FEDERAL LABOR RELATIONS AUTHORITY OALJ 15-11
Office of Administrative Law Judges
WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL 215, AFL-CIO CHARGING PARTY	Case No. WA-CA-12-0407

Douglas J. Guerrin
For the General Counsel

Eric Garcia
For the Respondent

James E. Marshall
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (Authority/FLRA), Part 2423.

On April 16, 2012, the American Federation of Government Employees, Council 215, AFL-CIO (Union/Charging Party) filed an unfair labor practice (ULP) charge with the Washington Regional Office of the FLRA, against the Social Security Administration (Respondent). (G.C. Ex. 1(a)). The case was transferred to the Chicago Regional Office of the FLRA on April 17, 2012. *Id.*

On November 30, 2012, the Acting Regional Director of the Chicago Regional Office issued a Complaint and Notice of Hearing, alleging that the Respondent failed to provide information pursuant to § 7114(b)(4) of the Statute. (G.C. Ex. 1(c)). The complaint alleged that the Respondent violated §§ 7116(a)(1), (5) and (8) of the Statute by failing to timely respond to the Union's information request and by refusing to provide the Union with sanitized copies of certain employees' fiscal year (FY) 2011 performance appraisals. *Id.* The Respondent filed an answer to the complaint on February 8, 2013, and admitted certain allegations and denied others, including the allegation that it violated the Statute. (G.C. Ex. 1(d)).

On February 13, 2013, the case was transferred back to the Washington Regional Office of the Authority. (G.C. Ex. 1(g)). A hearing was held in Washington, D.C. on March 7, 2013. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel and the Respondent filed timely post-hearing briefs which have been fully considered.

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

FINDINGS OF FACT

The American Federation of Government Employees (AFGE) is a labor organization under 5 U.S.C. § 7103(a)(4) and is the certified exclusive representative of a nationwide consolidated unit of the Respondent's employees. (G.C. Exs. 1(c) & 1(d)). The Charging Party is an agent of the AFGE for the purpose of representing employees at the Respondent's Office of Disability Adjudication and Review (ODAR). *Id.* The Respondent is an agency within the meaning of 5 U.S.C. § 7103(a)(3). *Id.*

In 2005, the parties incorporated the "Performance Assessment and Communications System" (PACS) into Article 21 of their collective bargaining agreement (CBA). (Tr. 28). PACS is a performance management system that uses "uniform elements and standards" to assess "virtually" every employee's performance. (Tr. 28, 30). Most employees are rated yearly, at a level 5, 3, or 1 on each of the following "elements": (1) interpersonal skills; (2) participation; (3) demonstrates job knowledge; and (4) achieves business results. (G.C Ex. 4). A level 5 ranking is an outstanding contribution, a level 3 ranking is a successful contribution, and a level 1 ranking is not successful. *Id.*

On November 17, 2011, Cheryl Mosco, a GS-08 Case Intake Technician at the Respondent's Pittsburgh, Pennsylvania Office in Region III, filed a grievance over her FY 2011 performance appraisal. (Tr. 7-8). Mosco requested Union President James Marshall to represent her throughout the grievance. (Tr. 11-12). Marshall accepted and in December 2011, he amended the grievance to allege that Mosco was not properly rated in items 1, 2 and 4, and was discriminated against for her Union activity. (Tr. 12). Mosco is the regional vice president of the Union's Philadelphia Region and the president of AFGE Local 3610. (Tr. 14).

Apparently, efforts to resolve the grievance were unsuccessful, and Marshall invoked arbitration on the matter in February 2012. (Tr. 8; G.C. Ex. 3). One month later, on March 19th the Union requested that the Respondent provide: "[c]opies of all FY 2011 appraisals covering the rating period of October 1, 2010 through September 30, 2011 for GS-08 Case Intake Technician[s] . . . in Region III, by office location, who were rated at least a Level 5 for Items 1, 2 or 4." (Jt. Ex. 1 at 1). The request specified that the Respondent "may redact the names of the Case Intake Technicians and any other personal identifiers." *Id.* The Union stated that it required the information to "present to an arbitrator" that "Ms. Mosco was treated unfairly and inequitably with respect to how she was rated[,]" and "for the national contract negotiations of Article 21 scheduled for June 2012 to address the possible arbitrariness or inconsistencies of the Agency's evaluation methods . . . in connection with the PACS appraisal system." *Id.* at 2. The Union requested a response "no later than April 11, 2012." *Id.* at 1.

