

ORDER ON DISCOVERY MOTIONS

IN THE MATTER OF THE APPEAL OF:

SANDRA L. ROYBAL, Appellant,

vs.

DEPARTMENT OF AVIATION,
and the City and County of Denver, a municipal corporation, Agency.

This is an appeal of an involuntary demotion and subsequent dismissal of Appellant, a Telecommunications Administrator for the Department of Aviation. Both parties have moved for discovery in the above appeal, and neither party has filed an objection to the opposing party's request.

I. Appellant's Discovery Request

Appellant seeks the following seven categories of documents to assist her in proving that Appellant's actions caused no financial loss or damage to the business relationship between the Agency and its cell phone provider, AT&T:

1. a) All communications between the Agency or its subcontractors and AT&T Mobility Services related to Exh. 1, the Jun. 30, 2011 memo from Adam Greer,
b) All communications sent or received by the Agency from Jul. to Sept. 2011, and
c) All communications received or sent from AT&T to the Agency from Jul. to Sept. 2011.
2. All communications between Adam Greer and the Agency related to Exh. 1 from Jul. to Sept. 2011,
3. All communications sent or received by Adam Greer related to Appellant from Jul. to Sept. 2011,
4. All communications sent by Lynn Rubner to any Agency employee or contractor related to Exh. 1 or Appellant from Jul. to Sept. 2011,
5. All communications sent by Teena O'Neil to any Agency employee or contractor related to Exh. 1 or Appellant from Jul. to Sept. 2011,
6. All communications sent to or received from AT&T related to Exh. 1, and
7. All communications involving the shipping, charging and credit for the three new iPhones identified in the letter of dismissal.

Appellant also requests:

8. AT&T account statements from Jul. to Nov. 2011,

9. Evidence concerning the Agency's allegation that this incident caused damage to the working relationship between AT&T and Apple,

10. Emails sent to or received by Appellant from July to Sept. 2011,

11. Warranty or other agreements between Agency and AT&T related to mobile phone services,

12. List of AT&T phones obtained by Agency from 2010 to 2011, and cost of phones for each year, and

13. List of all credited or free AT&T devices given to the Agency in 2010 and 2011.

1. Requests 1 -7

Appellant seeks the above documents to rebut the Agency's contention that her actions cost the City money and damaged business relations between the City and its phone provider, justifying the severity of the discipline imposed. The following requests for production tend to seek documents related to that issue: RFPs 1a) and c), 2 - 7. The Agency's responses to the requests that reference Exh. 1 are limited to the second area of concern noted in the Jun. 30, 2011 email to Nancy Gray: namely, the three iPhone 4Gs.

2. Requests 8 - 11

In RFP 8, Appellant requests all AT&T account statements from Jul. to Nov, 2011. That request does not appear to seek discoverable information, as it covers all Agency devices, not simply those related to this discipline or those for which a credit was granted, and is thus overbroad.

RFP 9 appropriately seeks all evidence related to the issue of whether Appellant's conduct damaged the business relationship between AT&T and Apple, a claim made in the disciplinary letter.

RFP 10 requests all emails sent or received by Appellant from Jul. to Sept. 2011. While it does not directly relate to the incident leading to the discipline, the time frame brackets the short period from the incident to the termination, and may lead to some discoverable evidence.

RFP 11 seeks the warranty covering the three cell phones referenced in Exh. 1, and any other agreements between the City and AT&T related to cell phone services. The request is granted, but limited to agreements in effect between Jul. and Sept. 2011.

3. Requests 12 – 13

RFP 12 seeks a list of all AT&T phones obtained by the Agency/City from 2010 to 2011 and their total cost. Based on the issues in this appeal, the cost and number of cell phones obtained by the Agency, but not the City as a whole, may assist Appellant in her argument that she did not violate CSR rules, and that the level of penalty imposed was too severe. The request is limited to cell phones obtained by the Agency and the cost of those telephones as the most directly relevant evidence, and excludes monthly service and use charges.

RFP 13 requests a list of all credited and free devices given to the Agency/City in 2010 and 2011, in aid of Appellant's argument that the credit given by AT&T was a routine matter, and thus her conduct caused no harm. The request seeks discoverable information.

II. Appellant's Requests for Admissions

All five admissions sought by Appellant are relevant to the issues in this appeal, and would simplify the hearing if admitted.

III. Appellant's Interrogatories

Appellant has propounded two interrogatories. The first is a request for a list of Agency employees who communicated with AT&T as alleged in "para. 5 (supra)".¹ That request, as corrected to refer to page 5 of the dismissal letter, seeks discoverable information.

The second interrogatory requests a list of AT&T representatives who communicated with the Agency between Jul. and Nov. 2011, and likewise is tailored to produce discoverable information and witnesses who may have relevant testimony.

IV. Agency's Discovery Request

The Agency requests all documents that Appellant relies upon in this appeal. This request seeks discoverable documents having obvious relevance to the issues raised in this appeal. Appellant does not object to this request, and it is granted.

ORDER

Based on the foregoing, the following orders enter:

1. Appellant's RFPs 1a) and c), 2 – 7, 9 13 are GRANTED, as limited above,
2. Appellant's RFP 1 b) and 8 are DENIED,
3. Appellant's requests for admission are GRANTED,
4. Appellant's interrogatories are GRANTED, and
5. The Agency's discovery request is GRANTED.

DONE November 22, 2011.



Bruce A. Plotkin
Career Service Hearing Officer

¹ The motion previously referred to page 5 of the dismissal letter, but does not refer to a paragraph 5. Since page 5 of the dismissal letter recites communications between the Agency and AT&T, I assume the reference to "para. 5" was intended to refer to page 5 of the dismissal letter. [See Exh. 2-5.]