SOCIAL SECURITY ADMINISTRATION, NEW YORK REGION Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 3369 Charging Party	Case Nos. BY-CA-40195 BY-CA-40987

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 his 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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **JULY 5, 1995**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

SALVATORE J. ARRIGO
Administrative Law Judge

Dated: June 5, 1995

Washington, DC

MEMORANDUM DATE: June 5, 1995

TO: The Federal Labor Relations Authority

FROM: SALVATORE J. ARRIGO
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION,
NEW YORK REGION

Respondent

and Case Nos. BY-CA-40195

BY-CA-40987

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 3369

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

SOCIAL SECURITY ADMINISTRATION, NEW YORK REGION Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 3369 Charging Party	Case Nos. BY-CA-40195 BY-CA-40987

John R. Barrett, Esq.
For the Respondent

Verne R. Smith, Esq.
For the General Counsel

Before: SALVATORE J. ARRIGO
Administrative Law Judge

DECISION

Statement of the Case

This matter arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Upon unfair labor practice charges having been filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for the Boston Regional Office, issued a Complaint and Notice of Hearing alleging Respondent violated the Statute by refusing to furnish the Union with a copy of a proposal to remove and decision letter issued by Respondent regarding the removal of an employee from Federal service.

A hearing on the Complaint was conducted in New York, New York, at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-

examine witnesses and argue orally.[1] Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this matter, my observation of the witnesses and their demeanor and from my evaluation of the evidence, I make the following:

Findings of Fact

At all times material the American Federation of Government Employees, AFL-CIO (herein AFGE) has been the exclusive collective bargaining representative of various of Respondent's employees and AFGE Local 3369 has been the agent of AFGE for the purpose of representing those employees.

Douglas Chauvin became an employee of Respondent in 1971. In 1978 Chauvin became a Union representative. During his tenure as a Union representative Chauvin was very active, engaging in the full range of labor-relations activities including negotiating, filing and processing grievances against Respondent and filing unfair labor practice charges against Respondent. Nevertheless, Chauvin had some diffi-culties within the Union and in 1986 Union President John Riordan ordered Chauvin to refrain from filing unfair labor practice charges against Respondent and charged Chauvin with "malfeasance." In September 1987 Riordan told Respondent not to grant Chauvin official time to engage in labor-management relations activities. Chauvin ceased being a Union represen-tative in early 1988. Charges were brought against Chauvin seeking his expulsion from the Union and he was expelled in December 1991.[2]

Beginning in March 1989 Respondent began bringing a number of disciplinary actions against Chauvin. By October 1993 seven such actions had been brought against him. Chauvin has represented himself in all seven situations.[3] The findings in Social Security I, a matter previously litigated before me, reveal that one such action occurred around July 19, 1991 when Respondent sent Chauvin a notice indicating it proposed to suspend him. In that case

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[1] Respondent's unopposed motion to correct the transcript is hereby granted.

[2] Social Security Administration, New York Region, New York, New York, 12-CA-10554 and BY-CA-20305 (May 25, 1993), ALJ Decision Report No. 107, May 28, 1993 (Social Security I).

[3] Chauvin testified he personally challenged these actions and, to date, has had two of the actions overturned.

Respondent had refused to provide the Union with a copy of the correspondence proposing suspension but subsequently provided the Union with a copy of the documents in question in compliance with my order issued April 14, 1993.

On or about October 1, 1993 Chauvin received from Respondent a notification that Respondent was proposing to remove him from employment. Shortly thereafter, Chauvin sent
Union President Riordan a letter telling Riordan of Respondent's proposal to remove him from employment and requesting Riordan to seek arbitration in the matter, but adding that Chauvin wished to represent himself in the arbitration. Riordan's reply to Chauvin was non-committal with regard to the Union requesting arbitration but specific as to declining to allow Chauvin to represent himself if arbitration was invoked. Chauvin was not satisfied with having the Union represent him in any arbitration which might take place and did not file a grievance on the matter.

