



CITY OF ATLANTA
DEPARTMENT OF LAW

KASIM REED
MAYOR

SUITE 5000 • CITY HALL
55 TRINITY AVENUE, ATLANTA, GEORGIA 30303
OFFICE: (404) 546-4100
DIRECT DIAL: (404) 546-4187

CATHY HAMPTON
CITY ATTORNEY

March 9, 2017

Via CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Benjamin Vinson
Chairman
Immigration Enforcement Review Board
270 Washington Street, S.W., Suite 1-156
Atlanta, Georgia 30334

Re: D. A. King v. City of Atlanta
Case No.: Unassigned

Dear Mr. Vinson:

Enclosed, please find a copy of the City of Atlanta's Response to D. A. King's January 17, 2017 Complaint. If you have any questions regarding this matter please contact my office at 404-546-4100.

Sincerely,

M. Alexander Hope Jr.
Associate City Attorney

Enclosure(s)

BEFORE THE IMMIGRATION ENFORCEMENT REVIEW BOARD

STATE OF GEORGIA

D. A. KING,)	
)	
Complainant,)	
)	Complaint No.: Not Assigned
v.)	
)	
CITY OF ATLANTA,)	
)	
Respondent.)	
_____)	

CITY OF ATLANTA’S RESPONSE TO
D.A. KING’S JANUARY 17, 2017 COMPLAINT

COMES NOW Respondent, the City of Atlanta (the “City”), and submits this Response to the Complaint (the “Complaint”) dated January 17, 2017, submitted by D.A. King (“Complainant”), forwarded by the Immigration Enforcement Review Board (the “IERB”) to the City’s Law Department on February 23, 2017. For the reasons set forth below, the Complaint should be dismissed in its entirety for failure to cite “sufficient facts concerning an alleged violation of failure to enforce the eligibility status provision...to determine if a *prima facie* case exists for finding a violation or failure to enforce.”¹

I. Introduction and Statement of Facts

Complainant alleges in “his educated opinion” without confirmation, inquiry, or sufficient clarification that on December 7, 2016, the City administered a public benefit as provided under O.C.G.A. §50-36-1 in the form of an adult education class and failed to verify participant eligibility.² The City’s Office of Immigrant Affairs facilitates a free civic engagement series for

¹ IERB Rule 291-2-.01 (3) (c); *See also* IERB Rule 291-2-.01 (5) (e)

² Attachment to Official Complaint, p.1, par. 5.

new residents called MyCity Academy ATL (the “Initiative”). Held at the Atlanta-Fulton Public Library Buckhead Branch, Initiative participants engage in discussions with community leaders and other volunteer guest speakers over a six month period. The Initiative’s purpose is to provide an introduction to the City, its history and government, along with an overview of vital emergency and public safety matters, and other basic essential services. The inaugural Initiative session was held on December 7, 2016, with the last session scheduled for May 3, 2017.

The Complaint lacks sufficient facts or information necessary to determine whether a potential violation or failure to enforce occurred. Complainant alluded to news stories, materials, and an application, each allegedly regarding the Initiative as part of his “Attachment to Official Complaint” but failed to provide any copies of the referenced sources. Similarly, Complainant failed to perform any reasonable effort to support his Complaint by not including additional information or facts such as an open records act request response.³ Instead, Complainant summarily concluded, without any support, that the Initiative is a public benefit as provided by O.C.G.A. §50-36-1, and that there is no verification process because an online application (a printed copy of which was not provided with the Complaint) did not contain a “provision for verifying eligibility.”⁴ For reasons contained herein, the City denies the Complainant’s allegations and respectfully moves the IERB for an order dismissing the Complaint as there is no *prima facie* case established in the Complaint to provide a basis to proceed.

³ Complainant “leaves it to the IERB” to inquire whether there are any existing affidavits or documents. *See* Attachment to Official Complaint, p.1, par. 4,

⁴ Attachment to Official Complaint, p.1, par. 4.

