



City of Philadelphia
Law Department

MEMORANDUM

Privileged and Confidential Advice of Counsel

TO: All City Commissioners and Department Heads
FROM: Nelson A. Diaz, City Solicitor *Nelson Diaz*
DATE: October 10, 2003
SUBJECT: Immigrant Access to City Services

It has come to my attention through advocates of the immigrant community in the City of Philadelphia that many documented and undocumented aliens are hesitant to access City services for fear of legal repercussions.

For this reason I would like to clarify the legal responsibility of the City of Philadelphia officers and employees in regard to the provision of City services to the community.

It is the policy of the City of Philadelphia to promote the utilization of its services by all of its residents who are entitled to and in need of them. Individuals should know that they may seek and obtain the assistance of City agencies regardless of personal or private attributes, and without negative consequences to their personal lives.

The Equal Protection Clause of the United States Constitution provides that "no State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court of the United States recognizes that illegal aliens are "persons" protected by the Equal Protection Clause and Due Process Clauses of the Fifth and Fourteenth Amendments. *Plyer v. Doe*, 457 U.S. 202, (1982). The Equal Protection Clause is made applicable to the States and by extension to the City of Philadelphia, pursuant to the Fifth and Fourteenth Amendments.

Therefore, all City officers and employees should be reminded that no person shall be denied any City services or benefits by reason of his or her immigration status.

I. City Services

The following City services shall be made accessible to all City of Philadelphia residents regardless of personal or private attributes, without negative consequences to their personal lives. This list should not be considered all inclusive, but a representation of the types of City services that should be made readily available.

- Police, Fire and EMS services
- Medical services, such as general medical care at Community Health Centers, Emergency Medical Assistance for care and services necessary for the treatment of emergency medical conditions, including labor and delivery
- Mental health services such as crisis intervention and services offered at Base Service Units
- Public health services for immunization and for the testing and treatment of symptoms of communicable disease
- Nutrition programs such as school lunch and breakfast programs
- "WIC" a program providing food and nutrition information to pregnant women and children age 4 and under
- Children's protective services
- Programs for children with special needs
- Programs for the disabled
- Services of Licenses and Inspections inspectors with regard to non-conforming landlords
- Services involving real estate tax payments or water/sewer bills
- Labor and employment enforcement
- Access to information on financial aid/community development programs
- Access to the courts
- Access to the schools
- Transportation services
- Shelter services
- Emergency disaster relief

II. Confidentiality of Information

In order to effectuate the City of Philadelphia's legal responsibilities concerning requests of confidential information by City officers and employees, confidential information in the possession of City agencies relating to immigration status or other personal or private attributes should be disseminated only as follows.

1. As used herein "confidential information" shall mean any information obtained and maintained by a City agency relating to an individual's sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual's income tax record.
2. No City officer or employee shall disclose confidential information unless:
 - a) such disclosure has been authorized in writing by the individual to whom such information pertains, in a language that he or she understands or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
 - b) such disclosure is required by law; or
 - c) such disclosure is to another City officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or
 - d) in the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any City agency; or
 - e) in the case of information relating to immigration status, (i) the individual to whom such information pertains is suspected by such officer or employee or such officer's or employee's agency of engaging in illegal activity, other than mere status as an undocumented alien, or (ii) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, other than mere status as an undocumented alien, or (iii) such disclosure is necessary in the furtherance of an investigation of potential terrorist activity.
3. A City officer or employee, other than law enforcement officers, shall not inquire about a person's immigration status unless such a person's immigration status is necessary for the determination of program, service or benefit eligibility.
 - a) Certain State or Federally funded Public Benefits programs partially administered by the City of Philadelphia may require that a person be a "qualified" immigrant in order access services.
 - (i) Examples of State or Federally funded Public Benefits programs partially administered by the City of Philadelphia include:
 - Temporary Assistance for Needy Families (TANF)
 - General Assistance (GA)
 - Medical Assistance (MA)

Food Stamps (FS)

- b) Citizen children of undocumented parents have the same rights to public benefits as all other U.S. citizens. Undocumented parents may apply for their citizen children.
4. A City officer or employee required to establish the identity of a person seeking City services shall accept as valid photo identification;
- a.) A State issued drivers license or non-drivers license; or
 - b.) A photo consular identification issued by the Nation of a foreign national; or
 - c.) A valid passport.
5. Law Enforcement Officers.
- a.) Law enforcement officers shall not inquire about a person's immigration status unless investigating illegal activity other than mere status as an undocumented alien.
 - b.) Police officers and peace officers, including members of the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity.
 - c.) It is the policy of the Philadelphia Police Department not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking help.

III. Contact Information

Agencies shall promulgate such rules as may be appropriate to detail circumstances in which confidential information may or may not be disclosed pursuant to this legal opinion. Any City officer or employee with a question relating to the disclosure of confidential information in relation to the delivery of City services should contact the Philadelphia Law Department, Gabriel J. Chorno, Assistant City Solicitor, 1515 Arch Street, One Parkway, 16th Floor.

cc. Honorable John F. Street, Mayor
Joyce Wilkerson, Chief of Staff
Philip Goldsmith, Managing Director