On October 18, 1993 Union President Riordan sent Respondent the following letter:

> Today, I received a letter from Douglas Chauvin informing me that he has received a proposal, dated September 24, 1993, to remove him from the federal service. He did not enclose a copy of the proposal.
>
> I request that you furnish me with a copy of the proposal to remove him so that the union may fulfill its obligations as the employee's exclusive representative; to ensure compliance with the contract; and to obtain information necessary to perform our representational duties. The union recognizes its obligation in protecting this information from any wider dissemination than is necessary to perform its representational functions. Moreover, Mr. Chauvin was a former officer of the union, and the union has a strong interest in seeing to it that this proposal does not involve union considerations.

Respondent replied to the Union on November 4, 1993 as follows:

> This will acknowledge receipt on October 19, 1993 of your letter dated October 18, 1993 requesting a copy of the proposal dated September 24, 1993, to remove Douglas Chauvin from the Federal Service. Your letter advises that Mr. Chauvin sent you a letter informing you of the proposed

removal but that he did not enclose a copy of the proposal.

As of this date, Mr. Chauvin has not designated you as his representative in connection with the current proposed action. Furthermore, no decision has been made concerning the proposed removal. Mr. Chauvin is exercising his personal statutory right to respond to the proposed action and has not designated a union representative. While Mr. Chauvin communicated with you concerning this matter, he did not furnish you with a copy of the proposal he received.

We believe it would be a violation of Mr. Chauvin's privacy rights to furnish you with a copy of the proposal. Therefore, we decline to do so.

Chauvin was terminated from Federal service on January 14, 1994. By letter dated March 7, 1994 Union President Riordan sent Respondent the following request:

It has come to the attention of Local 3369 that Douglas Chauvin was apparently removed from the federal service. Please confirm this in writing.

If Mr. Chauvin has been removed, please furnish me with a copy of the decision to remove him so that the union may fulfill its obligations as the employee's exclusive representative; to ensure compliance with the contract; and to obtain information necessary to perform our representational duties. The union recognizes its obligation in protecting this information from any wider dissemination than is necessary to perform its representational functions. Moreover, Mr. Chauvin was a former officer of the union, and the union has a strong interest in seeing to it that this proposal does not involve union considerations.

Respondent replied to Riordan on April 1, 1994, stating:

Reference is made to your letter dated March 7, 1994, received on March 15, 1994, requesting information concerning Mr. Douglas Chauvin's separation from the Federal service.

In response to your request concerning Mr. Chauvin's status, he was separated from his position of Claims Representative effective January 14, 1994.

As you are aware, the Federal Labor Relations Authority has determined that routine release of adverse action notices would constitute a violation of an employee's privacy rights.

In my letter to you dated November 4, 1993, you were advised that because Mr. Chauvin had not designated the union as his representative, it would be a violation of his privacy rights to furnish a copy of the proposal to remove him to you. Mr. Chauvin still has not designated the union to represent him in connection with his separation from the Federal service.

You previously stated that Mr. Chauvin had been in communication with the Local about this matter. Since there has been communication with Mr. Chauvin, management believes that he may make either of the documents available to the Local, if he chooses to do so.

Management also believes that a nexus can no longer be established between Mr. Chauvin's former union activities and the position that the removal action was taken in reprisal for his union activities since he has not been a union official or representative for more than two years.

We to [sic] believe it would be a violation of Mr. Chauvin's privacy rights to furnish you with a copy of the decision to remove him from Federal service since he has not designated the Local as his representative. Therefore, we decline [furnishing] a copy of the requested document.

Additional Findings, Discussion and Conclusions

Section 7114(b)(4) of the Statute provides that upon request, an agency must furnish the exclusive representative, to the extent not prohibited by law, data:

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion,

> understanding, and negotiation of subjects within the scope of collective bargaining; and
>
> (C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining . . .

