UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS FEDERAL DETENTION CENTER HOUSTON, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1030, COUNCIL OF PRISON LOCALS, AFL-CIO Charging Party	Case No. DA-CA-04-0045

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves her Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **NOVEMBER 29, 2004**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

SUSAN E. JELEN
Administrative Law Judge

Dated: October 27, 2004
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: October 27, 2004

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL DETENTION CENTER
HOUSTON, TEXAS

Respondent

and Case No. DA-CA-04-0045

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1030, COUNCIL OF PRISON LOCALS, AFL-CIO

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS FEDERAL DETENTION CENTER HOUSTON, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1030, COUNCIL OF PRISON LOCALS, AFL-CIO Charging Party	Case No. DA-CA-04-0045

Steve Simon, Esquire
For the Respondent

John Bates, Esquire
Michael A. Quintenilla, Esquire
For the General Counsel

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, *et seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (hereinafter FLRA/Authority), 5 C.F.R. § 2411 *et seq.*

Based upon an unfair labor practice charge filed by the American Federation of Government Employees, Council of Prison Locals, Local 1030, AFL-CIO (Union or Charging Party), a complaint and notice of hearing was issued by the Regional Director of the Dallas Regional Office of the Authority. The complaint alleges that the U.S. Department

of Justice, Federal Bureau of Prisons, Federal Detention Center, Houston, Texas (Respondent), violated section 7116 (a)(1), (5) and (8) of the Statute by failing to comply with section 7114(b)(4) of the Statute, by failing to furnish to the Union the investigative file pertaining to bargaining unit employee Manuel Contreras. Respondent filed an Answer admitting in part and denying in part the allegations set forth in the complaint.

A hearing was held in Houston, Texas, at which time all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. The General Counsel filed a timely post-hearing brief which has been fully considered. The Respondent filed a Motion requesting an extension of time for filing his closing brief, which the General Counsel opposed. Respondent's Motion is denied; Respondent's brief is untimely filed and will not be considered in this matter. 5 C.F.R. § 2423.33.

Based upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

At all times material herein, the Respondent is an agency under 5 U.S.C. § 7103(a)(3). At all times material herein, the Union is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at Respondent. (G.C. Ex. 1(c), 1(g)).

In May 2003, Officer Manual Contreras, a bargaining unit employee, approached Reynaldo Osorio, Secretary for the Union, seeking assistance. (Tr. 18-19) An investigation had been initiated at the Respondent's facility following an inspection of the prisoners and Contreras had been interviewed by Diego Leal, Special Investigative Agent (SIA). (Tr. 18-19, 63)

Leal is a special investigative agent at the Respondent's facility and is responsible for staff misconduct investigations and inmate misconduct investigations. He conducted the investigations on the incidents involving Contreras and other employees and

created an investigative file for each employee. (Tr. 63, 67) An investigative file includes the investigator's report, affidavits, documentary evidence, memos, notes and any other evidence or information collected during the investigation. (Tr. 23, 70, 71) When completed, the investigative file is turned over to the Warden so that he can determine whether discipline should be proposed. (Tr. 24, 72, 116) The Warden reviews the entire investigative file, including the investigator's written report. (Tr. 119-120) Once discipline is proposed, a staff member from Human Resources prepares the proposed discipline, which is issued by the employee's department head. (Tr. 117) The disciplinary file is created from the investigative file by the Human Resources staff, who copies any tangible evidence from the investigative file. (Tr. 79, 100-101) After the disciplinary file is created, the investigative file is returned to Leal where it is maintained in his office. (Tr. 75-76, 104). In making the final decision on a proposed discipline, Warden Adler relies on the evidence, primarily the affidavits as well as any oral and written responses provided by the employee. (Tr. 119)

On July 30, 2003, Contreras received a proposed ten day suspension for furnishing preferential treatment to inmates and failure to report two incidents. (G.C. Ex. 2) A copy of the complete disciplinary file was furnished to Contreras at that time, in accordance with the parties' collective bargaining agreement (CBA). (Tr. 28) Contreras responded to the proposed suspension, but declined Union representation at the oral presentation. (Tr. 87-88)

On August 8, 2003, the Union submitted a privacy waiver signed by Contreras (G.C. Ex. 3) as well as a request for information. The Union requested, among other things,[1] a complete copy of Contreras' investigative file.[2] (G.C. Ex. 4; Tr. 19-22, 93) The Union stated that it needed the investigative file to fulfill its representational responsibilities to represent employees under the Statute and to administer the contract by allowing the Union to

[1] The Union requested additional information which is not at issue in this matter.

