

ORDER ON APPELLANT'S MOTION FOR DISCOVERY

ANNA ROMERO, Appellant,

v.

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

On June 13, 2016, Appellant filed a motion seeking seven discovery requests from the Agency. In its response, the Agency agreed to produce Request for Production (RFP) a, Appellant's personnel file, and objected to the scope of the remaining requests.

This is Deputy Sheriff Romero's appeal of her ten-day suspension based on a use of force incident against an inmate at the Denver Detention Center. Based on her argument that the discipline imposed was unduly harsh and inconsistent with discipline meted out to other deputies for the same rule violations, Appellant seeks the past five years of disciplinary files for discipline under RR 200.19, Performance of Duties; RR 300.22, Inappropriate Force; and RR 400.4.1 and former RR 400.4, Cruel and Unusual Treatment of Prisoners. (RFPs b - d.) Appellant also requests the disciplinary documents on five incidents from the 2015 Annual Report of the Office of Independent Monitor, three incidents from the IAB's 2014 Annual Report, and one incident from the 2013 Annual Report. (RFPs e - g; Appellant's Motion for Discovery, Exhs. B - D.)

I. Request for Agency Disciplinary Files for the Same Violations

Appellant challenges the level of her discipline as unfair when compared with that given to other employees for the same offenses. While discipline of other employees charged with the same violations and details of comparable discipline is discoverable on that issue, it must not be remote in time. We have held that the past two years of similar discipline meets that standard. In re Koehler, CSA 113-09, 2 (Order 1/27/2010), citing In re Stone, CSA 70-07 (Order 11/20/07); In re Diaz, CSA 72-06 (CSB 9/20/07). CSR § 19-45 A. requires that discovery shall be narrowly tailored to the disputed issues. As such, only the disciplinary letters issued in similar actions are discoverable, as they will reveal the circumstances, findings and analysis used by the Agency in that discipline in sufficient detail to permit Appellant to determine whether her discipline was unfair in comparison with Agency past practice.

2. Request for Disciplinary Files for Use of Force Incidents Identified in OIM Annual Reports

Appellant's last three requests highlight a total of nine cases reviewed by the OIM in its last three annual reports. For the reasons given above, I find that use of force discipline issued in the past two years is discoverable in this appeal. Thus, the disciplinary letters for the cases highlighted in the 2014 and 2015 OIM Annual Reports must be produced.

Order

1. The Agency is directed to produce the disciplinary letters issued from 2014 to the present for cases finding violations of the rules noted in RFPs b, c, and d.
2. As to requests e and f, the Agency is directed to produce final discipline letters only for the highlighted matters described in the Motion for Discovery, Exhibits B and C.
3. Appellant's request g is denied.

DONE June 22, 2016.


Valerie McNaughton
Career Service Hearing Officer