

ORDER GRANTING IN PART APPELLANT'S MOTION FOR DISCOVERY
AND ORDER TO CONFER

IN THE MATTER OF THE APPEAL OF:

ERIC JOHNSON Appellant,

vs.

DEPARTMENT OF PUBLIC WORKS, SOLIDA WASTE MANAGEMENT
and the City and County of Denver, a municipal corporation, Agency.

Appellant filed a motion for discovery on October 3, 2013, then amended ("updated") his request on October 8. Agency did not directly respond, but filed a privilege log on October 8.

A. Interrogatories. Appellant requests the following interrogatories. All are considered relevant or reasonably calculated to lead to the discovery of relevant evidence except as otherwise noted.

1. Identify any and all individuals answering and/or assisting in the answering and/or assisting in the answering of these discovery requests. Granted.

2. Identify the names of all employees who were interviewed regarding the events at the Cherry Creek Transfer Station on May 24, 2013. Granted.

3. Identify each person who participated in the decision to terminate the Appellant's employment following the events of May 24, 2013, describe the role played by each person, and identify all documents pertaining in any way to each such decision. This 3-part interrogatory violates the spirit of Career Service Rule 19-45, by expanding the extent of presumptive interrogatories. No extraordinary need is shown for expanding discovery. This request is granted as to the first request only and denied as to the second and third request therein.

4. Identify any employees within the last three years who were investigated or disciplined for staying on premises after work hours, the race of those employees and what discipline was issued, if any. This interrogatory, as above constitutes three separate requests for discovery. While the request appears to be tangential to the Agency's claims, there is some indication it may be relevant. However, the period in question is too remote without any indication the supervisors involved were the same. In addition, if there has been no similar discipline within the past year for similar conduct, that alone would fail to establish a discriminatory pattern of conduct as apparently sought by Appellant. For these reasons, the first request is granted only as to the period from May 24, 2012 to and including May 24, 2013. The second and third requests within Appellant's fourth request are denied.

5. Identify any employees within the last three years who were investigated or have been disciplined for allowing illegal dumping at a City of Denver Solid Waste Management facility, the race of those employees, and what discipline was issued, if any. The first request is granted. The second and third requests are denied. Appellant may inquire at hearing as to these matters.

B. Requests for Production.

1. Produce all documents relied upon or identified in response to these discovery requests or consulted for any purpose in connection with responding to these discovery requests. The Agency is required to identify what conduct it relied on in finding a violation of a particular Career Service Rule. The Agency has not yet done so. This matter is addressed below, but as a matter of limited discovery under the CSRs, the request is overly broad and is denied.

2. Produce all communications relating to the Appellant from May 2013 until the present between Lars Williams and any of the following individuals.

- a. Charlotte Pitt;
- b. Richard Villa;
- c. David Peachey
- d. Mike Lutz
- e. Kathy Billings
- f. Any persons involved in Agency's personnel, staffing, or Agency management issues;
- g. And between any of the above-listed people.

The Agency produced a privilege log identifying email communications between Charlotte Pitt and Kathy Billings and Kathy Billings to Kathy Vargo of the Denver City Attorney's Office on September 18, 2013 regarding prior communications. Those communications, identified as "Portions of Bates No. 423 and 430" are deemed protected under the attorney-client privilege and denied. Moreover, communications subsequent to May 24, 2013 between those individuals is overly broad and of dubious relevance. Appellant's request is granted as to communications between the above-identified individuals for from May 1, 2013 through May 24, 2013, except those which are privileged and identified above.

3. Produce all documents related to Appellant's application for the mentoring program in 2010 and 2011, including but not limited to Appellant's application and any materials distributed by the Agency to its employees explaining the application process, and the scope for the Mentoring Program in 2010 and 2011. This request is overly broad and of dubious relevance, and is therefore denied. Appellant may make relevant inquiries at hearing.

4. Produce all documents related to the damage sustained to trailer B215 on May 24, 2013 and its repair, including the nature and extent of the damage, type of repair undertaken and the cost the Agency incurred in its repair. To the extent the Agency maintains a claim against the Appellant for damage to trailer B215 on May 24, 2013, the inquiry is relevant and is granted in its entirety. If Agency no longer wishes to pursue this claim it may simply indicate as much for its response.

5. Produce unedited and continuous video footage of all video recordings made at the Cherry Creek Transfer Station facility on May 24, 2013 between the hours of 4:00 p.m. and

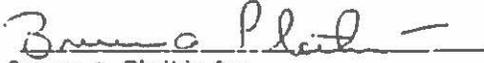
8:15 p.m. Agency responded it has already produced these recordings to the extent they remain. Appellant insists there remains pieces of recording not provided for the requested period. Only to the extent the Agency has or has access to the requested video and has not already produced all it has, the request is granted.

6. Produce written statement made by Ralph Gashler regarding the events that occurred at the Cherry Creek Transfer Station facility on May 24, 2013. Granted.

ORDER TO CONFER

In addition to the above discovery Order, it appears the parties have not yet complied with pre-hearing orders to confer and to arrive at, to the extent possible, stipulations, particularly with respect to their exhibits, and also with respect to witnesses and undisputed facts. The parties are ordered to so confer and to produce their certificate(s) of conferral at least one full day before hearing.

DONE October 8, 2013.


Bruce A. Plotkin for
Valerie McNaughton
Career Service Hearing Officer

I certify that on July 19, 2013, I delivered a copy of this Order to the following:

Mr. Eric Johnson, JZ357@live.com	(via email)
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