The General Counsel contends Respondent refused to comply with the provisions of section 7114(b)(4) of the Statute by failing to furnish the Union with the proposal to remove and the decision letter concerning the removal of Chauvin from employ-ment. Respondent essentially takes the position that the Privacy Act prohibited it from providing the Union with the information it requested and Respondent further contends that the Union has not shown the requisite "need" or "necessity" under the Statute to obtain the desired documents.4

In Social Security I the Union sought and Respondent refused to furnish a notice of proposal to discipline employee Chauvin. In that case Respondent raised arguments similar to those it now raises herein. That case concerned Respondent's refusal to furnish the Union with a proposal to suspend letter issued to Chauvin by Respondent in July 1991. In Social Security I Respondent, as here, took the position that releasing a copy of the proposal to suspend was prohibited by the Privacy Act (5 U.S.C. § 552a) and the Union did not sufficiently justify its "need" for the information. The Privacy Act, which generally prohibits disclosure of personal information about Federal employees without their consent, is not applicable if disclosure is required by the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The FOIA requires disclosure of information unless disclosure falls within an enumerated exception such as Exception (b)(6) wherein an individual's privacy rights must be balanced against the public's right to have the information disclosed where disclosure "would constitute a clearly unwarranted invasion of personal privacy." It is clear from the thrust of Respondent's brief that this is the exception to the FOIA that Respondent urges is applicable herein. In Social Security I I reviewed the parties' arguments and the relevant Authority case law wherein the Authority balanced employees' right to privacy against the "public interest" in disclosure, which the Authority summarized in United States Department of Veterans Affairs Regional Office, San Diego, California, 44 FLRA 312, 314-315

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4 Respondent does not dispute that the information sought is normally maintained by Respondent, reasonably available, and does not constitute guidance, advice, counsel, etc., within the meaning of section 7114(b)(4) of the Statute.

(1992) as "the facilitation of the collective bargaining process," in the Federal service. Thereafter I proceeded to balance the public/Union interest in disclosure against Chauvin's privacy interests, holding:

> The Union's requests for the disciplinary proposal . . . [was] specific and privacy interests of . . . Chauvin . . . [were] very strong since information concerning discipline is clearly "stigmatizing".
>
> With regard to the Union's need for the proposals to suspend . . . employee Chauvin . . . , the Union informed Respondent that it needed a copy of each proposal to fulfill its obligations as the employee's exclusive representative; to ensure compliance with the collective bargaining agreement; and to obtain information necessary to assess its representational responsibilities. The Union further informed the Agency that it would limit dissemination of the information to that which was necessary to perform its representational duties.
>
> . . . the General Counsel argues that in addition to the need expressed by the Union when it requested the (Chauvin) proposal, the Union had special reasons for wanting the information. Thus, Union representative Riordan testified Chauvin had previously been an active Union officer for many years and ". . . in safeguarding (Chauvin's) interests, we safeguard the interests of other officers also because the Agency may do the same thing to any one of us." Riordan was obviously alluding to fear that the Agency might have retaliated against Chauvin because of his prior activities as a Union officer. A union, and indeed unit employees alike, have a strong interest in assuring that reprisals are not taken against union officers who represent employees in grievances against an agency or otherwise pursue collective goals. By carefully reviewing the reasons and procedures used by management in imposing discipline on those closely identified with representational activities, a union protects its very existence. In the case herein, Chauvin was a well known Union representative who was involved in a number of grievances and unfair labor practice charges. Even though Chauvin had also filed actions against the Union and was currently engaged in a controversy with the Union and had previously refused to talk with Riordan,

> the Union had a strong interest in seeing to it that Chauvin's discipline did not involve Union considerations. Although the Union did not mention this factor to Respondent when requesting Chauvin's disciplinary proposal, Chauvin's active Union representational activities should have alerted Respondent to the Union's special interest in reviewing Chauvin's disciplinary proposal.
>
> Accordingly, notwithstanding the strong privacy interests which exist regarding the disciplinary suspension and considering Chauvin's lack of close attachment to the Union at that time, having balanced the competing interests herein I conclude that the reasons the Union expressed to the Agency for production of Chauvin's proposal, and its unexpressed but obvious interest in assessing the reasons and circumstances surrounding the disci-plining of a one time active Union officer, are sufficient to overcome the strong privacy interest against disclosure. I conclude therefore that Respondent by its failure to provide the Union with Chauvin's disciplinary proposal which it requested violated . . . the Statute.

No exceptions were taken to that decision.

