

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**

Appeal No. 18-09

ORDER ON DISCOVERY

IN THE MATTER OF THE APPEAL OF:

TINA MARTINEZ, Appellant,

vs.

DEPARTMENT OF SAFETY, 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 has filed a response objecting to each of the requests. Upon review of the motion, response, pleadings, and exhibits, the following findings and order is entered on the motion.

This is a direct appeal of Appellant's dismissal from employment with the Vehicle Impound Facility (VIF) administered by the Denver Sheriff's Department, for violations arising from her purchase of a vehicle that had been impounded at the VIF, and waiver of \$400 in storage fees.

Appellant requests discovery on the following subjects:

1) Information directly related to the disciplinary action taken in this case, [Interrogatory (Int.) 4; Requests for Production (RFP) 1, 2, 5, 7, and 8.]

2) Discipline imposed on other employees. [Ints. 1, 2, 3; RFP 3, 6.]

3) Advisory Opinions by the Denver Board of Ethics. [RFP 4.]

1. Information related to this disciplinary action

Appellant has requested a description of the investigative process and policies used in this appeal. [Int. 4; RFP 2.] The Agency responds that the IAB report was disclosed as a part of the Agency's Prehearing Statement, and is also available from the City Attorney's Office upon payment of copy costs. Appellant also requests documents supporting its responses to discovery, and documents supporting the Agency's position in this appeal. [RFPs 1, 8.] The Agency did not specifically object to these requests, and they appear to call for information

reasonably calculated to lead to admissible evidence. C.R.C.P. 26(b); Kerwin v. District Court, 649 P.2d 1086 (Colo. 1982.)

Appellant also requests copies of her personnel file and the anticipated exhibits in this appeal. [RFP 5, 7.] Appellant has immediate access to her personnel file through a request made to the Career Service Authority, and has already been provided a copy of the anticipated exhibits, attached to the Agency's Prehearing Statement. In re Harrison, CSA 55-07 (Order 11/18/08).

2. Information regarding discipline of other employees

Appellant seeks production of records related to all other city employees who have had storage or tow fees waived, from 2004 to the present. [Int. 1; RFP 3.] Appellant has not supported this request by any showing that the expense and effort necessarily spent in satisfaction of a request of this scope and breadth, covering by Agency estimate over \$1 million in annual revenue, is reasonably calculated to lead to admissible evidence.

Appellant also seeks the disciplinary records of departmental employees charged with violations of the same CSR rules. [Int. 2; RFP 6.] The Agency objects to the request as not discoverable, overbroad, burdensome, and an invasion of the privacy of other employees. Personnel files maintained based on an employment relationship are not public records, and employees are entitled to protection of their privacy interests by issuance of protective orders in an appropriate case. C.R.S. 24-72-202 (4.5). A request for information from personnel records of non-party co-workers must be justified by a showing that it is reasonably expected to produce information that tends to prove that the discipline was unfair under the rules; .i.e., that under closely similar circumstances, including the same supervisor using the same standards of conduct, the appointing authority took substantially different action. See St. Croix v. University of Colorado Health Sciences Center, 166 P.3d 230 (Colo. App. 2007). Appellant does not offer any argument that such disciplinary records would tend to rebut the Agency's evidence, or that the discipline or severity of the penalty violated Career Service Rules.

Appellant also requests any discipline imposed on three named high-level departmental employees during the course of their careers. [Int. 3.] Appellant does not offer any basis for a belief that such information would lead to admissible evidence.

3. Advisory Opinions of Denver Board of Ethics

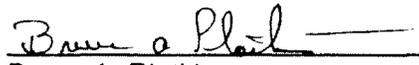
Opinions of the city's Board or Ethics are public record and available on its website, and thus are accessible to Appellant without use of the discovery process. [RFP 4.]

ORDER

Based on the foregoing findings and conclusions, the following order is entered:

1. RFPs 1, 8 are granted.
2. Interrogatories 1, 2, and 3, and RFPs 2 - 7 are denied.

Done this 22nd day of April, 2009.


Bruce A. Plotkin
Career Service Hearing Officer