

MEMORANDUM

The Minnesota Department of Human Rights (MDHR) has finished its investigation into this charge of discrimination (charge) and the Commissioner determines:

1. There is **PROBABLE CAUSE** to find that Respondent discriminated against Charging Party because of her disability.

Background

2. On September 28, 2022, Charging Party filed this charge and alleged Respondent discriminated against her in the area of public services, on the basis of her disability.¹ Specifically, Charging Party alleged that Respondent failed to reasonably accommodate her disability by refusing to remove or alter a strobe light at a pedestrian crossing next to her home. She claimed that after she advised Respondent that the light triggered her disability and asked for its removal or modification, Respondent ignored her and took no action to investigate her claim or address the problem, in violation of the Minnesota Human Rights Act (MHRA).
3. Respondent received a copy of the charge, provided MDHR with an answer to the charge, denied it discriminated against Charging Party, and provided documents and witness interviews to support its position. Respondent asserted that it took Charging Party's report seriously and promptly investigated whether an accommodation could be provided. It claimed that removal or replacement of the light was not warranted because the light's flashing rate was consistent with federal guidelines and removing or changing it would have a negative impact on pedestrian safety. Respondent also asserted that the cost of providing an accommodation was prohibitive.
4. Charging Party received a copy of Respondent's answer to the charge, submitted a rebuttal statement and additional documents, and participated in an investigatory interview.
5. MDHR considered all of these materials and interviewed relevant witnesses. MDHR limited its investigation to whether Respondent violated the MHRA.

Facts

6. Respondent is a city with approximately 10,500 residents. Under the MHRA, Respondent is a "public service."²
7. Charging Party is a woman with a disability who is a Respondent resident.³ The symptoms of Charging Party's disability are triggered by high-luminance, strobing LED lights.
8. In approximately April 2020, several residents asked Respondent to install warning lights at a crosswalk on a public street next to Charging Party's residence. Shortly thereafter, Respondent installed a pedestrian rectangular rapid flash beacon ("RRFB") system at the crosswalk. The RRFB contained two flashing LED lights.

¹ Minn. Stat. § 363A.12, subd. 1.

² Minn. Stat. § 363A.03, subd. 35 (defining public service as "any public facility, department, agency, board or commission, owned, operated or managed by or on behalf of the State of Minnesota, or any subdivision thereof, including any county, city, town, township, or independent district in the state.").

³ During this investigation Respondent disputed whether Charging Party was a resident. Evidence showed that she is a resident.

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9. On January 4, 2022, a pedestrian approached the crosswalk and activated the RRFB. Charging Party was nearby and experienced disability-related symptoms because of the bright, flashing LED lights. Her symptoms continued into the next day, and Charging Party was unable to go to work.
10. On January 6, 2022, Charging Party emailed Respondent's Public Works Director (Director), informed him that she was a person with a disability, explained how her disability was triggered by the crosswalk RRFB, and stated, "I'm looking forward to your reply in hopes there will be a change made."⁴ The Director did not respond.
11. On January 17, 2022, Charging Party emailed the Director to follow up on her request. Again, he did not respond.
12. On January 27, 2022, Charging Party sent a third email to the Director to follow up on her request and express concern for her safety. Upon receiving Charging Party's email, the Director emailed a state agency with considerable expertise in the field and asked to discuss Charging Party's concerns.
13. Later that same day, the Director replied to Charging Party's email and stated Respondent was researching the matter, had reached out to third parties, and would respond with its findings.
14. On February 4, 2022, the state agency informed Respondent that it was required to make facilities accessible to individuals with disabilities and recommended it treat Charging Party's email as an official complaint and commence an investigation. The agency further recommended that Respondent ask Charging Party questions regarding her photosensitivity rate and experience with other devices to set a direction for further conversation. The state agency did not express any concern that implementing Charging Party's request might have a negative impact on pedestrian safety.
15. Respondent decided not to ask Charging Party about her experience with other devices or her photosensitivity rate because it believed doing so would have "aggravated the situation."
16. At some point, the Director contacted a third-party vendor to explore Charging Party's request.
17. On February 8, 2022, the vendor emailed the Director a quote of \$8,616.45 to replace the existing RRFB lights.⁵
18. Subsequently, the Director brought the quote for replacing the existing RRFB lights to his supervisor, Respondent's City Administrator. The City Administrator chose not to replace the existing RRFBs.
19. On February 15, 2022, Charging Party sent a fourth email to Respondent and specifically requested that it either remove the RRFBs or slow down the flashing rate. Respondent did not respond.
20. On February 23, 2022, Charging Party sent a fifth email to Respondent to follow up on her request. Respondent did not respond.