On May 29, 2012, the Respondent denied the Union's request. (Jt. Ex. 2). It stated that the request was overboard because Case Intake Technicians in other offices, rated by different supervisors, were not similarly situated to Mosco. *Id.* The Respondent also maintained that disclosure would violate the Privacy Act. *Id.* The Respondent believed that releasing the information by "office location" would result in a "de facto disclosure of individual identities" because most of the Region III offices had only one Case Intake Technician. *Id.* at 2. Lastly, the Respondent contended that the Union failed to demonstrate how "national negotiations regarding Article 21 . . . would necessitate the use of PACS information from ODAR Region III." *Id.*

On June 12, 2012, the Union sent the Respondent a clarification of its information request and asked the Respondent to reconsider. (G.C. Ex. 5 at 1). In the correspondence, the Union stated that because Mosco was appraised "on generic elements and performance standards . . . all Case Intake Technicians must be considered similarly situated in accordance with Article 21 . . . ." *Id.* The Respondent did not provide the requested information.

POSITIONS OF THE PARTIES

General Counsel

The General Counsel (GC) asserts that the Union's information request met the statutory requirements of § 7114(b)(4) and that the Respondent's failure to furnish the information violated §§ 7116(a)(1), (5) and (8) of the Statute. The GC contends that the information requested by the Union was normally maintained by the Respondent in the regular course of business, reasonably available, and does not constitute guidance, advice, counsel, or training related to collective bargaining.

The GC utilizes the analytical framework set forth in *IRS, Wash., D.C.*, 50 FLRA 661 (1995) (*IRS*) to argue that the Union articulated two particularized needs for the information and established that the information was "necessary," as defined by the Statute. The GC maintains

that the Union properly established why it needed the performance appraisals, how it would use the information, and how that use related to the Union's representational responsibilities. *Id.* at 669.

With respect to the first particularized need, the GC asserts that the Union required the information for arbitration, to establish that Mosco was treated unfairly, and the request was made in conjunction with the Union's grievance representation of Mosco. As for the second particularized need, the GC contends that the Union required the information for contract negotiations, to address arbitrariness and inconsistencies in the PACS system, and that negotiations are within the Union's representational responsibilities.

The GC refutes the Respondent's contention that only employees with the same supervisor are similarly situated, stating that the Respondent's argument is based on non-precedential Merit Systems Protection Board (MSPB) case law.

As a remedy, the GC seeks an order requiring the Respondent to provide the Union with copies of all FY 2011 appraisals, covering October 1, 2010 through September 30, 2011, for GS-08 Case Intake Technicians for Region III, broken down by office location, who received at least a level 5 for items 1, 2, or 4. The GC also requests that the Respondent post a notice and send a copy of the notice via electronic mail to all employees in Region III, informing them that it violated §§ 7116(a)(1), (5) and (8) of the Statute. The GC requests that the Regional Chief Judge, Office of Disability Adjudication and Review, Region III, sign the notice.

Respondent

The Respondent argues that it did not violate the Statute by refusing to provide copies of all FY 2011 appraisals for GS-08 Case Intake Technicians in Region III because the Union's request failed to articulate a particularized need. The Respondent maintains that the request was overbroad because the Union failed to draw a connection between Mosco's arbitration and the broad range of the information requested. The Respondent further alleges that the information is not "necessary" because GS-08 Case Intake Technicians are not "similarly situated." According to the Respondent, only employees in the same office, under the same manager, are similarly situated.

The Respondent additionally asserts that even if the Union established a particularized need, the Privacy Act prohibits the disclosure of unsanitized performance appraisals. *U.S. Dep't of Transp., FAA, New England Region, Bradley Air Traffic Control Tower, Windsor Locks, Conn.*, 51 FLRA 1054 (1996) (*FAA*). The Respondent contends that the Union requested the information by office location and that it could not release the information because it would link employees to their respective appraisals. In the Respondent's view, identification of each appraisee is unavoidable due to the small number of Case Intake Technicians in each office.

The Respondent also maintains that the Union's June 12, 2012, request for reconsideration cannot be reviewed by the Authority because it was not included in the Union's ULP charge or the complaint.

