

ORDER ON APPELLANT'S MOTION FOR DISCOVERY

IN THE MATTER OF THE APPEAL OF:

THOMAS FORD and WILLIAM LEWIS, Appellants,

vs.

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

On November 13, 2014, Appellant William Lewis filed a motion seeking nine discovery requests from the Agency. The Agency responded, agreeing to produce requests b, f, e, g, and h to the extent not privileged, and objecting to the remaining on various grounds, as follows:

a. All communication sent or received from the Denver DA regarding the investigation of use of force on inmate Kyle Askin on July 13, 2014 and any and all correspondence and investigative reports. The Agency objects on the basis that the Denver District Attorney's office is a separate entity, and that this Agency is not its agent for service of discovery requests.

c. DA case filing forms and the entire DA's file pertaining to the July 13, 2014 Incident as alleged in the Agency's Pre-Disciplinary Letter. The Agency objects for the same reason as its response to the above request.

d. Any and all communications and emails exchanged between the DPD IAB and DSD IAB and the Independent Monitor relating to the July 13, 2014 Incident including those between Nicholas E. Mitchell, Ron Thomas, Stephanie O'Malley, Gary Wilson, and Melissa Ortega. The Agency raised the deliberative process privilege under the authority of CRMS 2-276(c), also asserting that the question is a fishing expedition.

e. Any and all communications and emails exchanged between the DPD IAB and DSD IAB relating to the July 13, 2014 incident. The Agency objects on the grounds that emails after the date of Appellant's termination are not discoverable to prove any issue in this appeal, and that all such communications contain privileged information shielded from discovery.

g. All records involving this case, including interviews and records of the Office of the Independent Monitor, including notes, recordings, e-mails, and correspondence relating to the July 13, 2014 incident. The Agency objects to the portion of this request related to records of the Office of the Independent Monitor on the basis that they are protected under the deliberative process privilege.

i. All records involving this case, including interviews and records of the Denver District Attorney's Office, including notes, recordings, e-mails, and correspondence relating to the July 13, 2014 incident. The Agency objects on the same basis indicated in a and c above.

On November 19, 2014, Appellant Lewis filed a reply to the Agency's response. Therein, Appellant argued that the deliberative process privilege does not apply to the materials requested, and in the alternative seeks a privilege log to support the claim of privilege.

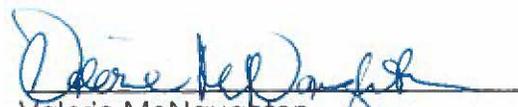
Order

1. To the extent the Agency produces the non-privileged portion of the documents sought in requests **b, f, e, g, and h**, those requests are moot.

2. The Agency is directed to produce all documents requested in **a, c and i** that are a part of its investigative, personnel or disciplinary files, regardless of whether the documents also are a part of the files of another governmental agency.

3. The Agency shall file a detailed privilege log on or before **December 5, 2014**, as to the documents in requests **b, d, e, f, g, and h** for which it claims privilege for an *in camera* review to determine the application of privilege.

DONE November 21, 2014.


Valerie McNaughton
Career Service Hearing Officer