[2] The terms investigative file and investigation file are used interchangeably by the parties. For the purposes of this decision, I will refer to investigative file.

determine if the Agency is imposing disparate treatment against staff based on race, ethnic origin and bargaining unit status. The Union also needed the information to determine if there was exculpatory evidence in the file that was not made available to the employee and the Union and if all the evidence was gathered and to determine whether to file a grievance on behalf of the employee. (G.C. Ex. 4) At the hearing, Osorio expanded on why he needed the information, stating that the Union wanted to see the same information that was made available to the Warden but not the employee. He wanted to see what information was gathered, who was interviewed as well as who was not interviewed and to ensure that there was not anything that was overlooked that would be beneficial to the employee. He also wanted to determine whether the Agency was imposing disparate treatment upon Contreras. (Tr. 25-27)

On August 28, 2003, the Respondent, by Wendy Burton, Human Resources Manager, replied to the Union's request for information. (G.C. Ex. 5; Tr. 28-29, 94) The Respondent did furnish a copy of the index to Contreras' investigative file, which showed the title of each document in the investigative file and the number of pages, as well as a listing of Respondent's staff charged with preferential treatment of inmates. (Tr. 30) As for the complete investigative file, Respondent denied the request, stating that the investigative file was not a part of the disciplinary record or disciplinary process. (G.C. Ex. 5; Tr. 94-95) The Respondent further stated "Specifically, your request fails to address why each item is required; in addition, it does not indicate how each item of information will be used; nor does it articulate how the use of each item relates to the Union's representational responsibilities under the Statute. If, based on the index, you can provide a particularized need for a particular item in the investigative file, we will entertain your request." (G.C. Ex. 5)

On September 2, 2003, Contreras received the final decision on his proposed suspension, which decreased the number of days from ten to six calendar days. (G.C. Ex. 6; Tr. 31) No grievance was filed on his suspension. (Tr. 39)

On September 12, 2003, the Union and the Respondent exchanged emails relating to the Union's request for the investigative file. (G.C. Ex. 7; Tr. 33) On September 19,

2003, the Union submitted a second data request, in which it stated more detailed reasons for requesting the investigative file. The request indicated that the Union believed, based on testimony of Warden Neil Adler in a prior arbitration proceeding, that the Warden relies on information contained in the investigative file. Therefore the Union wanted to see the same information that the Warden had reviewed in making the initial determination to impose discipline. The Union also referenced Article 30 - Disciplinary and Adverse Action of the parties' CBA, which allows an employee the right to receive the material which is relied upon to support the reasons for the action given in the notice. The Union further believed, based on the testimony of Leal in a previous arbitration proceeding, that investigative files contain information that is not included in the disciplinary files. The investigative file was needed to determine if the Respondent had treated Contreras in a manner consistent with others. Also there was a need to examine the investigative file to determine if the Respondent had considered improper criteria in making its decision to suspend Contreras: i.e., a potential disparate treatment allegation. (G.C. Ex. 8; Tr. 35-37)

The Respondent replied by letter dated October 17, 2003, again denying the investigative file and asserting that the Union had not expressed a particularized need for the information. (G.C. Ex. 9; Tr. 38)

The Union filed the unfair labor practice charge in this matter on October 29, 2003.

Positions of the Parties

General Counsel

Counsel for the General Counsel asserts that the Respondent violated section 7116(a)(1), (5) and (8) of the Statute by failing and refusing to furnish the Union with the investigative file for Manuel Contreras. Counsel for the General Counsel asserts that the Union's data requests of August 8 and September 19, 2003, meet all of the requirements of Section 7114(b)(4) of the Statute: that the data is normally maintained by the agency in the regular course of business, is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective

bargaining and does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. Counsel for the General Counsel cites to *United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Forrest City, Arkansas*, 57 FLRA 808 (2002) *(DOJ Forrest City)* (Authority found on facts nearly identical to the instant case that the Union was entitled to the complete investigative file on a bargaining unit employee, which the Union had requested to represent the employee on a suspension action.)

