

**DISCOVERY ORDER**

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IN THE MATTER OF THE APPEAL OF:

**JOAQUIN GONZALES**, Appellant,

vs.

**COMMUNITY PLANNING AND DEVELOPMENT**,

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

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On May 26, 2011, the Agency filed a motion for discovery. Appellant did not respond. On May 27, 2011, Appellant filed a motion for discovery. The Agency filed a timely objection, claiming Appellant failed to engage in required informal discovery prior to filing its formal discovery request. The Agency also requested a pre-hearing conference in the event Appellant's discovery motion is granted.

This is a direct appeal of Appellant's dismissal from employment as Chief Inspector in Community Development and Planning, for alleged violations of Career Service Rules arising from Appellant's alleged granting administrative leave to several inspectors and alleged misrepresentation of the events to his colleague and supervisor.

A. Agency's request for discovery.

The Agency's requests for discovery appear relevant or reasonably calculated to lead to the discovery of relevant, admissible evidence. The Appellant did not object. The Agency's discovery request is GRANTED in its entirety.

B. Appellant's request for discovery.

1. Agency's objection based on Appellant's alleged failure to conduct informal discovery per pre-hearing order. The Agency claims Appellant's discovery request should be denied in its entirety because Appellant failed to follow the requirements of the pre-hearing order in this case. The order required the parties to attempt informal discovery before making a formal discovery request. [Notice of Hearing and Pre-hearing Order ¶ C. Appellant responded Agency was or should have been aware of its discovery requests before he filed his formal motion, and that there was insufficient time for Appellant to make a subsequent informal request prior to the deadline for formal discovery. Without conduct a time and resource-consuming hearing it is not possible to determine whether Appellant had sufficient time to made an informal request. Moreover, no undue prejudice will result to the Agency from considering Appellant's

discovery requests. I therefore DENY the Agency motion to deny Appellant's requested discovery based upon the Agency's timeliness claim.

2. Agency's request for a pre-hearing conference is DENIED because there is insufficient time to conduct the hearing and allow a reasonable time before hearing for completion of discovery.

C. Appellant's request for interrogatories: Appellant requests the following interrogatories.

1. A narrative regarding any process or policy governing supervisors changing employees' Kronos records. This request is overly broad, and may be easily directed to Agency witnesses during hearing via more specifically-directed questions. This request is DENIED.

2. The name, date, corresponding supervisor, and reasons for all Agency employees who have been granted administrative leave since January 2010. Insofar as Appellant has made a discrimination claim, he has the right to inquire into comparative conduct by supervisors toward employees with a non-protected status, as long as the inquiry is limited to relevant supervisors and employees in a relevant period. Appellant's request appears reasonably calculated to achieve at least part of those ends, and is therefore GRANTED.

3. A narrative regarding the Agency's factual basis for finding Appellant violated CSR § 16-60 a., b., c., and d. This information should be contained in the notice of dismissal, and more specifically-directed questions may be elicited at hearing. This request is DENIED.

4. A narrative regarding the investigative process used in dismissing Appellant. Appellant may inquire at hearing. This request is DENIED. Inquiry may be made at hearing

D. Appellant's subpoena duces tecum requests.

1. All documents relied on in responding to the above interrogatories. This request is GRANTED to the extent that any such documents were used to support the Agency's response to interrogatory designated as "2. b." above.

2. A complete copy of the Community Planning and Development, Inspector Operations Manual, Revised November 2007. While it is unclear what relevance this request has to a claim in the case, it maybe, possibly, might, sort of lead to such evidence, and is GRANTED as follows: The Agency shall make available a copy of the Manual at no cost to Appellant if the Agency possesses preprinted copies of the Manual. If the Agency must create a copy to provide Appellant, Appellant shall pay the reasonable cost of reproduction.

3. Disciplinary documents regarding other Agency supervisors authorizing administrative leave for employees since January 1, 2010. This request is DENIED as

irrelevant.

4. Documents regarding supervisor's authorization of administrative leave for employees since January 1, 2010. This request is GRANTED for reasons stated above.

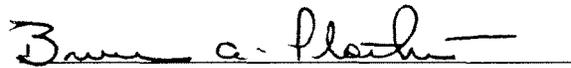
5. Appellant's complete employee file. This request is GRANTED as follows. The Agency shall make available Appellant's complete employee file at a reasonable cost to reproduce said file.

6. Disciplinary documents of any supervisors from January 1, 2010 to present, involving any of the charges asserted against Appellant in his April 15, 2011 dismissal letter. This request is DENIED as irrelevant.

7. All documents the Agency intends to produce or include in the record. This request is DENIED as moot. Agency must produce all such documents as exhibits at hearing and provide copies to Appellant.

8. Any document supportive of the Agency's disciplinary decision. This request is DENIED as moot. Agency must produce any documents it relied on to support its claims as an exhibit at hearing.

DONE June 9, 2011.

  
Bruce A. Plotkin,  
Career Service Hearing Officer

I certify that, on June 9, 2011, I delivered a correct copy of this Order to the following in the manner indicated.

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