As for the remedy, the Respondent argues that an electronic posting is inappropriate because the GC did not provide physical evidence that the Respondent typically communicates via email with its bargaining unit employees. The Respondent also contends that any posting or email Order should be limited to its Pittsburgh, Pennsylvania office and signed by that office's Hearing Office Director.

PRELIMINARY MATTERS

The Respondent maintains that the Union's June 12th request for reconsideration cannot be reviewed by the Authority because the Respondent was not provided notice in the charge or the complaint.

The Authority has long held that the purpose of a charge is to initiate an investigation and as such, a charge is sufficient if it informs the Respondent of the "general nature" of the violation and does not prejudice the Respondent. *E.g. U.S. DOJ, BOP, Allenwood Fed. Prison Camp, Montgomery, Pa.*, 40 FLRA 449, 455 (1991) (*BOP*). Unlike a charge, the purpose of a complaint is to notify the Respondent of the "specific claims" against it. *Dep't of Transp., FAA, Fort Worth, Tex.*, 55 FLRA 951, 956 (1999). A complaint is valid if it bears a relationship to the charge, and is closely related to the events complained of in the charge. *BOP*, 40 FLRA at 455.

In this case, the charge notified the Respondent of the "general nature" of the violation by alleging a violation of the Statute based on the Respondent's refusal to furnish requested information. (G.C. Ex. 1(a)). Moreover, and contrary to the Respondent's contention, the complaint notified the Respondent of the "specific claims" against it. The complaint explicitly asserted that "[o]n June 12, 2012, the Union responded, in writing, to Respondent's May 29, 2012, memorandum and reiterated why it needed the [requested appraisals]." (G.C. Ex. 1(c)).

The record demonstrates that the complaint's allegation concerning the June 12th request is closely related to the charge. Both the charge and the complaint emanate from the same events: the Union's March 19, 2012, request and the Respondent's denial on May 29, 2012. The June 12th request is merely a development of the factual circumstances; its inclusion does not generate additional legal claims beyond the alleged § 7114(b)(4) violation.

Further, it is apparent that the Respondent was not prejudiced in any way. The Respondent addressed the June 12th request at the hearing and in its post-hearing brief. (Tr. 49-51 & R. Br. 11-12); *see U.S. DOJ, Office of Justice Programs*, 50 FLRA 472, 477 (1995) (finding that the Respondent was on notice of the allegations against it because it addressed them in its submission to the Authority). Accordingly, I reject the Respondent's defense and find that there is no defect in either the complaint or the charge. The June 12th correspondence will be considered.

The Respondent also asserts that the complaint in this matter should be dismissed pursuant to § 7116(d) of the Statute because the Union filed a grievance prior to filing the ULP charge in this matter. Section 7116(d) permits an aggrieved party to raise certain issues under

The grievance procedure or as a ULP charge, "but not under both procedures." 5 U.S.C. § 7116(d). An earlier-filed grievance will bar a ULP charge if "the ULP charge arose from the same set of factual circumstances as the grievance and the theory advanced in support of the ULP charge and the grievance are substantially similar." *See OLAM Sw. Air Def. Sector (TAC), Point Arena Air Force Station, Point Arena, Cal.*, 51 FLRA 797, 801-02 (1996) (citations omitted).

After reviewing the evidence, I find that the grievance cannot stand as a § 7116(d) bar to the ULP because the charge and the grievance are predicated on different facts and do not advance substantially similar theories. First, the ULP is predicated on the Respondent's failure to disclose information in June of 2012, whereas the grievance is predicated on the Respondent's alleged discrimination during FY 2011. (G.C. Exs. 1(a) & 1(c)). Second, the theory behind the grievance is a violation of the parties' CBA. (Tr. 7-8; G.C. Ex. 2). The ULP charge does not allege a violation of the parties' CBA. (G.C. Ex. 1(c)). Rather, it alleges that the Respondent violated §§ 7116(a)(1), (5) and (8) of the Statute. *Id.*; *see Overseas Educ. Ass'n v. FLRA*, 824 F.2d 61, 72 (D.C. Cir. 1987) (finding that legal theories are not substantially similar where the grievance presents a violation of a CBA and the ULP concerns a statutory violation). For the foregoing reasons, I find that § 7116(d) of the Statute does not bar this action.

