HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 42-15

ORDER ON APPELLANT'S MOTION FOR DISCOVERY

IN THE MATTER OF THE APPEAL OF:

FRANK ESPINOSA, Appellant,

v.

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

Introduction and Arguments on Discovery Issue

Appellant moved to discover 22 requests for production (RFPs) in this matter. The Agency responded, agreeing to produce RFPs A – J, M, O, and Q; and agreeing to produce RFPs K – L and U subject to its ability to assert privilege. The Agency objects to RFPs N, P, R – T, and V on the basis of relevance; and objects generally that Appellant failed to establish good cause to exceed CSR 19-45's presumptive limit of 10 discovery requests. Appellant replied to the Agency's objections, stating that all of his requests are discoverable for impeachment and as to the feasibility of available precautions.

This is an appeal of Appellant's four-day suspension for the erroneous release of an inmate. Appellant has admitted the facts underlying the incident. However, the Agency still bears the burden of proving Appellant's conduct violated the Career Service Rules and Agency regulations alleged, as well as establishing the degree of discipline imposed was reasonable under the circumstances.

Analysis

The Agency has already produced or agreed to produce RFP A – M, O, Q, and U, subject to its ability to assert privilege claims. For documents over which it claims privilege, the Agency has agreed to produce a privilege log.

RFPs N, P, and R – T seek post orders and forms governing inmate receipt or release in effect before, during, and after the incident, and revisions of those documents. The Agency objects on the grounds that the only post orders in effect on the date of the incident are relevant, which it has already produced. Appellant responded, stating that the Agency has submitted a post order with a revision date of June 20, 2014, more than six months after the incident [Ag. Exh. 12]. Earlier and later post orders and their revisions are discoverable under C.R.E. 407.

Finally, the Agency has objected to RFP V which seeks "documents, emails, messages, and communications housed or contained in the 'IA Pro,' 'CUFs II' and 'EIS' software programs concerning the investigation and termination of Appellant," on the basis that it is overly burdensome, not relevant, and not likely to lead to the discovery of relevant admissible

evidence not already being produced through other duplicative requests. To the extent the programs contain documents related to Appellant's discipline that have not already been produced, the Agency is ordered to produce them.

Because each of the RFPs identified above seeks discoverable information related to the underlying incident, Agency policies, or the Agency's position on discipline, Appellant has established good cause to exceed CSR 19-45's presumptive limit of 10 RFPs. Counsel's choice to ask those questions in specific sub-parts for clarity's sake is appropriate given the circumstances of this case. *See* Leaffer v. Zarlengo, 44 P.3d 1072 (Colo. 2002). Moreover, some of what is covered in these requests should have been produced as a matter of course during the parties' initial exchange of information about the nature and basis of the claims and defenses.

Order

1. RFPs A – V are GRANTED. By November 11, 2015, the Agency shall produce documents responsive to the aforementioned RFPs. The Agency shall produce a privilege log for portions of documents excluded on the basis of privilege.
2. The Agency may condition the production on the payment of reasonable copying costs.

DONE November 3, 2015.

Valerie McNaughton
Career Service Hearing Officer