

ORDER GRANTING MOTION FOR SUBPOENA DUCES TECUM

IN THE MATTER OF THE APPEAL OF:

PHAZARIA KOONCE, Appellant,

vs.

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

Appellant has moved for issuance of a subpoena duces tecum to the Denver Police Department for its complete investigative file on Appellant. The Agency objects to the subpoena.

Appellant argues that the investigative file is relevant because she claims the year-long investigation and several adverse actions taken after it was concluded were issued in retaliation for her 2011 complaint of discrimination.

The Agency counters that the information is contained in Appellant's OHR file, and thus already available to her. The rule requires only that OHR "maintain such records, forms and procedures as necessary to control personnel transactions". CSR § 2-40 A.4. That does not appear to mandate that OHR maintain a copy of an investigation by another agency.

The Agency also argues that it is only the intent of Manager of Safety Ashley Kilroy that is at issue. In fact, Appellant claims the Agency itself retaliated against her beginning in 2011, and involved a number of actions and persons. Appellant bears the burden to prove her retaliation claim. Parts of the investigative file are already a part of the evidence in this appeal, and Appellant is entitled to review the entire file to determine if it contains other evidence that will tend to prove her claim. [Exhs. 4, 6, 7.]

Finally, the Agency claims that production would subject witnesses to potential retaliation by Appellant. Witnesses are already protected from such retaliation by departmental and Career Service Rules. The mere possibility of improper action by Appellant does not outweigh her right to discovery to support her claim.

Motions to subpoena documents from a non-party city agency may be filed within 20 calendar days of the hearing. CSR § 19-45(B). This motion was filed on Nov. 6th, 20 days before the Nov. 26th hearing date. It is therefore timely. In addition, the exhibits support Appellant's claim that the investigation is an essential part of her retaliation claim. [See Exhs. 1 - 8.]

Order

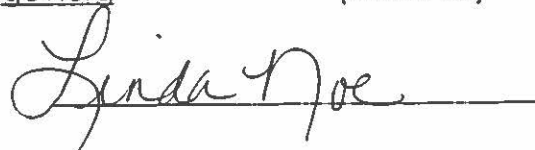
Appellant's motion for issuance of a subpoena duces tecum to the Denver Police Department for production of the entire investigative file for DPD case no. P2012007036 is GRANTED. The signed subpoena for production by Nov. 19, 2013 is included with this order.

DONE November 14, 2013.


Valerie McNaughton
Career Service Hearing Officer

I certify that on Nov. 14, 2013, I delivered a correct copy of this Order to the following in the manner indicated:

Capt. Phazaria Koonce, phazaria@hotmail.com	(via email)
Reid Elkus, Esq., Relkus@elkusandsisson.com	(via email)
Don Sisson, Esq., dsisson@elkusandsisson.com	(via email)
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Jennifer Jacobson, ACA, Jennifer.Jacobson@denvergov.org	(via email)
City Attorney's Office at Dlefilng.litigation@denvergov.org	(via email)
Marinda Kincaid, HR Dir., Marinda.Kincaid@denvergov.org	(via email)



**HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF
DENVER, COLORADO**

Appeal No. 36-13

SUBPOENA TO PRODUCE DOCUMENTS

IN THE MATTER OF THE APPEAL OF:

PHAZARIA KOONCE, Appellant

vs.

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

**To: Custodian of Records
Denver Police Department
1331 Cherokee Street
Denver, CO 80204**

1. **You are hereby ordered to:** Provide a complete copy of the entire file to Elkus, Sisson & Rosenstein, P.C., in relation to DPD case no. **P201207036** on or before November 19, 2013. You may bill Elkus Sisson & Rosenstein, P.C., the appropriate amount for the duplication and production of these files.

Dated this 14 day of November, 2013.

CAREER SERVICE BOARD

Valerie McNaughton
~~Bruce A. Plotkin~~ Valerie McNaughton
Career Service Hearing Officer

Party requesting Subpoena:
Elkus Sisson & Rosenstein, P.C.
Attn: Scott D. McLeod & Donald C. Sisson
501 South Cherry Street, Suite 920
Denver, CO 80246
Telephone: (303) 567-7981