⁴ Charging Party had an advocate who also sent communication regarding her accommodation request to Respondent. Multiple City Council members affirmatively blocked the advocate's email address in order to avoid receiving his communications.

⁵ Respondent's answer suggested that this quote was for a "[replacement] module with a slower flashing rate." The Director, however, did not recall exactly how the proposed replacement module differed from the existing one.

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21. On March 2, 2022, Charging Party sent a sixth email to Respondent to follow up on her request. Respondent did not respond.
22. On March 16, 2022, a pedestrian activated the crosswalk RRFB. Charging Party, who was driving near the intersection at the time, again experienced disability-related symptoms due to the lights.
23. On March 17, 2022, Charging Party contacted Respondent for a seventh time, by letter. In her letter, Charging Party detailed her March 16 experience with the RRFB and reminded Respondent that she had previously reached out numerous times, without receiving a response.
24. On March 30, 2022, the City Administrator wrote a letter to Charging Party confirming that Respondent had received numerous communications from her regarding her disability and advising that a state agency had suggested that he ask Charging Party some questions about her disability. The City Administrator further stated that Respondent had been unable to confirm that Charging Party actually lived in the city and closed by asking Charging Party to contact Respondent. Charging Party did not receive this letter.
25. On April 5, 2022, Charging Party contacted Respondent by email, reiterating that she had contacted Respondent numerous times but had been ignored. Respondent did not respond.
26. On June 10, 2022, the Director contacted the vendor with whom he had previously communicated, asking the vendor to explore whether the flashing rate of the existing RRFB could be slowed, so that full replacement might be unnecessary. A few days later, the vendor advised Respondent that it would prepare a quote. It never did so.
27. On September 9, 2023, the Director followed up with the vendor by email and asked if it had found a unit with a slower flashing rate.
28. On September 12, 2022, the vendor responded that it was unable to find a unit with a slower flashing rate than the existing RRFB unit. The vendor offered to provide recommendations for other possible replacements.
29. On September 29, 2022, the Public Works Director emailed the vendor that Respondent would “stick with what we have.” Respondent explained that it “still get[s] a lot of good comments on [the existing module] and the person causing all of the trouble hasn’t sent anything in a while.”
30. Respondent did not notify Charging Party that it had decided to deny her accommodation request and take no further action.

Legal Standard

31. Charging Party alleged Respondent failed to reasonably accommodate her disability by removing or altering the strobe light at the pedestrian crossing next to her home. She claimed that Respondent completely ignored her repeated attempts to discuss the situation.
32. It is unlawful under the MHRA to “fail to ensure physical and program access for people with disabilities unless the public service can demonstrate that providing the access would impose an undue hardship in its operation.” In determining whether providing physical and program access would impose an undue

hardship, the following factors may be considered: (1) the type and purpose of the public service's operation; (2) the nature and cost of the needed accommodation; (3) documented good faith efforts to explore less restrictive or less expensive alternatives; and (4) the extent of consultation with people or organizations who are knowledgeable about people with disabilities.⁶

Discussion

33. The evidence supports a finding that Respondent failed to reasonably accommodate Charging Party's disability. In fact, the evidence establishes that Respondent intentionally refused to engage in good faith with Charging Party and failed to take any meaningful steps to determine whether a reasonable accommodation was even possible.
34. Charging Party is a woman with a disability that is triggered by the RRFB at the crosswalk next to her home. She repeatedly asked Respondent to accommodate her by removing, replacing, or altering the RRFB, and repeatedly attempted to engage in discussions with Respondent geared at finding a cost-effective solution. Her request was facially reasonable, and Respondent was obligated to provide the accommodation unless doing so "would impose an undue hardship on its operation."⁷
35. Respondent alleged that removing or replacing the light in question posed an undue hardship because it would be cost-prohibitive and would have a negative impact on pedestrian safety.⁸
36. As discussed above, the MHRA outlines four factors which should be considered in determining whether an accommodation would impose an undue hardship.
37. With respect to the first factor, the parties agree that Respondent is a public service with a legitimate interest and role in ensuring pedestrian safety.
38. The second factor outlined in the MHRA is "the nature and cost of the needed accommodation."⁹
39. Preliminarily, the evidence shows that Respondent failed to even attempt to assess the nature of Charging Party's needed accommodation. Despite being explicitly advised by a state agency to treat Charging Party's initial inquiries as an official complaint and to engage in good faith interactive discussions with her, Respondent did none of these things.
40. Respondent requested two quotes from a vendor: (1) for replacing and (2) for adjusting the existing RRFB. Despite these requests, Respondent failed to analyze the quotes or explore or implement the vendor's recommendations.
41. The vendor provided a quote of \$8,616.45 to replace the necessary equipment. Respondent alleged this was \$3,000 more than the cost of initially installing the crosswalk RRFB module.

