

ORDER ON APPELLANT'S MOTION FOR DISCOVERY

WILLIAM JACKSON, Appellant,

v.

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

On July 22, 2016, Appellant filed a discovery motion seeking ten requests for production, A - J. Appellant submitted a reply on Aug. 8, 2016.

This is Deputy Sheriff Jackson's appeal of his dismissal for an alleged inappropriate use of force against an inmate. The Agency agreed to produce, or has already produced, documents responsive to RFPs A - C, G, and H, and denies there are any documents responsive to RFP J. The following RFPs remain at issue:

1. RFP D seeks documents pertaining to action by the DDC Conduct Adjustment Board (CAB) concerning inmate MW. The Agency objected that this request is not relevant. Appellant clarified in his reply that he seeks information about the jail charges arising from the Nov. 24, 2014 confrontation between Appellant and MW. The appropriateness of Appellant's use of force under all of the circumstances, including the inmate's mental state and conduct, is the essential issue in this appeal. Thus, a request for the jail's administrative disciplinary documents against the inmate may tend to produce information relevant to the use of force chosen or to the penalty imposed.

2. RFP E seeks communications to or from the Denver District Attorney's Office regarding the investigation of the use of force used on inmate MW, including the entire DPD file and interviews. The Agency objects that the request is not relevant, and that the only possible document is the DA's determination not to pursue criminal charges against Appellant. Appellant replied that the information is discoverable regarding both the inmate's and Appellant's conduct. An identical request was found to be discoverable in a previous use of force appeal against a deputy, and was admitted in evidence at the hearing. See In re Ford, 48-14 (Order 11/21/14). The same rationale applies here: the DA's evaluation of the evidence may provide information related to the Agency's disciplinary and/or penalty decisions.

3. RFP F seeks medical records and photographs of the injuries complained of by inmate MW, as well as records supporting his X03B classification, a category used for inmates with mental health issues. The Agency objected that the request violates HIPPA, and that the request is not relevant. However, the Agency agreed to produce documents if they are covered by a protective order. The medical records may shed light on the totality of the circumstances involved in this incident, and thus are discoverable for an asserted violation of Departmental Order 5011.1M. In order to protect the privacy interests of the inmate, release of the documents shall be subject to a protective order.

4. RFP I seeks copies of disciplinary letters issued by the Agency for inappropriate force between November 2013 and the present. The Agency argues that the information sought is not relevant in the absence of a discrimination claim because the Career Service disciplinary system is not comparative. Appellant replied that he requests prior disciplinary letters in order to test the consistency of the Department's assignment of a Conduct Category F in cases alleging inappropriate force, citing the CSB reasoning and decision in In re Ford, CSB 48-14, p. 4 (12/17/15).

While the reasonableness of the penalty imposed is at issue in this appeal, I find the scope of the requested documents overbroad and burdensome. Disciplinary letters in inappropriate force cases issued from Jan. 1, 2015 to July 31, 2016 will suffice for the purpose sought.

Order

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

1. RFPs D, E, and F are granted.
2. RFP I is granted, as limited to disciplinary letters for inappropriate force from Jan. 1, 2015 to July 31, 2016.
3. By **August 15, 2016**, the parties shall submit a joint protective order to cover the documents sought in RFP F.
3. By **August 18, 2016**, the Agency shall produce the documents responsive to these requests.

DONE August 10, 2016.



Valerie McNaughton
Career Service Hearing Officer