

ORDER ON APPELLANT'S REQUEST FOR SUBPOENAS DUCES TECUM

IN THE MATTER OF THE APPEAL OF:

SILVER GUTIERREZ, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency.

Appellant has requested subpoenas duces tecum for three non-parties under CSR § 19-45 B., and represents that the Agency has no objection to the request.

Background and Discovery Requests

This is an appeal of Appellant's 75-day suspension from his position as Captain in the Denver Sheriff's Department based largely on charges that he sexually harassed a female co-worker, Captain Cheryl Moore-Arabalo, from April 2010 until the fall of that year.

First, Appellant seeks "any documentation Captain Arabalo may have in her possession which would exonerate the allegations Captain Arabalo has made against Captain Gutierrez", including emails between the two of them, emails between Arabalo and others regarding Appellant, and her entire file produced to the Colorado Civil Rights Division (CCRD).

Second, Appellant requests a copy of Captain Arabalo's documents filed with the CCRC, "to eliminate any concern of fraudulent production from Captain Arabalo".

Third and lastly, Appellant seeks to obtain the 2010 financial records of the Denver Sheriff's Foundation. Appellant argues that those records may reveal that Capt. Arabalo was motivated to falsely accuse Appellant of sexual harassment to protect herself from a possible claim from Appellant that she embezzled funds from the Foundation while she was president of that organization. Appellant's response to the allegations asserts that Arabalo made the allegations against him within a month after Arabalo had been accused of embezzlement, "knowing that lodging such a complaint, I would be removed from my duties as the Treasurer of the Foundation". [Exh. 2-12.]

Analysis

The first request seeks information relevant to the disciplinary appeal by targeting contemporaneous statements made by the accuser in the sexual harassment charge, which may yield statements that would support Appellant's theory of the case; i.e., that Arabalo was a willing participant in the banter about which she later complained. However, the request is not limited in time and therefore is overbroad as stated in the motion. The request for the documents produced by Arabalo to the CCRD is relevant

and not overbroad.

The second requested subpoena is directed to the CCRD, and seeks a copy of Arabalo's submittals during the charge of discrimination (COD) she filed against Appellant in or around October 2010. Appellant does not identify the COD number, or any person who may have that file. In the absence of that information, the request seeks an unenforceable subpoena against a large Colorado agency.

Finally, Appellant asks for financial records from the Denver Sheriff's Foundation, again without naming the custodian of those records. A subpoena must be directed to a specific person for service and enforcement purposes.

Order

Based on the foregoing findings and conclusions, it is hereby ordered as follows:

1. By separate subpoena duces tecum, Capt. Arabalo will be ordered to produce:
 - a) any emails to Appellant in her possession dated April 2010 to the fall of 2010 which would exonerate Appellant from fault in this disciplinary action,
 - b) any emails dated April 2010 to the fall of 2010 between Capt. Arabalo and any colleagues or friends regarding Appellant, and
 - c) any documents given to the CCRD by Capt. Arabalo as a part of her COD filed about October 2010.
2. The motion for a subpoena duces tecum to the CCRD is denied. Appellant may renew this motion by supplying the name and title of the person in possession of these records, and further identifying the COD which is the subject of the request.
3. The motion for financial records from the Denver Sheriff's Foundation is denied. Appellant may renew this motion by supplying the name and title of the person in possession of these records.

Dated this 27th day of December, 2011.


Valerie McNaughton
Career Service Hearing Officer

I certify that on December 27, 2011, I delivered a copy of this Order to the following:

Silver Gutierrez, silvergutierrez@yahoo.com	(via email)
Eric James, ejames@elkusandsisson.com	(via email)
Don Sisson, dsisson@elkusandsisson.com	(via email)
Denver City Attorney's Office, dlefilng.litigation@denvergov.org	(via email)
Lili Tran, HR Services, Lili.Tran@denvergov.org	(via email)