ANALYSIS

Section 7114(b)(4) of the Statute requires an agency 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. 5 U.S.C. § 7114(b)(4).

In its answer to the complaint, the Respondent admitted that the requested information was normally maintained, but it denied that it does not constitute guidance, advice, counsel, or training. The Respondent did not contend at the time of the original denial, at the hearing, or in its post-hearing brief, that the information constituted guidance, advice, counsel, or training. Therefore, I will consider the Respondent to have abandoned that claim and I will not review it further.

The primary factor in dispute is whether the requested information is "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining[.]" To demonstrate that information is "necessary," a union "must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the

Statute." *IRS*, 50 FLRA at 669-70 (footnote omitted). A Union's responsibility for articulating its interests requires more than a conclusory or bare assertion. *Id.* at 670. The request must be sufficient to permit an agency to make a reasoned judgment as to whether information must be disclosed under the Statute. *Id.*

A Union is also responsible for articulating the scope of its request. *U.S. Dep't of the Air Force, Randolph AFB, San Antonio, Tex.*, 60 FLRA 261, 264 (2004) (*Randolph AFB*). For instance, if a Union seeks information that is broader than the circumstances of the request, it must establish a connection between the broader scope of the request and the particular matter referenced, or it fails to establish a particularized need. *Id.*

When faced with an information request, an Agency must respond in a timely manner or it risks violating §§ 7116(a)(1), (5) and (8) of the Statute. *Dep't of Transp., FAA, Ft. Worth, Tex.*, 57 FLRA 604, 606-07 (2001). An Agency should furnish the information, ask for clarification of the request, or identify countervailing disclosure interests. The Authority requires parties to communicate their interests in disclosing information so that each party will have time to consider and accommodate the respective positions. *IRS*, 50 FLRA at 670-71.

If the parties are unable to agree on whether, or to what extent, requested information must be provided, the Authority will find a ULP if the Union has established a particularized need and either: (1) the agency has not established a countervailing interest; or (2) the agency has established such an interest but it does not outweigh the Union's demonstration of particularized need. *Id.* at 671.

In this case, the record establishes that the Union asserted two particularized needs for the sanitized FY 2011 performance appraisals for GS-08 Case Intake Technicians in Region III: (1) to prepare for Mosco's arbitration; and (2) to prepare for imminent contract negotiations of Article 21. (Jt. Ex. 1 at 1, 2). Information requested for the purposes of grievance arbitration and contract negotiation is indisputably within the scope of collective bargaining. *See U.S. Dep't of Transp., FAA, New England Region Burlington, Mass.*, 38 FLRA 1623, 1629 (1991). Nevertheless, the information must still be "necessary" for the Union's asserted purposes.

With respect to the first particularized need, the asserted need to prepare for arbitration, I find that the Union established, with sufficient specificity, a particularized need for the requested information. *See IRS*, 50 FLRA at 669-70. The Union explained why it needed the appraisals, which was to prepare for Mosco's arbitration. (Jt. Ex. 1 at 1). It described how it would use the information; to demonstrate that Mosco was "treated unfairly and inequitably with respect to how she was rated." *Id.* Finally, the Union provided the connection to its representational responsibilities by explaining that the information would permit it to determine whether the Respondent adhered to Article 21 or discriminated against Mosco because of her protected activities. *Id.*

The Respondent contends that the Union's request fails to state a particularized need because it is overbroad. *See Randolph AFB*, 60 FLRA at 264. Indeed, the information requested by the Union (region-wide appraisals) is broader than the circumstances covered by the request (a single employee's arbitration). Also, it is not immediately apparent how Mosco's arbitration connects to the appraisals of Case Intake Technicians in different offices, supervised by different managers. However, after the Respondent denied the Union' request for information, the Union sent a clarification to the Respondent on June 12, 2012, and connected the breadth of the information to Mosco's arbitration by reminding the Respondent that Mosco was appraised on the uniform elements and performance standards of PACS, which apply to all Case Intake Technicians. As such, "all Case Intake Technicians must be considered similarly situated in accordance with Article 21 . . . ." (G.C. Ex. 5 at 1).

