

ORDER ON REQUEST FOR SUBPOENA DUCES TECUM

IN THE MATTER OF THE APPEAL OF:

GREGORY HILL, Appellant,

vs.

TECHNOLOGY SERVICES, ENTERPRISE BUSINESS APPLICATIONS,
and the City and County of Denver, a municipal corporation, Agency.

On March 1, 2011, Appellant filed a request for subpoenas for the production of documents, some of which were previously requested but not yet provided by the Agency, and some of which he planned to ask for in discovery by March 4, 2011. The Agency responded on March 3, 2011.

Appellant Gregory Hill filed this appeal under CSR § 19-10 A.2. based on the Agency's July 2010 denial of his age discrimination and retaliation complaints. Appellant seeks 1) documents filed by the City in response to Appellant's EEOC complaint; 2) documents from former members of the EBA team which show their reasons for leaving; 3) emails between Technology Services, CSA or the City Attorney's Office regarding this appeal; 4) a list of all persons in the Criminal Justice Applications (Safety) team by age and team assignments before and after the reorganization; 5) documents explaining or used in planning those team assignments; and 6) documents listing the reorganization's beginning dates, justification and personnel.

The Agency response objects to all of these requests as untimely, burdensome and overly broad. It also argues that a subpoena duces tecum under CSR § 19-45 B. only applies to non-parties, and the Agency itself, a party to this appeal, is the custodian of the documents being requested.

I find that Appellant's requests for subpoenas to provide documents are timely. After the Agency's interlocutory appeal was dismissed and the matter was remanded for hearing, my Jan. 20, 2011 order reset the discovery deadline to March 4, 2011, and the deadline for document subpoenas to March 1, 2011.

It must be noted that the motion seeks subpoenas for documents, a discovery tool for requiring a non-party to produce documents relevant to the case. CSR § 19-45 B. Appellant stated that he would file a discovery request by March 4th to obtain the same documents. Discovery requests are addressed to the other party in an appeal. In this case, that other party is the Agency. The Hearing Office has not received a request for discovery from Appellant since this motion was filed. In any event, the motion gave the Agency sufficient notice of the documents being requested by the pro se Appellant, and it will therefore be treated as a request for discovery to a party.

As to the first request, it appears that the Agency has submitted its EEOC Position Statement as Exhibit 12 in its Amended Pre-hearing Statement, and therefore that request

has already been satisfied. Appellant has stated no basis for his belief that his requests for exit documents or emails (nos. 2 and 3, above) would produce any information that may lead to relevant evidence, and as such the requests are speculative. On the other hand, the remaining requests (nos. 4, 5 and 6, above) are narrowly tailored to produce relevant evidence as to the central issue in this case: whether the Agency assigned personnel to a unit based on their age.

Order

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

1. Appellant's request for the Agency's response to EEOC is denied as moot. [See Agency Exh. 12.]

2. Appellant's requests for documents about former EBA employees and emails regarding elements of this case are denied as overbroad.

3. Appellant's requests numbered 3 and 4 in his request for subpoenas are granted. The Agency shall produce the requested documents or interrogatory responses on or before **March 14, 2011**.

DONE March 7, 2011.


Valerie McNaughton
Career Service Hearing Officer

I certify that on March 7, 2011, I delivered a correct copy of this Order to the following in the manner indicated:

Gregory Hill, Gregory.Hill@denvergov.org

(via email)

City Attorney's Office at Diefiling.litigation@denvergov.org

(via email)

HR Services, HRServices@denvergov.org

(via email)

