

ORDER ON APPELLANT'S MOTION FOR DISCOVERY

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IN THE MATTER OF THE APPEAL OF:

**LUCIA WATERMAN**, Appellant,

vs.

**DENVER DEPARTMENT OF HUMAN SERVICES**,  
and the City and County of Denver, a municipal corporation, Agency.

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Appellant has moved for discovery in twenty-seven requests for production (RFPs). The Agency filed its response, in which it objects to the number of requests under § 19-45, raises specific objections to seven of the requests, and objects to Appellant's request for an *in camera* review of documents withheld as privileged. The Agency has agreed to produce any existing, non-privileged documents responsive to the remaining RFPs.

Nature of appeal and discovery requests

This appeal challenges Appellant's three-day suspension from her position as an Administrator II for the Agency. The suspension is based on four asserted instances of unprofessional communications in September and December, 2014.

The following lettered RFPs are still at issue:

RFPs d, e and s: The disciplinary records of Child Welfare Director Joe Homlar, Deputy Director and decision-maker Jeff Holliday, and Caseworker Supervisor Kelly Garcia-Brauch. The Agency objects on relevance grounds.

The issues in this appeal are whether the conduct violated the cited rules, and whether the level of discipline was appropriate given the nature of the misconduct and Appellant's employment history. Evidence about discipline imposed on Appellant's supervisor and manager would not strengthen or rebut evidence on any of these issues. Ms. Garcia-Brauch's only involvement is that she was the person allegedly insulted by Appellant in December, 2014. Appellant raises no specific grounds for these requests, and I find that RFPs d, e and s should be denied.

RFP f: Records of all investigations by Joe Homlar. The Agency objects on the grounds it seeks disclosure of confidential information, is unduly burdensome, and is not relevant to the issues in this appeal.

Appellant does not state why other investigations conducted by Homlar would assist in resolving any issue in this case, and the parties' submittals reveal no such reason. In addition, the request calls for confidential information about other employees.

RFP g: Records of all misconduct alleged against Appellant.

In support of this suspension, the Agency will be restricted to producing evidence about the four instances of allegedly unprofessional communications described in the disciplinary letter, and therefore other asserted misconduct is not discoverable.

RFP q: Notes of the preparation done for the pre-disciplinary meeting.

Appellant does not argue that these notes would be relevant to any issue herein, and I can perceive of no reason for their relevance.

RFP x: Instances included in the disciplinary letter's allegation that there was a pattern of inappropriate behavior.

As noted above, no evidence will be admitted about any inappropriate behavior other than that asserted in the disciplinary letter, and therefore this request would not yield any potentially relevant evidence.

RFP z: Records of discipline imposed by Deputy Manager Jeff Holliday for comparable misconduct. The Agency objects that the request seeks information of no relevance, and that production would be unduly burdensome.

The Agency has objected to RFP z on the basis that the Career Service system does not use comparative discipline. Discipline under the Career Service Rules is governed by several factors, including the seriousness of the offense, an employee's past history, and the type and amount believed needed to achieve the goals of discipline. CSR § 16-20. Discipline imposed on other employees is not one of those factors. However, an employee who contests the level of discipline may seek in discovery information about discipline imposed by the same supervisor under closely similar circumstances, in aid of an argument that her discipline was unduly harsh or unfair under the Rules. See In re Diaz, 72-06 (1/19/07); aff'd In Re Diaz, CSB 72-06 (5/17/07); see also St. Croix v. University of Colorado Health Sciences Center, 166 P.3d 230 (Colo. App. 2007). Thus, the request is relevant to the issue of the amount of discipline, if sufficiently narrowed to seek only discipline imposed by Holliday under similar circumstances and for similar asserted unprofessional communications within the past two years.

Since the Agency has not objected to any request on the basis of privilege, Appellant's request for an *in camera* review of documents withheld in discovery is moot.

### Order

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

1. On or before **May 26, 2015**, the Agency is ordered to produce any discipline imposed by Jeff Holliday for similar unprofessional conduct from March 13, 2013 to the present, redacted to remove identifying information of the employee disciplined.
2. All other requests are denied for the above reasons.

DONE May 20, 2015.

  
Valerie McNaughton  
Career Service Hearing Officer