The Respondent did not challenge the Union's clarification regarding the scope of its request. Instead, it ignored the Union and failed to disclose the requested information. The Respondent offers no evidence or explanation for its unresponsiveness other than: "it was something that we were kind of used to seeing." (Tr. 50). Unfortunately for the Respondent, its familiarity with the Union's persistence during information requests does not aid its case. As construed by the Authority § 7114(b)(4) "requires" parties to interact for the purpose of communicating and accommodating interests. *IRS*, 50 FLRA at 670. In my opinion, the Respondent failed to display the type of dialogue envisioned by the Authority that allows parties to evaluate their respective interests in disclosure and reach agreement.

I find that the Union articulated and established a particularized need for the requested information. I conclude that the requested information is "necessary" within the meaning of § 7114(b)(4), for Mosco's arbitration.

As for the second particularized need, I find that the Union articulated and established that the requested information was necessary for the forthcoming national contract negotiations between the parties.

The Union articulated with sufficient specificity, why it needed the information (imminent national contract negotiations), the uses for which it would put the information (negotiation of Article 21), and the connection between those uses and the Union's representational responsibilities under the Statute ("to address the possible arbitrariness or inconsistencies of the Agency's evaluation methods in determining who should be rated a Level 5 for Items 1, 2 and 4 in connection with the PACS appraisal system."). (Jt. Ex. 1 at 2). The Union's reference to Article 21 reinforces its need for the information as that Article deals directly with the Respondent's responsibilities under PACS. *Library of Cong.*, 63 FLRA 515, 519 (2009) (a Union's citation to specific provisions in the CBA notifies the agency that the requested information is "necessary").

I disagree with the Respondent's contention that the requested information cannot be considered "necessary" because Case Intake Technicians in other offices are not "similarly situated," as defined by the MSPB. Information requests are numerous and dissimilar. Because

they arise from distinctive circumstances, information that may be "necessary" in one instance, may not be in another. A Union's burden under § 7114(b)(4) is to establish the necessity of requested information, under the particular circumstances, for its asserted purposes. If Unions were additionally required to prove that employees are "similarly situated" (identical job title, office, supervisor, appraiser, etc.), agencies would not be required to disclose what would otherwise be "necessary" information.

This case is illustrative. Currently, the Union has possession of only Mosco's appraisal. If § 7114(b)(4) required the Respondent to disclose only the appraisals of "similarly situated" GS-08 Case Intake Technicians, the Union would obtain *one* additional appraisal: the appraisal of the other GS-08 Case Intake Technician in the same office, who was assessed by the same supervisor as Mosco. (Tr. 6-7). Two appraisals, both completed by the same supervisor, are useless for the Union's asserted purposes of addressing the potential misapplication of a nationwide performance management system, at national contract negotiations. To determine whether PACS is being applied uniformly, it is "necessary" to compare different supervisors' application of PACS to a much larger quantity of employees, i.e. GS-08 Case Intake Technicians in Region III.

Undoubtedly, in certain circumstances, a Union will need to demonstrate that certain employees have an identical office and/or supervisor, to establish the necessity of requested information. Here, however, that showing is not warranted because the fundamental information is the supervisors' application of PACS, not the employees' performance. As stated above, the Union established, with sufficient specificity, that the imminent national contract negotiations over Article 21 necessitated the appraisals of Case Intake Technicians assessed by different supervisors.

I additionally find that the necessity of the information should have been evident to the Respondent from the surrounding circumstances. *See Veterans Admin. Cent. Office, Wash., D.C.*, 25 FLRA 633, 637 (1987) ("necessity" of information may be evident from the surrounding circumstances and not require as detailed an explanation by the Union). The record reveals that the Respondent was aware of the potential inconsistent application of PACS to its employees. PACS has been the subject of numerous arbitrations and "comes up an awful lot in grievances." (Tr. 30, 38). The proximity of the Union's request to the national contract negotiations lends further support to the information's obvious necessity. The Union requested the information just three months prior to negotiations. *See Dep't of HHS, SSA*, 21 FLRA 253, 276 (1986), *rev'd sub nom. AFGE, AFL-CIO v. FLRA*, 811 F.2d 769 (2d Cir. 1987) (where a request is made when contract negotiations are imminent, the necessity of information may be apparent). The Union even mentioned the impending date of negotiations in the request. (Jt. Ex. 1 at 2). It is evident that the Union would need employee appraisals to address the potential misapplication of a nationwide performance management system, during national contract negotiations.

