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**Trend: Local Efforts to Encourage Immigrants to Access Essential Social Services and Cooperate With the Police Without Fear of Immigration Consequences**

Experience shows that many immigrants will not access essential social services if doing so could result in sharing of information related to immigration status with the BICE (formerly INS)<sup>1</sup> or other federal agencies. Increased talk of police-BICE cooperation and the proposed federal CLEAR Act that would require local police to enforce federal immigration law have caused immigrant communities to become increasingly wary of interacting with city workers including the police, emergency medical providers and the fire department.

In response to this growing problem, states and localities have adopted a number of different strategies to improve immigrant access to social services, and to encourage immigrants to cooperate with and seek the assistance of law enforcement.<sup>2</sup> One strategy that has been implemented in fairly rapid succession in three cities is to adopt measures protecting the confidentiality of immigration status information when individuals access public services. The following is a description of measures adopted in New York, NY; Philadelphia, PA; and Durham, NC in the weeks surrounding the Immigrant Workers' Freedom Ride.

While the three policies share similarities in terms of substance, each was adopted in a different way, demonstrating that there are a variety of ways in which localities can act to ensure that immigrants can access city benefits and services to which they are entitled and cooperate with police without fear of negative immigration consequences.

**New York, NY: Executive Order Establishing City-Wide Privacy Policy**

New York City was the first of the three. On September 17, 2003, New York adopted a broad-based measure protecting individuals from being asked by city workers about their immigration status, as well as from having their immigration status shared by city workers. This was done in the form of an Executive Order. Upon the urging of advocates, Mayor Michael Bloomberg signed Executive Order 41, a "City-Wide Privacy Policy," that built on an earlier policy, Executive Order 34, which had been signed in May, 2003.

<sup>1</sup> On March 1, 2003 the functions previously performed by the Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) transitioned into two offices of the Department of Homeland Security (DHS): U.S. Bureau of Citizenship & Immigration Services (BCIS) and Bureau of Immigration and Customs Enforcement (BICE).

<sup>2</sup> For a detailed discussion of this issue, see Chapter 2 of *Low Pay, High Risk: State Strategies for Advancing Immigrant Workers' Rights*, available at: << <http://www.nelp.org/docUploads/lphrch2112603%2Epdf>>>.

**The NYC privacy policy is a broad-based one protecting a range of information defined as “Confidential,” including:**

- sexual orientation
- receipt of public assistance
- immigration status
- income tax records
- status as a:
  - victim of sexual assault
  - crime witness
  - victim of domestic violence

**The policy prohibits city workers from asking about immigration status:**

City workers are not allowed ask individuals about their immigration status unless it is necessary to provide service or they are required by law to do so.

In addition, law enforcement officers --such as police officers and corrections officers-- can also ask when they are investigating “illegal activity” *other than* simply possible immigration status violations.

**The policy also prohibits city workers from sharing “confidential” information:**

City workers are not allowed to share any “confidential” information they have about individuals unless they are so required by law or they have written authorization from the individual to do so.

In addition, law enforcement officers can share immigration status information when investigating “illegal activity” *other than* simply possible immigration status violations.

### **Philadelphia: City Solicitor Memorandum Clarifying Confidentiality Policy**

Shortly after the NYC policy was signed and made public, Nelson A. Diaz, the Philadelphia City Solicitor issued a memorandum clarifying Philadelphia’s policy regarding confidential information. In a memorandum dated October 10, 2003, Diaz stated that “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 memorandum then goes on to outline a confidentiality policy that is strikingly similar in language and structure to the NYC executive order.

#### **Ways the Philadelphia policy builds on the NYC policy**

In addition to the provisions of the NYC policy, the Philadelphia policy provides that written authorization by an individual for city workers to share “confidential” information is to be provided “in a language that he or she understands.”

Also, the Philadelphia policy lists valid photo identification where a city worker is required to establish the identity of a person seeking City services:

- A state issued drivers’ license or non-drivers’ license

- A photo consular identification issued by the nation of a foreign national, or
- A valid passport.

Finally, the Philadelphia policy lists examples of city services that should be made readily available to all Philadelphia residents regardless of personal or private attributes. It also includes examples of benefits programs that may require that a person be a “qualified” immigrant in order to access services.

These additions are significant because they increase the likelihood that immigrants will know when they may properly be asked about their immigration status. They also provide guidance to City workers about types of identification they can request and that immigrants are likely to have.

### **Durham, NC: City Council Resolution Supporting the Rights of Persons Regardless of Immigration Status**

A little over a week after the Philadelphia confidentiality policy was clarified, on October 20, 2003, the Durham City Council adopted a Resolution “Supporting the Rights of Persons Regardless of Immigration Status.”

The Durham Resolution describes, more briefly than the NYC Executive Order or the Philadelphia City Solicitor’s memorandum, Durham’s confidentiality policy:

#### **The Durham policy prohibits city workers from asking or otherwise seeking information about immigration status**

The Resolution provides that city workers are not to inquire into the immigration status of any person “during the course and scope of their employment” *unless* otherwise required as part of a City officer or employee’s duties by law or by court order.

Moreover, the Resolution prohibits city workers from engaging in activities designed to ascertain the immigration status of any person.

#### **The Durham Resolution is silent with regard to the sharing of information**

The only reference to the sharing of immigration status information appears in a general disclaimer: “This policy shall not be construed to prohibit any Durham City officer or employee from cooperating and sharing information with federal or state authorities and other governmental entities as required by law.”

While the Durham Resolution provides less protection than the NYC and Philadelphia policies, it still provides a measure of assurance that city workers will not ask about immigration status unless they are required to do so. For example, this means that local police will not stop individuals and ask about their immigration status simply because the police believe the individuals may be undocumented.

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