web Service

This email is a service from City of Portland.

b. The second email will be between you and the Community Member. It is essentially referring the complaint to you in a formal way with the Community Member copied.

ADA INTERNAL COORDINATION THREAD | Do not use for public reply

 **Christina Wienholz (311 Support)** <311@portlandoregon.gov>
To: Cheron, Nickole; Gregor, Joshua; Simeone, Jonathan
Wed 1/11/2023 2:11 PM

Hi Nickole,

The following submission came in through the city's ADA Accommodation Request form. After review, it has been determined that this issue would fall to The Office of Equity and human Rights and if you are still serving as the ADA Coordinator, we're passing you the baton to take over the fulfillment of this particular request.

Thank you.

From: **SpongeBob**
Date: Wed, Jan 11, 2023 at 1:52 pm
How would you like to make your request? I will continue with the online form

Confidentiality

Confidentiality Waiver I do *not* waive confidentiality.
I would like to request that the City... Provide accommodations for a City activity, event or program

Event Details

Name of activity, event or program underwater ramp program
Date of event Wed, 02/02/2033 - 00:00
Event host Office of equity in human rights disability division

Event Accommodations

What type of accommodations are you requesting? An accessible entrance to the event and routes to restrooms

Contact Information

Your Name SpongeBob
Your Email spongebob@hotmail.com
Phone (555) 555-5555
Would you prefer that we contact you by phone or email? Email
Who are you making this request or complaint for? Myself

--
Christina | PDX311

Step 2: Determine if the complaint is complete.

For a complaint to be “complete” it must include at least the following:

- A written explanation of what happened;
- Information necessary to contact the complainant (if the complaint is filed by e-mail, the City should request the sender’s actual name and address, if not provided);
- Identification of the person or group injured by the alleged discrimination;
- Identification of the person or organization alleged to have discriminated;

- The basis for the alleged discrimination, e.g., race, national origin, limited English proficiency, or disability;
- Sufficient information to understand the facts that led the complainant to believe discrimination occurred and when the discrimination took place (a description of issues of discrimination is included in the Investigation section below).
- Your bureau should work with each complainant to ensure that you have sufficient information to properly evaluate the complaint [see request for information below]. It is more likely for complaints to be incomplete if they are submitted via correspondence.

Corresponding with the Community Member

As illustrated above, you will receive two emails when a complaint is referred to you. When you respond to the Community Member, please do so on the email that was generated through Forums via 311. This helps us track the process.

If you contact the community member for more information and they do not respond, **please follow the following steps:**

- If you don't hear back from the Community Member after one week, send a second email and highlight that this is the second time you are reaching out. Let them know that you would really like to help them with their complaint and if there is a better way to relay information to please let you know.
- If you still don't hear back after the second email, you may send a third email that notifies the Community Member this is the last time you'll be reaching out. Let them know that you would still like to support them with the situation if they choose to reach out again and that they can re-file the complaint at any time.

If the complaint meets criteria:

- Within 15 days, send an email response through Zendesk to the complainant to let them know that the complaint has been accepted and moved into the Investigation stage.

If the complaint does not meet the criteria:

- Within 15 days of receipt of the written complaint, send a dismissal email through Zendesk to the complainant outlining the complaint and providing an explanation for dismissal. Provide referral information where possible.
 - Because you are doing this process through Zendesk, there is no need to create a separate file to document correspondence, but if you have a phone conversation or communication in a way not in Zendesk, you need to save that info and email it to the 311 complaint email.

(You can find templates of correspondence in the [ADA title II and Civil Rights Title VI complaint process guidance](#))

Step 3: Investigation

Take a deep breath. Most of the complaints submitted are easily managed through email! The 311 ADA Title II Committee will be available to you throughout the process.

“Investigation” is a spectrum

- The investigation can lean toward the quick and informal which involves nothing more than a quick conversation, document review, and immediate determination of how to resolve the complaint (sometimes occurring in a matter of a few days). This could almost be considered an “informal agreement or action.”

- OR the investigation can be a more formal and lengthy process that may include policy and plan reviews, data analysis, and in-depth interviews. This will depend on the nature of the complaint.

For detailed guidance, referred to OEHR [ADA Title II](#) Complaint Process Guidance. Bureaus should contact Title VI or Title II Managers and Attorney for complicated complaints.

