

**HEARINGS OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 106-09

ORDER PARTIALLY CLOSING HEARING AND SEALING RECORD

IN THE MATTER OF THE APPEAL OF:

ERICA LOPEZ, Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES,
Agency, and the City and County of Denver, a municipal corporation.

The Agency has moved to close the hearing during particular testimony and seal the record and pleadings related to that testimony. Appellant's counsel confirmed by phone to the hearing office that Appellant does not object to the motion. Having reviewed the Agency's motion, the hearing officer finds and orders as follows.

This is an appeal of Appellant's dismissal from the Department of Human Services for violations of specified Career Service Rules arising from Appellant's alleged sale of illegal drugs during work hours in 2009. Appellant denies that she engaged in any drug sale, or that there are any such charges pending. The Agency asserts that certain law enforcement officers are necessary witnesses on the issue of Appellant's sale of drugs and the status of those charges. The Agency requests that the hearing be closed during their testimony to protect the identity of the law enforcement officers and their ongoing investigations. The Agency also requests that those portions of the record that identify them be sealed, including the Agency's Amended Prehearing Statement, and the records of their testimony.

The Career Service Rules provide the hearing officer with broad authority to provide for a fair and efficient appeal process. § 19-30. As a general matter, hearing office records are open to the public unless there is a legitimate reason for non-disclosure. An order sealing the records and closing the hearing may not be based solely upon an agreement between the parties. Access to criminal justice records may be limited by "the agency's interest in pursuing ongoing investigations without compromising them". CRS § 24-72-308(1)(c); Harris v. Denver Post, 123 P.3d 1166, 1174 (Colo. 2008).

Here, it is undisputed that the Agency cannot present evidence supporting its discipline and relevant to the issues in this appeal without the testimony of certain law enforcement officers. It also claims that the requested order is necessary to permit them to testify fully and freely regarding Appellant's criminal conduct and the

agreements reached regarding the criminal charges. Failure to close the hearing and seal the record as to their testimony would jeopardize law enforcement's ability to pursue ongoing investigations concerning others. Notably, the Agency has limited its request to that which is necessary to protect the above law enforcement interests.

I find that the Agency has demonstrated that the interests of a full hearing on the merits and the protection of law enforcement investigations outweighs the interests of the public in attending the portion of the hearing devoted to the testimony of the police officers. The request is narrowly tailored to the interests to be protected, and Appellant does not object to the motion. Therefore, the Agency has provided good cause for its motion justifying a limitation upon full public access.

ORDER

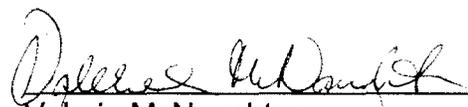
Based on the foregoing findings and conclusions, the following order is entered

1. The Agency will provide the hearing office with an unredacted and a redacted copy of the Agency's Amended Prehearing Statement. In the redacted copy, the Agency shall delete the names of all law enforcement officers, and replace identifying information with the initials, "LEO". The original documents shall remain under seal pursuant to Hearing Office policy for sealed documents. The redacted Prehearing Statement shall be available for public access.

2. The hearing in this appeal will be closed during the testimony of law enforcement officers to be designated by the Agency in its unredacted Amended Prehearing Statement.

3. In addition, the record shall be sealed as to the testimony and identity of the designated law enforcement officers.

DONE February 1, 2010.


Valerie McNaughton
Career Service Hearing Officer

I certify that a copy of this Order was delivered on February 1, 2010 to the following in the manner indicated:

Erica Lopez, 8024 Decatur Ct., Westminster, CO 80031	(via U.S. mail)
Michael O'Malley, Esq., Michaelomalley@hotmail.com	(via email)
Kathy Hand, Kathy@legalnavigators.net	(via email)
City Attorney's Office at Diefiling.litigation@denvergov.org	(via email)
Jennifer Fairweather, HR, Jennifer.Fairweather@denvergov.org	(via email)