Counsel for the General Counsel further asserts that the Union set forth a "particularized need" for the data requested, pursuant to the guidelines set forth in *Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri*, 50 FLRA 661 (1995) *(IRS Kansas City)*. In its requests of August 8 and September 19, the Union articulated its particularized need for the requested information, that it needed the investigative file to determine if the Respondent had discriminated against bargaining unit employees, to determine if there was exculpatory evidence in the file that was not made available to Contreras and the Union, to determine if all the evidence was gathered, and to determine if a grievance should be filed. The General Counsel noted that similar particularized need statements had been approved by the Authority in *DOJ Forrest City, supra,* and *U.S. Department of Justice, Federal Bureau of Prisons, Federal Detention Center, Houston, Texas,* 60 FLRA 91 (July 15, 2004) *(FDC Houston)* (involving the same parties and the same issues.)

The General Counsel further argues that the Privacy Act does not bar disclosure of the investigative file. The Union requested that all documents in its August 8 request be sanitized and this qualification was never withdrawn. It is well settled that disclosure of information sanitized to remove names and personal identifiers, does not violate the Privacy Act. *See, U.S. Equal Employment Opportunity Commission, Washington, D.C.*, 20 FLRA 357 (EEOC) (1985). The General Counsel asserts that Respondent's argument that the request for sanitized documents applied only to the disciplinary file should be rejected in view of a plain reading of the August 8 request. Further, Contreras signed a Privacy Act waiver, giving the Union access to his

documents. Therefore the Union's access to the relevant records would not be a clearly unwarranted invasion of personal privacy. *U.S. Department of Justice, Office of Justice Programs*, 45 FLRA 1022 (DOJ, Justice Programs) (1992). The privacy interests of other employees and inmates would not be an unwarranted invasion of privacy, if the documents were sanitized as requested by the Union. The General Counsel notes that the Respondent had released the unsanitized affidavit of Officer Irene Garcia, indicating that it truly had no legitimate privacy concerns in the material contained in the investigative file. The General Counsel further notes that the Respondent did not raise any Privacy Act concerns in its responses to the Union.

The General Counsel finally asserts that Respondent's argument that the Union could not establish a particularized need for the investigative file because the decision to discipline Contreras was based solely on evidence in the disciplinary file must be rejected. The General Counsel argues that the Authority previously rejected this same argument in nearly identical circumstances in *DOJ Forrest City*, 57 at 831, noting this argument ignored the Union's other stated reasons for reviewing the investigative file. In both requests, the Union asserted its need to determine whether the Respondent had treated Contreras in a disparate manner, a particularized need argument that the Respondent failed to address.

The General Counsel would also reject the Respondent's argument that the Warden does not consider the investigative file in imposing discipline. The Warden admitted that he reviewed the investigative file, including the SIA's investigative report, prior to imposing the proposed discipline.

Finally the General Counsel argues that Respondent's argument that the Union should have reviewed the investigative file index and stated a particularized need for any additional data on that index should be rejected. The General Counsel argues that the Respondent is imposing additional prerequisites to the Statutory obligations regarding information requests.

With regard to remedy, the General Counsel requests that the complete investigative file on Manuel Contreras be furnished to the Union and an appropriate notice and order

be issued. Further the Respondent should be ordered to waive any timeliness objections, in the event that the Union determines that filing a grievance or invoking arbitration is warranted. *See Health Care Financing Administration*, 56 FLRA 503 (HCFA) (2000).

Respondent

Respondent asserts that it did not violate the Statute by refusing to furnish the requested data to the Union and asserts that the Union's request for data did not meet the standards as set forth in section 7114(b)(4). At the hearing, the Respondent asserted that the parties' CBA provides a comprehensive information disclosure procedure in disciplinary and adverse action cases. Prior to the initiation of disciplinary action under Article 30(d)(1) of the CBA, an investigation is conducted and is reviewed by the chief executive officer, in this case, Warden Adler. Once the investigation is completed, the items in the investigative file which constitute evidence and will be used against an employee are assembled into a disciplinary file in the personnel department. A proposal letter is prepared, reviewed by the regional office and the Labor Management Relations Office in Phoenix, Arizona, and issued to the employee. Under Article 30(e)(1) of the contract, the proposal of discipline notice tells the employee that the employee has a right to have a copy of the entire disciplinary file. In this case, the employee concerned asked for a copy of the file and received it on July 31, 2003.