In short, the Union specifically articulated to the Respondent the necessity of the information and, in my view, the necessity should have been evident to the Respondent from the surrounding circumstances.

Turning to the timeliness of the Respondent's May 29, 2012 denial, the record establishes that the Respondent failed to respond in a timely manner under the circumstances. *BOP, Lewisburg Penitentiary, Lewisburg, Pa.*, 11 FLRA 639, 642 (1983) (*BOP, Lewisburg*) (the timeliness of an agency's response depends on the circumstances). The Union requested the appraisals on March 19, 2012, three months prior to national contract negotiations. The information was necessary to prepare for national contract negotiations over Article 21. The Respondent ignored the Union's request for slightly over two months and, just weeks before negotiations, denied it.

The Authority has previously found a violation where the Respondent failed to respond in a similar timespan. *See DOD Dependents Sch., Wash., D.C.*, 19 FLRA 790, 791 (1985) *remanded as to other matters sub nom. N. Germany Area Council, Overseas Educ. Ass'n v. FLRA*, 805 F.2d 1044 (D.C. Cir. 1986), *decision on remand*, 28 FLRA 202 (1987) (violation for failing to respond for slightly over two months). In addition, the Respondent did not engage in any conduct that would preclude the finding of a violation. *See BOP, Lewisburg*, 11 FLRA at 642 (agency did not violate the Statute by responding to an information request after a two-month delay because it immediately disclosed most of the information and made a diligent effort to find the remaining information over the two months).

Furthermore, the record indicates that the Union has been limited in its ability to bargain over Article 21. *Id.* at 642 (information should be furnished in a "timely manner . . . in order to effectuate the purposes and policies of the Statute."). Negotiations over Article 21 are ongoing, despite the implementation of the parties' CBA in 2012. (Tr. 23, 29). The Respondent concedes that the parties' continue to have "fundamental disagreements on . . . some real basic [issues]" concerning Article 21. (Tr. 29-30).

Given the circumstances, the Respondent's March 29, 2012, reply was untimely and hindered the Union's ability to perform its duty as exclusive representative. As such, I find that the Respondent violated §§ 7116(a)(1), (5) and (8) of the Statute by failing to timely reply to the Union's request for information.

Finally, as for the Respondent's assertion that disclosure by office location would violate the Privacy Act, 5 U.S.C. § 552a, I note that it is well settled that the disclosure of information in sanitized form, to remove names and personal identifiers, does not violate the Privacy Act. *See, e.g., Health Care Fin. Admin.*, 56 FLRA 503, 506 (2000). In the case at hand, the Union requested the Respondent to "redact the names of the Case Intake Technicians and any other personal identifiers." (Jt. Ex. 1 at 1). Because the Union requested sanitized information, the Respondent's Privacy Act defense does not present a real issue for review. *See U.S. DOJ, INS, Border Patrol, El Paso, Tex.*, 37 FLRA 1310, 1324 (1990) (when a Union requests information

in sanitized form, it is unnecessary to determine whether disclosure would violate the Privacy Act). If the Respondent genuinely believed that marking the information by office location would act as a personal identifier, it should have redacted it, as requested, and disclosed the information pursuant to the Statute.

The Respondent correctly cites *FAA*, for the proposition that "employees have significant privacy interests in shielding their individual performance appraisals from public view." 51 FLRA at 1061. However, in *FAA*, the Union requested "*unsanitized* copies of performance appraisals" identified by "'name and position.'" *Id.* at 1056 (emphasis added). As stated above, the Union here requested the Respondent to sanitize the information by "redact[ing] the names . . . and any other personal identifiers." (Jt. Ex. 1 at 1). In the very case relied on by the Respondent, the Authority confirmed that the "[d]isclosure of sanitized . . . performance appraisal information . . . would protect against a clearly unwarranted invasion of employees' privacy[.]" *FAA*, 51 FLRA at 1062 n.6. Because the Union requested the information in a sanitized form, I reject the Respondent's defense that the Privacy Act prohibits disclosure.

