

ORDER RE: APPELLANT'S MOTION FOR SUBPOENAS DUCES TECUM

IN THE MATTER OF THE APPEAL OF:

FRANKLIN GALE, Appellant,

vs.

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

PROCEDURAL POSTURE AND PARTIES' ARGUMENTS

On March 5, 2015, Appellant requested Subpoenas Duces Tecum be issued to the Department of Safety (DoS), Office of the Independent Monitor (OIM), and Denver Police Department (DPD), seeking information "relating in any way to the investigation of the June 16, 2014 incident involving Appellant." In support of his request, Appellant stated the internal affairs bureau of DPD investigated the case rather than DSD, as required by Department Order. The Appellant also claimed support for his request based upon alleged conflicts of interest in the investigation, and based on his allegation that the agency's disciplinary action against him was motivated by his position as a union representative.

In its April 2, 2015 response, the Agency argued the subpoenas duces tecum are duplicative of early discovery requests; the Agency is already complying with those requests; and since DoS and DPD are both parties to the action, they may not be served with subpoenas duces tecum.

On April 9, 2015, Appellant replied the Agency has not produced the requested discovery. Appellant suggested that the Hearing Office issue the requested subpoenas duces tecum, but hold them in abeyance until the Agency complies with the March 27, 2015 discovery order. Appellant also argued that the discovery order did not cover the information sought from the Office of the Independent Monitor, and that good cause exists to grant his request. Finally, Appellant argued the Denver Police Department is not a party to this appeal, and therefore may be served with subpoenas duces tecum.

ANALYSIS

Subpoenas for the production of documents which are relevant to the appeal may be issued to non-parties, including non-party City agencies, upon the motion of either party, and supported by good cause. CSR 19-45(B).

The Department of Safety is a party to the appeal and may not be issued a subpoena duces tecum. Accordingly, Appellant's subpoena duces tecum request for the Department of Safety is denied.

The Office of the Independent Monitor and Denver Police Department, on the other hand, are not parties to this appeal. As such, a subpoena duces tecum may be issued if the request is relevant and good cause is shown.

The only reference to the Office of the Independent Monitor in Appellant's initial request or reply in support was that Chief Wilson informed Independent Monitor Nicholas Mitchell of Captain Gilespie's arrest. This claim does not establish either relevance or good cause, and the request is, therefore, denied.

Appellant claims the Denver Police Department was assigned to investigate the internal affairs inquiry in violation of Departmental Order 1530.3A. Appellant also argues DPD Sgt. Blair is DSD Captain Blair's husband, and was in the same unit that investigated the complaint involving her allegedly preferential treatment. These claims establish that the proposed subpoena duces tecum is both relevant and states good cause, and is, therefore, granted.

However, because the issue may yet be resolved through discovery, the subpoena duces tecum will be held in abeyance until discovery is completed. At that point, if Appellant believes the discovery related to DPD is not complete, he may request the subpoena, provided he justifies why the discovery did not comply with the March 27, 2014 discovery order.

ORDER

1. Appellant's request for subpoenas duces tecum is denied for the Office of the Independent Monitor and Department of Safety.
2. Appellant's request for a subpoena duces tecum is granted for the DPD. However, the subpoena duces tecum shall be held in abeyance, pending Appellant's showing that the Agency did not comply with the March 27, 2015 discovery order.

DONE April 14, 2015.



Bruce Plotkin
Career Service Hearing Officer