The Union in this matter requested a copy of the investigative file, as well as some comparative data on like cases with information regarding race, gender, and bargaining unit status. The comparative data and a detailed index of the investigative file were provided. At that time the Respondent asked the Union to explain its particularized need for any item on the index that it did not already have through the disciplinary file. The Respondent asserts that the Union refused to set forth its particularized need, but insisted on asking for a blanket request for the entire file.

The Respondent asserts that the Union's explanations for its need for the investigative file do not meet the particularized need standard. Rather the Union set forth

only theoretical concerns, that the extraneous, non-evidentiary, hearsay documents that might be in the investigative file but were not in the disciplinary file might show unlawful discrimination. The Respondent asserts that the Union never alleged an actual concrete concern, never alleged any impropriety in the investigation, but again only raised theoretical concerns and asked for the entire investigative file.

Furthermore, the Respondent asserts that the Union did not provide the Privacy Act waiver for a coworker whose private information, protected by the Privacy Act, was included in the file, and the Union did not provide Privacy Act waivers for the inmates whose information was also in the file.

The Respondent also raises security concerns regarding the difficulty in getting the cooperation of witnesses, both staff and inmate, in a correctional facility. The Respondent requests consideration of the security concerns relating to the Union's blanket request for an entire file of irrelevant, extraneous, hearsay documentation without the allegation of a concrete concern as opposed to the chilling effect on future investigations if it becomes established as a matter of precedent that an entire file is automatically subject to disclosure upon the request of the Union.

Analysis and Conclusions

Section 7114(b)(4) of the Statute provides that an agency has the duty to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data: (1) which is normally maintained by the agency in the regular course of business; (2) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (3) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

1. Whether the Information was Normally Maintained by Respondent in the Regular Course of Business

Respondent admitted in its Answer to the Complaint that the investigative file is normally maintained by Respondent in the regular course of business. Further, Respondent's witnesses admitted that it possesses and maintains the Contreras' investigative file in a secured safe in the office of SIA Leal at the Federal Detention Center in Houston, Texas. (G.C. Ex. 1(c) and 1(f); Tr. 72, 75, 104)

Accordingly, it is found that the investigative file requested by the Union on August 8, 2003 and September 19, 2003 is normally maintained by the Respondent in the regular course of business. *Department of Health and Human Services, Social Security Administration, Baltimore, Maryland,* 37 FLRA 1277 (1990).

2. Whether the Information was Reasonably Available.

Availability under Section 7114(b)(4) of the Statute has been defined as that which is accessible or attainable. *Department of Health and Human Service, Social Security Administration*, 36 FLRA 943 (HHS, SSA) (1990); *U.S. Department of Justice, Washington, D.C., and U.S. Immigration and Naturalization Service, Northern Region, Twin Cities, Minnesota and Office of Inspector General, Washington, D.C. and Office of Professional Responsibility, Washington, D.C.*, 46 FLRA 1526 (1993). Respondent's witnesses established that the Contreras' investigative file is accessible and attainable at the Houston facility in the SIA's office. Burton specifically admitted that she could gain access to the investigative file after asking permission from SIA Leal. (Tr. 105)

Accordingly, as the Respondent has presented no evidence to the contrary, the investigative file for Manuel Contreras is reasonably available. *HHS, SSA*, 36 FLRA 943; *INS, Northern Region,* 46 FLRA 1526. No evidence was submitted by Respondent that providing the investigative file would be unduly burdensome to Respondent.

3. Whether the Information Constituted Guidance, Advice Counsel, or Training Provided for Management Officials or Supervisors, Relating to Collective Bargaining

Section 7114(b)(4)(c) of the Statute exempts from disclosure to the exclusive representative information which contains guidance, advice, counsel, or training for

management officials relating specifically to the collective bargaining process, such as: (1) courses of action agency management should take in negotiations with the union; (2) how a provision of the collective bargaining agreement should be interpreted and applied; (3) how a grievance or unfair labor practice charge should be handled; and (4) other labor-management interactions which have an impact on the union's status as the exclusive representative. *National Labor Relations Board*, 38 FLRA 506 (1990) aff'd 952 R.2d 523 (D.C. Cir. 1992).

In this case, the Respondent did not present any evidence to suggest that the Contreras' investigative file constitutes guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. Nor was this idea ever expressed in the Respondent's responses to the Union's requests for information. (G.C. Exs. 5, 8 and 9) Further, the Authority has found similar investigative files did not constitute guidance, advice or counsel. *See DOJ Forrest City*, 57 FLRA 808 and *FDC Houston*, 60 FLRA 91.