II. Standard of Review

A review panel of the IERB shall review all complaints received to determine their legal sufficiency.⁵ Complaints must, *inter alia*, contain “sufficient facts concerning the alleged violation of failure to enforce the eligibility status provision, including a date or range of dates in which this violation or failure to enforce allegedly occurred, to determine if a *prima facie* case exists for finding a violation or failure to enforce.”⁶ If the review panel determines that the complaint meets the IERB’s adopted procedural requirements and states sufficient facts to merit further hearing before the review panel, the review panel shall set the complaint down for an initial hearing before the review panel.⁷

Any complaints made by an individual not authorized to file a complaint, made on forms not promulgated by the IERB, made in a manner not proscribed by the IERB, or *which do not contain sufficient facts to determine whether a potential violation or failure to enforce has occurred shall not be considered by the IERB* (emphasis added).⁸ Such determination shall not be considered either an initial or final decision of the IERB for purposes of either appeal or subject to the provisions dealing with service on the complainant or the applicable public agency or employee.⁹ Such determination shall be entered into the official records of the IERB.¹⁰

⁵ IERB Rule 291-2-.02 (1)

⁶ IERB Rule 291-2-.01 (3) (c); *See also* IERB Rule 291-2-.01 (5) (e)

⁷ IERB Rule 291-2-.02 (3)

⁸ IERB Rule 291-2-.02 (2)

⁹ *Id.*

¹⁰ *Id.*

III. Analysis

Complainant fails to state sufficient facts concerning the alleged violation to determine if a *prima facie* case exists for finding a violation or failure to enforce.

The Complaint does not contain sufficient facts to determine whether a potential violation or failure to enforce has occurred; thus, the Complaint should not be considered by the IERB.¹¹ While Complainant alleges that the City violated O.C.G.A. § 50-36-1 on December 7, 2016, the only argument in support of that claim is that the Initiative application does not contain a provision to verify eligibility. Complainant failed to attach any of the referenced documents to the Complaint and instead inserted unverifiable links. Accordingly, the City and the IERB are unable to review these referenced documents and respond to their authenticity. Despite Complainant's ambiguous allegation of "having been through the process of trying to obtain public documents" from the City pursuant to Georgia's open records law, the City has never received any requests for records pertaining to the Initiative from anyone, including the Complainant.

The sole supporting information cited in the Complaint is an allegation that an online application failed to contain an eligibility verification provision, but a copy of which was not provided with the Complaint. That lone allegation is not sufficient to establish that public benefits¹² were administered by the City on December 7, 2016, thus, triggering the City's obligation to gather eligibility documentation pursuant to O.C.G.A. § 50-36-1. Nor is it sufficient to establish that there were any applicants for public benefits from the City on December 7, 2016.

¹¹ IERB Rule 291-2-.02 (2)

¹² The City expressly denies that Initiative is a public benefit as defined in O.C.G.A. § 50-36-1.

The Complaint fails to establish that the City violated or failed to enforce the eligibility provision of O.C.G.A. § 50-36-1 on December 7, 2016.

The Complaint is void of sufficient facts to determine whether a violation or failure to enforce occurred because the documents and webpages referenced in the Complaint are not attached or reviewable. While Complainant may have attempted to include hyperlinks to referenced sources, the submitted Complaint did not include sufficient references to the electronic document locations or printed copies of the materials as viewed on the alleged date. Without the corresponding website address links and printed copies as available on the date in question, neither the IERB nor the City is able to fully understand or verify Complainant's claims. On its face, the Complaint fails to state any sufficient facts to establish a *prima facie* case and should not be considered by the IERB.

Further, Complainant fails to provide any fact or information establishing that the Initiative is an "adult education program" under O.C.G.A. §50-36-1 and, thus, subject to eligibility verification. The Complaint lacks even a scintilla of evidence for the IERB's review other than the Complainant's assumptions from reading a news story that apparently contained photos. Assumptions are not sufficient facts and cannot support a *prima facie* case for the IERB to review.