Recently, in U.S. Department of Transportation, Federal Aviation Administration, New York Tracon, Westbury, New York, 50 FLRA 338 (1995) (FAA), the Authority, for the first time, addressed the holdings of the Supreme Court in United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) (Reporters Committee) and United States Department of Defense v. FLRA, 510 U.S. --, 114 S. Ct. 1006 (1994) (Department of Defense) regarding the interplay between a union's right to information under the Statute and the proscriptions imposed by the Privacy Act. Thus, the Authority held in FAA at 343-344:

> With respect to the public interest to be weighed, the Authority is guided by Reporters Committee and Department of Defense. In Department of Defense, the Supreme Court rejected the Authority's previous approach, which defined the public interest in terms of collective bargaining as embodied in the Statute. The Court held that the only relevant public interest to be considered in the FOIA Exemption 6 balancing analysis is the extent to which disclosure of the information would shed light on the agency's

performance of its statutory duties or otherwise inform citizens as to "'what their government is up to.'" Department of Defense, 114 S. Ct. at 1013-14 (quoting Reporters Committee, 489 U.S. at 773). In addition, the Court stated that "all FOIA requestors have an equal, and equally qualified, right to information[.]" 114 S. Ct. at 1014. See also Reporters Committee, 489 U.S. at 771 ("the identity of the requesting party has no bearing on the merits of his or her FOIA request").

Although the case before the Court in Department of Defense involved only the disclosure of bargaining unit employees' home addresses, we find no basis for determining the relevance of an asserted public interest any differently in cases involving other information, including performance appraisals. We note that courts reviewing claims under Exemption 6 of the FOIA consistently have analyzed the public interest utilizing the same definition regardless of differences in the type of information sought. Compare [FLRA v. United States Department of Commerce, 962 F.2d 1055, 1060 (D.C. Cir. 1992) (Commerce)] (names and duty stations of unit employees who received certain performance evaluations) with [National Association of Retired Federal Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989)] (names and addresses of Federal annuitants). Accordingly, in balancing the interests under Exemption 6, we will in this and future cases define the public interest in disclosure of information in terms of the extent to which disclosure of the information would shed light on the agency's performance of its statutory duties or otherwise inform citizens as to what their Government "is up to." Reporters Committee, 489 U.S. at 773.

We adopt this definition of public interest because we conclude that Department of Defense requires this result for all cases involving the FOIA, including those that have their genesis in a request pursuant to section 7114(b)(4) of the Statute. . . . (Footnote omitted).

In FAA the Authority also set forth the respective burdens the parties bear in proceeding in a case such as herein. Thus, in FAA at 345-346 the Authority stated:

> . . . in cases where an agency defends a refusal to furnish requested information on the basis that disclosure is prohibited by the Privacy Act because it would result in a clearly unwarranted invasion of personal privacy within the meaning of FOIA Exemption 6, the agency bears the burden of demonstrating: (1) that the information requested is contained in a "system of records" under the Privacy Act; (2) that disclosure of the information would implicate employee privacy interests; and (3) the nature and significance of those privacy interests. If the agency makes the requisite showings, the burden shifts to the General Counsel to: (1) identify a public interest that is cognizable under the FOIA; and (2) demonstrate how disclosure of the requested information will serve that public interest. Although the parties bear the burdens set forth above, we will, where appropriate, consider matters that are otherwise apparent.
>
> Once the respective interests have been articulated, we will, as we have in the past, balance the privacy interests against the public interest. . . In striking this balance, we must be mindful that the "clearly unwarranted" language in Exemption 6 weights the scales in favor of disclosure. . . . (Footnote omitted).

