
DISCOVERY ORDER 11/13/13

IN THE MATTER OF THE APPEAL OF:

DAVID JOHNSON, Appellant,

vs.

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

This is an appeal of Appellant's six (6) day suspension from employment with the Denver Sheriff's Department, for violations arising from his alleged violations of CSA Rules. Appellant seeks discovery, *inter alia*, of the personnel file of Deputy Robin Mazotti. The Appellant is willing to receive the personnel file in a redacted form, but requests the file in its entirety. The Agency objects to the portions of the Mazotti personnel file not related to discipline, but has agreed to turn over a redacted version of the disciplinary portions of the file. Upon review of the motion, response, pleadings and exhibits, the following findings and order enter.

1) Personnel files. Appellant is entitled to view his own personnel file. To the extent not already provided, the Agency shall provide, or make available for copying, Appellant's entire personnel file. Deputy Mazotti's personnel file may be relevant for impeachment, but the Appellant does not state cause to view the remainder of her file, other than a review of her personnel file would "likely lead to additional discoverable admissible evidence." To the extent the remainder of Mazotti's personnel file might reveal additional, relevant evidence, that speculative revelation, even redacted, is substantially outweighed by harm to Mazotti's privacy.

2) Protective order. The parties agree a protective order is appropriate to protect Deputy Mazotti's privacy rights. The request is granted insofar as this order permits the discovery of Mazotti's disciplinary record only.

3) Investigation material. Appellant requested a description of the investigative process and policies used in this appeal. The Agency responded the IAB report was disclosed, in relevant part, in Agency's Prehearing Statement, and is also available from the City Attorney's Office upon payment of copy costs. Appellant also requested documents supporting Agency's responses to discovery, and documents supporting the Agency's position in this appeal. [RFPs 1, 8.] The Agency did not specifically object to these requests, and they appear to call for information reasonably calculated to lead to admissible evidence. C.R.C.P. 26(b); Kerwin v. District Court, 649 P.2d 1086 (Colo. 1982).

Appellant also requested copies of exhibits in this appeal. [RFP 5, 7.] The Agency stated it provided such copies as part of its Prehearing Statement.

ORDER

Based on the foregoing findings and conclusions, the following orders enter:


1. Personnel files. Appellant's Motion for Discovery of his own personnel file is granted to the extent not already provided or made available. With respect to Mazotti's personnel file, the motion is granted in regard to her disciplinary history only. The remainder of the request is denied.

2. Protective Order. A protective order shall issue with regard to Deputy Mazotti's disciplinary history. The remainder of the request for a protective order is rendered moot by this order.

3. Investigative material. To the extent it has not already done so, the Agency shall provide all documents, notes, recordings, statements, and other materials which formed the basis of the Agency's disciplinary decision in this appeal.

All discovery required by this order as well as the proposed protective order are due on or before November 22, 2013.

Done this 13rd day of November, 2013.



Bruce Plotkin
Career Service Hearing Officer

CERTIFICATE OF DELIVERY

I certify that, on November 13, 2013, I delivered a correct copy of Order to the following, in the manner indicated:

Sgt. David Johnson, David.Johnson@denvergov.org	(via email);
Carrie Slinkard, Esq., Clinkard@brunolawyers.com	(via email);
City Attorney's Office at Diefiling.litigation@denvergov.org	(via email);
Marinda Kincaid, HR Dir., Marinda.Kincaid@denvergov.org	(via email).