Further, relying solely on an online application's alleged lack of a verification provision is not sufficient to establish a violation of O.C.G.A. §50-36-1, should it be determined to apply to this instance. O.C.G.A. §50-36-1 clearly contemplates alternative collection methods.¹³ Specifically, the statute states:

Documents and copies of documents required by this subsection may be submitted in person, by mail, or electronically, provided the submission complies with Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or electronically shall satisfy the requirements of this Code

¹³ O.C.G.A. § 50-36-1 (f) (3).

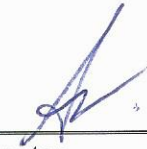
section. For purposes of this paragraph, electronic submission shall include a submission via facsimile, Internet, electronic texting, or any other electronically assisted transmitted method approved by the agency or political subdivision.¹⁴

There is no statutory requirement that documentation of eligibility must be collected with an application. There is also no rule which states that eligibility documentation cannot be collected in a format other than that utilized in the submission of the application, *e.g.* – a rule stating that an electronic application cannot be verified through submission of paper documents. There is no requirement that eligibility documents (even when properly required) must be posted online for anyone to view. Therefore, even if the Initiative was a qualified public benefit under O.C.G.A. §50-36-1(a)(4), which it is not, Complainant has failed to state sufficient facts to determine whether a potential violation or failure to enforce has occurred by merely stating that the online application viewed did not contain an eligibility status verification provision. For this and the other reasons as outlined herein, the Complaint fails to establish sufficient facts to determine whether a violation or failure to enforce occurred and the City respectfully requests that the IERB dismiss the Complaint.

IV. CONCLUSION

For the reasons set forth above, the Complaint should be dismissed in its entirety for failure to cite “sufficient facts concerning an alleged violation of failure to enforce the eligibility status provision...to determine if a *prima facie* case exists for finding a violation or failure to enforce.”¹⁵

Respectfully submitted this 9th day of March, 2017.



Elizabeth Wharton
Senior Assistant City Attorney
Georgia Bar No. 750850

¹⁴ *Id.*

¹⁵ IERB Rule 291-2-.01 (3) (c); *See also* IERB Rule 291-2-.01 (5) (e)

Diana Freeman

Assistant City Attorney
Georgia Bar No. 118898

M. Alexander Hope Jr.

Associate City Attorney
Georgia Bar No. 174139

CITY OF ATLANTA
DEPARTMENT OF LAW
55 Trinity Avenue, Suite 5000
Atlanta, Georgia 30303
404-546-4187 (phone)
404-979-7814 (e-fax)
mahope@atlantaga.gov

BEFORE THE IMMIGRATION ENFORCEMENT REVIEW BOARD

STATE OF GEORGIA

D. A. KING,)	
)	
Complainant,)	
)	Complaint No.: Not Assigned
v,)	
)	
CITY OF ATLANTA,)	
)	
Respondent.)	
_____)	


CERTIFICATE OF SERVICE

This is to certify that I have served the foregoing **RESPONSE OF THE CITY OF ATLANTA** by depositing the same in the U.S. Mail with adequate postage affixed thereto, addressed to:

Mr. Benjamin Vinson, Chairman
Immigration Enforcement Review Board
270 Washington Street, SW, Suite 1-156
Atlanta, GA 30334

Mr. D. A. King
2984 Lowe Trail
Marietta, GA 30066

This 9th day of March, 2017.



M. Alexander Hope Jr.
Associate City Attorney
Georgia Bar No. 174139

CITY OF ATLANTA
DEPARTMENT OF LAW
55 Trinity Avenue, Suite 5000
Atlanta, Georgia 30303
404-546-4187 (phone)
404-979-7814 (e-fax)
mahope@atlantaga.gov