The specific issue the Authority addressed in FAA was an agency's obligation to furnish its employees' collective bargaining representative with unsanitized employee performance appraisals which it requested. After reviewing the strong privacy interests employees have in their performance appraisals, inter alia, the Authority examined the "public interest" involved and stated, in part:

> With respect to the public interest asserted by the General Counsel, we similarly are guided by precedent recognizing that the public is served if the Respondent carries out its personnel functions fairly, equitably, and in accordance with laws, rules and regulations, Commerce, 962 F.2d at 1060; [Ripskis v. Department of Housing and Urban Development, 746 F.2d 1, 3 (D.C. Cir. 1984)]; Core v. United States Postal Service, 730 F.2d 946, 948 (4th Cir. 1984) (Core), and otherwise fulfills its statutory and regulatory obligations. The Respondent is engaged in air traffic control activities, which clearly affect aviation safety for the general public. Disclosure of unsanitized performance appraisals would shed light on the

> ability of employees to perform their air traffic control duties and on the manner in which those duties are performed, which furthers the public interest in knowing how "public servants" are carrying out their Government functions. NLRB v. Robbins Tire and Rubber Co., 437 U.S. 214, 242 (1978) (a basic purpose of the FOIA is to ensure an informed citizenry needed to "hold the governors accountable to the governed"). (Footnote omitted).

The Authority went on to say in FAA however, that, contrary to some earlier decisions, when defining the public interest under FOIA Exemption 6, it would not be appropriate to consider the benefits which disclosure to a union would yield, such as the early resolution of grievances, the proper administration of a collective bargaining agreement, generally, or any other interest that was specific to the union and not a concern of the general public at large. The identity of the requester and a commitment not to disclose would similarly be irrelevant. Thereupon the Authority in FAA balanced the articulated privacy interests against the public interests and concluded that disclosure of the unsanitized employee performance appraisals the union requested was prohibited by law and the complaint was dismissed.

As FAA was issued by the Authority only recently, the parties did not have the benefit of its holdings when litigating the case herein. However no motion to reopen the record has been filed and I find the parties when litigating and briefing this case, sufficiently treated the essential matters the Authority indicated should be considered and I therefore conclude a rehearing of this case is not required. While whether the letter of proposal and the removal letter sent to Chauvin were contained in a "system of records" was not specifically addressed, I doubt if Respondent could seriously challenge a finding that such documents are of such a nature that they are regularly contained in a "system of records" within the meaning of the Privacy Act, and I so find.[5] Prior Authority decisions support this finding. See

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[5] 5 U.S.C. § 552a(b)(2) provides:

> No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be . . . (2) required under section 552 of this title [FOIA].

for example, National Treasury Employees Union and U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C., 46 FLRA 234, 238 (1992) and United Power Trades Organization and U.S. Department of the Army Corps of Engineers, Walla Walla, Washington, 44 FLRA 1145, 1178-79 (1992), petition for review dismissed, No. 92-70520 (9th Cir. Aug. 26, 1992) and see FAA at 346.

It is clear that a letter from an employer notifying an employee of a removal action and the reasons therefore is one of the most stigmatizing and therefore most highly private matters of concern to an employee. In order to support a removal, the reasons the Agency sets forth for the action must, by the very nature of the action, be derogatory to the employee. If, because of the sensitivity of information contained in performance appraisals, the strong privacy interests of the affected employee is recognized by the Authority and the courts, even more so should be letters dealing with an employee's removal, as in the case herein. See FAA at 347.

With regard to the General Counsel's burden under FAA, the record reveals the Union stated it was seeking the Chauvin proposal to remove letter and the removal letter to "fulfill its obligations as (Chauvin's) exclusive representative; to ensure compliance with the contract; and to obtain information to perform (its) representational duties." The Union further stated it recognized its obligation to limit the dissemination of such information. However, when a Privacy Act defense is raised to the production of data as sought herein, such considerations are no longer relevant to ascertain whether the public interest is served. See FAA at 343-344, 346 and 348. Disclosure of such data for these reasons reveals an insufficient relationship to shedding light on the Agency's performance of its statutory duties or informing citizens "what their government is up to."

In support of its contentions Counsel for the General Counsel argues:

> Unlike home addresses, disclosure of the proposal and decision letters at issue in (this case) sheds light on Respondent's performance of its statutory duties and reveals to the public what their government is up to. The requested information will indicate, when subjected to comparative scrutiny, whether Respondent is treating its employees fairly and even-handedly, and whether Respondent has complied with appropriate negotiated and statutory procedures. The requested information will thus open up to

> public scrutiny the manner in which Respondent handles its disciplinary actions. The benefits of disclosure would inure to the public at large, since a strong public interest exists in ensuring that the government treats the Federal workforce fairly, in a nondiscriminatory manner, and in compliance with appropriate laws, rules and regulations. . . .