Timeframe

Once a complaint has been accepted for investigation, bureaus have 60 days to complete the investigation and send the resolution letter to the complainant.

Information Gathering/Fact Finding.

You need to answer the following questions:

- What occurred?
- Who was involved?
- Why did it happen?
- If appropriate, how can we resolve?

Interviews

Talk with those involved. You must document your communications. If you do this outside of Zendesk, send any notes or transcripts to your original 311 email referral to keep a record of the investigation. If you want to record the interview, you can attach the sound file to the ticket.

Along with the summary, attach any relevant materials. Bureaus should save all supplemental materials in a file as there is a five-year retention requirement. At any time, City Attorneys can request these files.

The main objectives of an interview are to gather information that will either support or refute the allegations in the complaint and obtain an understanding of the recipient's operation or policies that the complainant is citing in the complaint. The investigation team should ensure that they understand the nature of the complaint, as the complainant's concerns may be different from what was originally written in the complaint. If you need follow-up or clarity from the Community Member, use the email thread from 311 if possible.

Interview order

When deciding the order of interviews, consider the order of the story and the flow of information you need to collect.

- First, interview the person who made the report. If there are others named in the report, interview them too.
- Next, interview any witnesses to the incident or allegation. This can sometimes lead to more witnesses being identified, and you should interview them as well at this stage.
- Finally, interview the City staff responsible for the plan, event, program, service that the complaint is against.

Analysis

Properly collected and analyzed evidence is essential to determining compliance. The investigation team should review the information and cross-check it with the Investigative Plan to ensure that all needed information has been collected. If at any time you are unsure about how to apply the laws that pertain to the investigation reach out to OEHR and/or your City Attorney.

Step 4: Resolution Review (with Title II Manager)

Resolution Outcomes

There are several approaches to resolving a complaint. Our ultimate responsibility is to ensure nondiscrimination, meaningful engagement, and equitable benefits and service. The opportunity to resolve a complaint as quickly and informally as possible should be encouraged throughout the process. Ideally, all involved can work together through collaborative, consensual dispute resolution approaches and problem-solving processes.

The types of outcomes for complaint resolution are:

- Informal Resolution (the community member accepts an outcome and the complaint is over)
- Unsubstantiated. With or without actions. (The bureau finds that there is no evidence of wrongdoing and may or may not make process improvement regardless of finding as a mechanism of practicing good governance)
- Substantiated Finding with actions. (The bureau finds that discrimination has occurred and takes corrective actions to resolve complaint)

Final complaint resolution review

Within Zendesk, attach and relevant documentation and a summary of how the complaint was resolved.

The summary should:

- Present all facts pertinent to the case in an organized fashion;
- Include any of elements or legal analysis you used in managing the complaint if that didn't already happen through the summary email chain with the ADA Title II Committee.
- Recommend corrective or remedial action, as appropriate.

If you haven't already involved the ADA Title II Committee in your complaint management, before you send your decision letter to the complainant, you will need to reach out to the ADA Title II & Disability Equity Manager to review your decision email to the Community Member.

For ADA Title II, email: Nickole.Cheron@portlandoregon.gov

Step 5: Final email correspondence with Community Member

To complete a complaint investigation or compliance review, send the complainant a resolution letter. Template letters and summaries of what they should include are provided in Appendix F(4) of [Civil Rights Title VI and ADA Title II Complaint Process Guidance](#).

All closure letters should include the following:

- A statement of City's jurisdictional authority. The City has the authority to investigate discrimination complaints against City programs, plans, events, and services. The City of Portland ADA Title II complaint process is an administrative process which can result in corrective action but does not include compensation;
- A statement containing the elements of the complaint and any relevant city code or regulation that applies or doesn't apply;
- A brief summary of the findings and any corrective actions;
 - Let the Community Member know if any elements of the complaint that were brought up did not fall into the administrative limit of the complaint process and why.

- A statement of the complainants right to appeal to a state or federal agency with basic contact information, file with another agency, or take private action;
 - **BOLI:** mailb@boli.state.or.us, 971-245-3844
 - **DOJ:** AttorneyGeneral@doj.state.or.us, 503-378-4400
- Your contact information and a statement about availability for any other concerns or questions.