Therefore, it is found that the investigative file of Manuel Contreras does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

4. Whether the Union Articulated a "Particularized Need" for the Information in its Data Requests

As stated above, the Authority set forth guidelines in *IRS Kansas City,* 50 FLRA 661, for determining whether information is necessary and how requested information will be disclosed under section 7114(b)(4) of the Statute. The Authority held that a union requesting information under that section must establish a particularized need for the information by articulating, with specificity, why it needs the information, including the uses to which it will put the information and the connection between those uses and its representational responsibilities under the Statute.

In this case, the Union explained that it needed the information in order to determine whether or not to file a grievance in the disciplinary matter, if there was exculpatory evidence in the file that was not made available to Contreras and the Union and if all the evidence had been

gathered. The Union also stated that it needed to be apprized of all the information available to the Warden, who made the decision on the disciplinary proposal, to determine if the affected employee and the Union had the opportunity to present a complete defense before the decision was made, and whether there were factors considered in the decision that the employee and the Union were not aware of.

Respondent argues that the decision to discipline Contreras was based on the evidence in the disciplinary file as opposed to the investigative file, and therefore there was no issue relating to potential exculpatory evidence or the thoroughness of the investigation. Respondent did not deny, however, that the Warden, who imposed discipline, had access to both the investigative file and disciplinary file.

Therefore, the Union stated with specificity why it needed the requested information, including the uses to which it would put the information and the connection between those uses and its representational responsibilities under the Statute. *FDC Houston,* 60 FLRA 91 and *DOJ Forrest City,* 57 FLRA 808. Further, the Respondent's attempt to impose additional requirements with regard to Statutory requests for information must be rejected. In this regard, the Respondent's argument that the Union needed to make additional particularized need arguments for individual items set forth in the investigative file index is not appropriate.3 Having found that the Union's stated need for the entire investigative file has been found adequate under the Statutory requirements, further articulation of the need for individual items is not required by the Authority. Moreover, in the context of this particular situation, such additional explanation from the Union would appear to be futile, given the Respondent's consistent position regarding its determination not to release the investigative file.

Further the Respondent raised concerns that security investigations may become more difficult if the investigative files are made available to the Union. The General Counsel asserts that this is an attempt by the Respondent to reargue that the law enforcement privilege

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The lack of specificity in the investigative file index, which only listed the title and number of pages for each document within the investigative file, would not be of assistance to the Union in setting forth additional particularized need explanations.

prohibits the disclosure of records related to an investigation, which was rejected by the Authority in *FDC Houston*, 60 FLRA 91. I find that the Respondent's explanation of its countervailing security interest is general and conclusory. As such, it is not sufficient to outweigh the Union's demonstration of a particularized need for the information. *See Department of the Air Force, Scott Air Force Base, Illinois*, 51 FLRA 675, 683-84 (1995) (speculation about possible outcomes falls short of establishing agency interests deserving of much weight).

Privacy Act Issues

An agency asserting that the Privacy Act bars disclosure is required to demonstrate: (1) that the information requested is contained in a "system of records," within the meaning of the Privacy Act; (2) that disclosure would implicate employee privacy interests; and (3) the nature and significance of those privacy interests. *U.S. Department of Transportation, Federal Aviation Administration, New York TRACON, Westbury, New York*, 50 FLRA 338, 345 (1995) (*FAA*). In this case, Contreras signed a Privacy Act Waiver, giving the Union permission to see all of the information contained in his investigative file, thereby waiving any privacy interests he may have. (G.C. Ex. 3) In this respect, the Authority has held that the Privacy Act does not preclude release of information concerning an employee when the information is sought by a union as the employee's representative. *Federal Employees Metal Trades Council and U.S. Department of the Navy, Mare Island Naval Shipyard, Vallejo, California*, 38 FLRA 1410 (1991). In such circumstances, the union's access to the relevant records would not be a clearly unwarranted invasion of personal privacy. *DOJ, Justice Programs*, 45 FLRA 1022. Respondent did not submit any evidence as to the nature and significance of any other individual's privacy interests. And as noted by the General Counsel, the Respondent furnished the unsanitized affidavit of another employee when it released the disciplinary file to Contreras.