⁶ Minn. Stat. § 363A.12, subd. 1.

⁷ Id.

⁸ Respondent's contention that the RRFB's "flash rate" was consistent with federal guidelines is irrelevant to the determination of whether providing an accommodation would have imposed an undue hardship.

⁹ Minn. Stat. § 363A.12, subd. 1(2).

42. Respondent, however, did not bring the quote to the City Council for formal review or vote and failed to provide evidence that it conducted a cost analysis to explore implementation of the vendor's quote. In fact, evidence indicated that upon receiving the quotes, the City Administrator merely stated that Respondent had done its due diligence and determined that no further effort was warranted.
43. The vendor was unable to find a unit with a slower flashing rate and did not provide a quote to Respondent in response to that request; it offered to provide recommendations for replacement. The Public Works Director declined this offer, stating Respondent would "stick with what we have." He explained that further exploration of alternatives appeared unnecessary because Respondent "still get[s] a lot of good comments on [the existing module] and the person causing all of the trouble hasn't sent anything in a while."
44. The third factor outlined in the MHRA is "documented good faith efforts to explore less restrictive or less expensive alternatives." Here, the evidence showed that Respondent made no effort whatsoever to explore less restrictive or less expensive alternatives, despite Charging Party's repeated expressions of interest in exploring such alternatives.
45. While Charging Party contacted Respondent at least eight times concerning her accommodation request¹⁰, Respondent ignored her.¹¹ In fact, Respondent conceded that it intentionally avoided contacting Charging Party because it believed doing so would have "aggravated the situation." Evidence further showed that several of Respondent's City Council members blocked her advocate's email address in order to avoid receiving the advocate's communications about Charging Party's requests.
46. Respondent claims to have finally sent a letter to Charging Party on March 30, 2022. As noted above, Charging Party never received this letter. However, she sent Respondent an email six days later, and Respondent again failed to respond. This failure indicates that the March 30, 2022, letter was merely a performative gesture; it was clearly not a good faith effort to communicate with Charging Party about her accommodation.¹²
47. The fourth factor outlined in the MHRA is "the extent of consultation with knowledgeable disabled persons and organizations." Again, this factor supports a probable cause finding. As noted above, Respondent actively avoided any contact with Charging Party's advocate. And while the evidence showed that Respondent did reach out to a state agency with relevant expertise, it failed to act on the agency's recommendations or suggestions.
48. Finally, while Respondent asserted that granting Charging Party's accommodation request would have had a negative impact on public safety, there was no evidence that it ever considered any safety data or otherwise analyzed the safety implications, if any, of providing an accommodation.
49. In sum, evidence demonstrated Respondent failed to engage in the reasonable accommodation process to find an accommodation or an alternative.

¹⁰ Charging Party's advocate also contacted Respondent numerous times during this time frame, but similarly received no response.

¹¹ Charging Party received one response from the Public Works Director on January 27, 2022, claiming that Respondent would "respond with our findings as soon as we have collected the information we are seeking." Charging Party, however, never received a response with Respondent's findings.

¹² Respondent's lack of good faith is underscored by its communication with the vendor, in which it advised that it was no longer interested in discussing alternatives because "the person causing all of the trouble hasn't sent anything in a while."

Conclusion

50. THEREFORE, MDHR finds that there is **PROBABLE CAUSE** to find that Respondent discriminated against Charging Party, in violation of the MHRA.¹³

Minnesota Department of Human Rights

FOR THE DEPARTMENT BY:

A handwritten signature in black ink, appearing to read 'R. Lucero', written in a cursive style.

Rebecca Lucero, Commissioner

Dated: June 15, 2023

¹³ Minn. Stat. § 363A.12, subd. 1.