HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 17-15

ORDER RE: APPELLANT'S MOTION FOR DISCOVERY

IN THE MATTER OF THE APPEAL OF:

STEVEN SINGLETON, Appellant,

vs.

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

Appellant has moved for discovery in the above appeal. The Agency's response states various objections to six of the ten requests for production (RFP), and agrees to produce documents responsive to RFPs a, b and j, subject to privileged documents listed in its concurrently filed privilege log.

Nature of appeal and discovery requests

This appeal challenges Appellant's thirty-day suspension from his position as Deputy Sheriff for the Agency. The suspension is based on a October 6, 2013 incident during which Appellant is alleged to have torn up several inmate grievance request forms (kites) in front of the inmate who created them.

The following RFPs are at issue:

c) Records and interviews related to this discipline, including the Internal Affairs Bureau (IAB) file. The Agency objects on various grounds, but adds that there are no such documents.

d) Records involving this case, including records of the Office of Independent Monitor (OIM). The Agency objects on the basis that the documents should be requested of OIM, which is a third party to this appeal, citing CSR § 19-45(B).

e) Communications by the Agency's Conduct Review Office (CRO) related to the discipline. The Agency objects but points to documents concurrently produced in the Bates numbered PDF.

f) Communications sent or received by the Department of Safety concerning the IAB investigation. The Agency objects but points to documents concurrently produced in the Bates numbered PDF, and has alleged privilege over documents in its Vaughn[1] Index.

g) Communications housed in internal software programs concerning the investigation and discipline in this case. The Agency states that two of the programs, CUFFS and EIS, are software

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[1] *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974); *see also Citizens Comm'n on Human Rights v. FDA*, 45 F.3d 1325, 1326 n.1 (9th Cir. 1995) (holding that a Vaughn Index must: (1) identify each document withheld; (2) state the statutory exemption claimed; and (3) explain how disclosure would damage the interests protected by the claimed exemption).

used by the Denver Police Department, not the Sheriff's Department. It objects to production of documents in IA Pro, its software, as irrelevant to the discipline. It adds that there are no such documents that have not already been produced under RFP b.

h & i) Comparative discipline of other deputies disciplined under RR 200.21 and 400.5 within the past three years. The Agency objects on the basis that the Career Service Rules do not establish a comparative discipline system, and therefore the requested information is not discoverable.

Analysis and Order

The Agency has provided documents in response to RFPs **e**. and **f**. and has listed additional documents in a Vaughn index of any withheld material. Issues arising from that production must be raised by separate motion. The Agency stated that there are no documents responsive to RFPs **c**. and **g**., but urges the Hearing Office to nonetheless issue an order resolving the matter for future appeals. Since the issue is not in dispute, the matter is moot.

With regard to the request for records from the OIM (RFP **d**.), the Agency demurs because OIM is a third party agency, from which documents must be requested via subpoena under CSR § 19-45C. The OIM is a separate agency from the Department of Safety, The request is denied as a request outside the scope of the requestee to produce. Under the prehearing order, May 15, 2015 is the last day for filing a subpoena to the OIM.

Finally, Appellant seeks production of any other discipline under RR 200.21 and 400.5 within the past 36 months. (RFP **h** & **i**.) Discipline under the Career Service Rules is not required to be comparative to discipline issued to other employees under similar circumstances. CSR § 16-20. However, an employee may seek in discovery discipline imposed on other employees by the same supervisor under closely similar circumstances and the same standards of conduct if it contests the level of discipline, as it does here. *See* In re Diaz, 72-06 (1/19/07); *aff'd* In Re Diaz, 72 06A (CSB 5/17/07); *see also* St. Croix v. University of Colorado Health Sciences Center, 166 P.3d 230 (Colo. App. 2007). Appellant has narrowly tailored the request to only discipline under RR 200.21 and 400.5. However, a three-year window is not justified by the facts presented by the Appellant. I find that the request as modified to two years' past discipline seeks discoverable information on a disputed issue, and is not unduly burdensome to the Agency.

Based on the foregoing findings and conclusions, it is ordered as follows:

1. On or before **May 19, 2015**, the Agency is ordered to produce any disciplinary letters of other employees issued under CSR § 16-60 L pertaining to RR 200.21 and 400.5 from March 31, 2013 to the present, redacted to remove identifying information of the employee disciplined.

2. All other requests are denied.

DONE May 13, 2015.

Bruce Plotkin
Career Service Hearing Officer