I conclude that the Union met its burden of establishing a particularized need for the requested information. The Respondent did not timely establish any countervailing interests in non-disclosure. I find that the Respondent violated §§ 7116(a)(1), (5) and (8) by untimely responding to the Union's request and by refusing to furnish the Union with the necessary information.

REMEDY

The Authority has consistently held that the remedial purposes of the Statute are best served if a Notice is signed by an official designated by the Authority and not by the Respondent. *See U.S. Dep't of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, Cal.*, 36 FLRA 705, 706-07 (1990). By requiring the highest level of the Respondent's management hierarchy to sign, the Respondent acknowledges its obligations under the Statute and its intent to comply with those obligations. *Id.*

I reject the Respondent's contention that the Notice should be limited to the Pittsburgh, Pennsylvania Office and signed by someone other than the Regional Chief Judge. The Respondent admitted in its answer that the Regional Chief Judge was the individual responsible for denying the Union's request. Moreover, the Union's request was not limited to the Pittsburgh, Pennsylvania Office. The Union sought information throughout Region III for the purpose of national contract negotiations. Consistent with the remedial purposes of the Statute, the Notice will be signed by the Regional Chief Judge, Office of Disability Adjudication and Review, Region III, and be posted throughout Region III.

The Respondent also contends that an electronic posting is inappropriate because the General Counsel failed to provide physical evidence demonstrating that the Respondent communicated via email with bargaining unit employees. The Authority recently held that unfair

labor practice notices should, as a matter of course, be posted both on bulletin boards and electronically. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014). As such, I will incorporate the electronic dissemination into the Order.

CONCLUSIONS

The Respondent was obligated to furnish the "necessary" information and its failure to do so violated §§ 7116(a)(1), (5) and (8) of the Statute. Also, the Respondent also violated §§ 7116(a)(1), (5) and (8) of the Statute by failing to timely reply to the Union's March 19, 2012, information Request. Contrary to the contention made by the Respondent, disclosure of the requested information in a sanitized form as requested, does not constitute a violation of the Privacy Act. Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Social Security Administration, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the American Federation of Government Employees, Council 215, AFL-CIO (AFGE) the exclusive representative of certain of its bargaining unit employees, with sanitized copies of all performance appraisals of GS-08 Case Intake Technicians in Region III, Office of Disability Adjudication and Review, who received at least a Level 5 for items 1, 2, or 4, in FY 2011.

(b) Failing and refusing to respond in a timely manner to requests for information made pursuant to the Statute by the AFGE, Council 215.

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

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

(a) Furnish the AFGE, Council 215, the exclusive representative of certain of its bargaining unit employees, with sanitized copies of all performance appraisals of GS-08 Case Intake Technicians in Region III, Office of Disability Adjudication and Review, who received at least a Level 5 for items 1, 2, or 4, in FY 2011.

(b) Respond in a timely manner to requests for information made pursuant to the Statute by the AFGE, Council 215.

(c) Post at its Region III facilities where bargaining unit employees represented by the AFGE, Council 215 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 Regional Chief Judge, Office of Disability Adjudication and Review, Region III, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other conspicuous places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Send the Notice by electronic mail to all the AFGE, Council 215 bargaining unit employees in the Respondent's Region III offices. This Notice will be sent on the same day that the Notice is physically posted.

(e) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Washington Region, 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, D.C., December 31, 2014

Susan E. Jelen

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 Social Security Administration, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to furnish the American Federation of Government Employees, Council 215, AFL-CIO (AFGE) with sanitized copies of all performance appraisals of GS-08 Case Intake Technicians in Region III, Office of Disability Adjudication and Review, who received at least a Level 5 for items 1, 2, or 4, in FY 2011.

WE WILL NOT fail and refuse to respond in a timely manner to requests for information made pursuant to the Statute by the AFGE, Council 215.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

WE WILL furnish the AFGE, Council 215 with sanitized copies of all performance appraisals of GS-08 Case Intake Technicians in Region III, Office of Disability Adjudication and Review, who received at least a Level 5 for items 1, 2, or 4, in FY 2011.

WE WILL respond in a timely manner to requests for information made pursuant to the Statute by the AFGE, Council 215.

_____
(Agency/Respondent)

Dated: _____ 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 any of its provisions, they may communicate directly with the Regional Director, Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW., 2nd Flr., Washington, DC 20424-0001, and whose telephone number is: (202) 357-6029.