

**ORDER DENYING MOTION FOR SUBPOENA FOR DOCUMENTS FROM NON-PARTIES**

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IN THE MATTER OF THE APPEAL OF:

**LORI MACK**, Appellant,

vs.

**OFFICE OF ECONOMIC DEVELOPMENT,**

and the City and County of Denver, a municipal corporation, Agency.

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On January 10, 2013, Appellant moved for subpoenas to produce documents from three non-parties, Rico Figueroa, Josh Sosa and Ginger Garite. Appellant also requested subpoenas to produce documents from city employees Michael Henry and Paul Washington. The Agency did not respond to the motion.

This is an appeal of Appellant's three-day suspension as well as her retaliation and whistleblower claims. The disciplinary letter indicates that the discipline was based on Appellant's failure to disclose to her supervisor the relationship between herself and her husband's organization, Men Who Care, and her attempts to use her Agency position to influence contractor Center for Relationship Education to select Men Who Care as the provider of training overseen by the Agency. The retaliation and whistleblower claims are both based on Appellant's filing of a grievance asserting race discrimination against her direct supervisor, Ledy Garcia-Eckstein.

CSR § 19-45B requires good cause in support of a subpoena ordering a non-party to produce documents relevant to an appeal. Here, Appellant first seeks copies of all communications by Mr. Figueroa and Mr. Sosa with the Agency. This request is not narrowly tailored to include only documents relevant to matter at issue.

Appellant also moves for a subpoena to Board of Ethics Director Michael Henry to produce ethics opinions and documents related to Appellant, T.H. Mack, Ledy Garcia-Eckstein and Paul Washington for the past five years. The request does not state as cause that Appellant has reason to believe that the ethics opinions or documents are likely to produce discoverable information.

Next, Appellant requests a subpoena addressed to former employee Ginger Garite to produce documents she received from city supervisors "that demonstrate mismanagement and hostility toward Ms. Garite, [Appellant] and others. This request is not narrowly designed to adduce only documents discoverable in this appeal, and is so vague as to be unenforceable by order.

Finally, Appellant seeks a subpoena for personal and business documents from Paul Washington that would rebut Mr. Washington's denial that he was aware of Mr. Mack's business with the city. Mr. Washington will be called as a witness by the Agency and will then be available for cross examination by Appellant. The request for documents is not narrowly

tailored to produce only documents discoverable in this appeal. Documents the Agency considered in taking its action are discoverable from the Agency itself.

Order

For the reasons stated above, the Appellant's motion for a subpoena for production of documents from a non-party is therefore DENIED.

DONE January 15, 2013.

  
Valerie McNaughton  
Career Service Hearing Officer

I certify that on January 15, 2013, I delivered a copy of this Order to the following:

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