

ORDER ON APPELLANT'S SECOND MOTION TO COMPEL DISCOVERY

IN THE MATTER OF THE APPEAL OF:

LUCIA WATERMAN, Appellant,

vs.

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

Appellant has moved for an order compelling discovery. The Agency filed its response objecting to the motion.

Procedural background and arguments on discovery issue

This appeal challenges Appellant's three-day suspension based on four asserted instances of unprofessional communications in September and December, 2014. In her previous motion for discovery, Appellant sought responses to twenty-seven requests for production, including the entire grievance and investigative file related to this discipline. The Agency claims that it produced 228 pages in response to the twenty requests either conceded by the Agency or ordered produced by the hearing officer, and that there are no more documents responsive to those requests.

The current motion seeks an order compelling the Agency to make full disclosure of all documents relevant and material to this appeal, including mitigating and exculpatory documents. As grounds, Appellant produced a document she contends should have been produced, but wasn't. (Exh. A, Appellant's Motion to Compel, Aug. 6, 2015.) Exhibit A is a confidential memo from Division Director Joe Homlar to DDHS Deputy Director Jeff Holliday submitting his withdrawal as investigator based on his knowledge of allegations made by Appellant against him. Appellant argues that Homlar continued as the investigator despite the conflict of interest, and that the letter is relevant to her claim that the charges were motivated by Homlar and Holliday's personal vendetta against her. She states that the Agency's failure to produce Exhibit A renders its entire discovery production suspect. As a result, Appellant argues that the Agency should be ordered to provide full disclosure of exculpatory or mitigating evidence "which may similarly favor Appellant's case."

The Agency maintains that the document is neither authenticated nor responsive to any of the discovery requests, and no other responsive documents exist. The Agency argued in its previous response that it is not required to produce exculpatory information because the constitutional requirements imposed on prosecutors in Brady v. Maryland, 373 U.S. 83 (1963), do not apply to civil or administrative cases, absent certain rare circumstances that are not present here.

Analysis

In this procedural setting, discovery is narrowly limited to the issues on appeal; here, Appellant's three-day suspension. Unlike in a criminal matter where liberty interests are at stake,

there is no requirement that the Agency disclose mitigating or exculpatory documents. See Brodle v. Dept. of Health and Human Services, 951 F.Supp.2d 108, 118 (D.D.C. 2013).

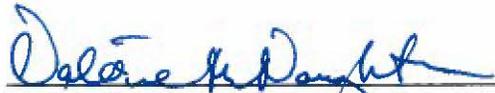
The confidential memo which led to this motion is not an obviously exculpatory document. It appears to be merely a cover sheet for Homlar's investigative summary. The memo also explains his decision to withdraw as investigator, and conveys his opinion and that of other staff members that Appellant's actions adversely affect morale and the Agency's ability to function well. The document bears the initials "JSH" next to Joe Homlar's name and title, which may assist in authenticating the memo's author.

Appellant contends that the document is clear evidence that the Agency's document production was incomplete. The memo may have been kept separate from the investigative file because it was marked confidential and included Homlar's withdrawal as investigator. It contains no information from the investigation, but only Homlar's opinion about matters not directly related to the four incidents for which Appellant was disciplined. I do not find that the Agency failed to satisfy its discovery obligations in this appeal based on its failure to produce this document.

Order

Based on the foregoing findings and conclusions, Appellant's motion to compel discovery is denied.

DONE August 12, 2015.


Valerie McNaughton
Career Service Hearing Officer