The general assertions raised above would be applicable to the disciplinary actions made against any government employee and make available such documents to any member of the public. Indeed, the arguments raised for public scrutiny herein are similar to those raised and found unpersuasive by the Authority in FAA when treating the duty to furnish performance appraisals to a requestor. It is apparent that if Chauvin's Union activities were even a part of the reasons why Respondent decided to terminate him, the Agency would be engaging in conduct violative of section 7116(a) of the Statute. It follows therefore that reviewing the contents of the proposal to remove letter and the removal letter could shed light on the agency's performance of its duty to refrain from violating the Federal Service Labor-Management Relations Statute. Nevertheless, I suggest that before acceding to such a request without violating the Privacy Act, the Agency would have to ascertain that circumstances exist where it would be reasonable that an objective observer could believe that a Statutory violation might exist. A prerequisite would be that Chauvin had engaged in activity protected by the Statute. The amount of Union or protected activity, the nature of the activity and when the activity occurred would also be, in my view, essential considerations.

A stated above, Chauvin, was quite active while serving as a Union representative, frequently engaging in conduct protected by the Statute, including filing and processing grievances and unfair labor practice charges against Respondent. In many circumstances the termination of an employee engaged in such conduct would raise a reasonable suspicion that the employee's union activity had some part to play in the agency's decision to remove the employee, and the removal correspondence from the agency might so indicate. However, Chauvin ceased being a Union representative in early 1988 and, absent evidence to the contrary, I conclude his activities for and on behalf of the Union, including process-ing grievances, also ceased at that time. Thus, Chauvin had not been involved in Union activity from early 1988 until he received his proposal to remove in September 1993, approxi-mated five and three-quarter years. Chauvin did file an unfair labor practice charge against Respondent during that period, activity protected by the

Statute, but that charge involved Respondent's disciplining Chauvin by suspending him for one day in June 1990 for distributing written statements containing "abusive and offensive language" directed to Union President Riordan, whose qualification for the presidency Chauvin questioned and against whom Chauvin had been openly critical.[6] That matter was tried before Administrative Law Judge Eli Nash who, in his Decision found Respondent guilty of having committed an unfair labor practice against Chauvin by such conduct and inter alia, ordered the recision of the suspension. Presumably Respondent complied with Judge Nash's order and the case was closed.

Having considered the nature of Chauvin's recent statutorily protected activity and the lack of any significant current protected activity engaged in by Chauvin, and in view of Chauvin's background of being very alert and sensitive to his rights including those protected by the Statute, I conclude the expectation that either Respondent's proposal or removal letter to Chauvin contained any reference to his protected activity would be remote. The public interest in disclosure in these circumstances would be rather slight. On the other hand, as stated above, Chauvin has substantial interest in keeping private information concerning the Agency's reasons for wishing to remove him from Federal service. In these circumstances I conclude that, on balance, the public interest served by disclosing the requested documents herein is significantly outweighed by the substantial invasion of privacy that would result.

Accordingly, I conclude that disclosure of copies of the proposal to remove or the removal letter sent to Chauvin by Respondent would constitute a clearly unwarranted invasion of personal privacy within the meaning of FOIA Exemption 6. Therefore, as disclosure of the requested information is prohibited by law, I conclude Respondent's refusal to furnish the requested data is not a violation of the Statute and I recommend the Authority issue the following:

ORDER

It is hereby ordered that the Complaint in Case Nos. BY-CA-40195 and BY-CA-40987 be, and hereby is, dismissed.

Issued, Washington, DC, June 5, 1995

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6 Social Security Administration, Office of Field Operations, New York Region, 2-CA-00292 (July 31, 1991), ALJ Decision Report No. 98 (November 8, 1991).

SALVATORE J. ARRIGO
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SALVATORE J. ARRIGO, Administrative Law Judge, in Case Nos. BY-CA-40195 and BY-CA-40987, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

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Dated: June 5, 1995
Washington, DC