The General Counsel further argues that the Union's August 8 request clearly stated that the requested documents could be issued in a sanitized form. Respondent argued that the request for sanitized documents was only related to the information regarding discipline for similarly situated employees and not specifically for the investigative file.

Although the Union's request for sanitized documents is not as clear as the General Counsel contends, in its responses, the Respondent did not specifically articulate its Privacy Act concerns to the Union, which would have enabled the Union to reiterate more clearly its request for sanitized documents. It is well settled that disclosure of information sanitized to remove names and personal identifiers does not violate the Privacy Act. EEOC, 20 FLRA 357.

Therefore, the Union's request for information pursuant to section 7114(b)(4) is not barred by the Privacy Act.

Conclusion and Recommendation

Based on all of the foregoing, it is found and concluded that Respondent violated section 7116(a)(1), (5) and (8) of the Statute by failing to provide the complete investigative file on Contreras which the Union requested for representational purposes.[4] The General Counsel requested both at the hearing and in its brief that the Respondent be ordered to refrain from raising the defense of untimeliness in any grievance and/or arbitration in connection with the Contreras suspension. Respondent has not raised any legal or public policy objections to the proposed remedy. *See F.E. Warren Air Force Base, Cheyenne, Wyoming*, 52 FLRA 149, 160-62 (1996) (Authority set forth its approach to evaluating requests for nontraditional remedies). Although the Union could have filed a grievance without the requested information, the release of the requested information would have enabled the Union to make this decision in an informed manner. In light of the circumstances of this case, I conclude that the remedy requested by the General Counsel is appropriate. *HCFA*, 56 FLRA 503.

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[4] My *in camera* review of the investigative file reveals that it contains additional notes and reports not included in the disciplinary file. I do not find that these documents support the Respondent's defenses regarding its refusal to release the document pursuant to the Union's request for information under section 7114(b)(4) of the Statute. Further, I reject the General Counsel's objections to my *in camera* review in this matter. *See U.S. Department of the Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Chicago, Illinois District Office*, 40 FLRA 1070 (1991).

Having found that the Respondent violated section 7116 (a)(1), (5) and (8) of the Statute, I recommend that the Authority adopt the following:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the U.S. Department of Justice, Federal Bureau of Prisons, Federal Detention Center, Houston, Texas, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the complete investigative file on Manuel Contreras, a bargaining unit employee, as requested by the American Federation of Government Employees, Local 1030.

(b) In any like or related manner, interfering with, restraining, or coercing unit employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Furnish to the American Federation of Government Employees, Local 1030, the exclusive representative of certain of its employees, the complete sanitized investigative file on Manuel Contreras.

(b) Refrain from alleging as a defense in any subsequent grievance and/or arbitration filed in connection with the investigative file of Manuel Contreras that the grievance is untimely, as long as the grievance is timely filed from the date the Union receives the requested information.

(c) Post at its facilities in Houston, Texas, where bargaining unit employees represented by the American Federation of Government Employees, Local 1030, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Warden, and shall be posted and maintained for 60 consecutive days thereafter.

Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

Issued, Washington, DC, October 27, 2004.

_____

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Detention Center, Houston, Texas, has violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to furnish the complete investigative file on a bargaining unit employee, as requested by the American Federation of Government Employees, Local 1030, the exclusive representative of certain of our employees.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the complete investigative file on a bargaining unit employee, as requested by the American Federation of Government Employees, Local 1030, the exclusive representative of certain of our employees.

_____

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(Respondent/Activity)

Date: _____ By: _____

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, whose address is:

525 Griffin Street, Suite 926, Dallas, TX 75202-1906, and whose telephone number is: 214-767-6266.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. DA-CA-04-0045, were sent to the following parties:

_____

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CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

John Bates, Esquire **7000 1670 0000 1175 4571**
Michael A. Quintanilla, Esquire
Federal Labor Relations Authority
525 Griffin Street, Suite 926
Dallas, TX 75202-1906

Steve Simon, Esquire **7000 1670 0000 1175 4588**
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522 N. Central Avenue, Suite 243
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Reynaldo Osorio **7000 1670 0000 1175 4595**
Secretary
AFGE Local 1030
P.O. Box 52129
Houston, TX 77052

REGULAR MAIL:

President
AFGE
80 F Street, NW
Washington, DC 20001

DATED: October 27, 2004
Washington, DC