

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

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT LOUISIANA STATE OFFICE NEW ORLEANS, LOUISIANA Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3475, AFL-CIO	Case Nos. DA-CA-90596 DA-CA-90737 DA-CA-90739
Charging Party	

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. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **OCTOBER 10, 2000**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, Suite 415
Washington, DC 20424-0001

GARVIN LEE OLIVER
Administrative Law Judge

Dated: September 8, 2000
Washington, DC

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

MEMORANDUM

DATE: September 8, 2000

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, LOUISIANA STATE OFFICE
NEW ORLEANS, LOUISIANA

Respondent

and Case Nos. DA-
CA-90596 DA-
CA-90737 DA-
CA-90739

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 3475, 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

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

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Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT LOUISIANA STATE OFFICE NEW ORLEANS, LOUISIANA Respondent and	Case Nos. DA-CA-90596 DA-CA-90737 DA-CA-90739
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3475, AFL-CIO Charging Party	

Timothy J. Hartzler, Esquire
For the Respondent

Dorothy T. Pleasant, President AFGE, Local 3475
For the Charging Party

Mary A. Silvis-Larson, Esquire
For the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

These three unfair labor practice cases allege that the Respondent failed to comply with section 7114(b)(4) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(b)(4), and thereby violated sections 7116(a)(1), (5) and (8) of the Statute by failing to provide the American Federation of Government Employees, Local 3475, AFL-CIO (Union), information it requested for representational purposes.

Respondent's answers admitted the jurisdictional allegations as to the Respondent, the Union, and the charges, but denied that the requested information met all

of the statutory criteria for disclosure so that Respondent had violated the Statute.

For the reasons explained below, I conclude that a preponderance of the evidence supports the alleged violations.

A hearing was held in New Orleans, Louisiana. The parties were represented and afforded a full opportunity to be heard, to adduce relevant evidence, to examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and the General Counsel filed helpful briefs. Based on the entire record¹, including my observation of the witness and her demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

Case No. DA-CA-90596

On or about May 24, 1999, Dorothy Pleasant, President AFGE Local 3575, submitted a written request for information to Jason Gamlin, Senior Community Builder, and Frank Z. Elmer, Management Representative, with a copy to the Arbitrator, in an arbitration which had been held on April 28, 1999. The Union stated that it needed the five page, 12 category, list of information to pursue the grievance, the arbitration, to prepare its post-hearing brief or file exceptions, and to decide if it should pursue additional proceedings. This case deals only with items number four and ten of the request. (G.C. Exh. 2).

Item 4

Item 4 of the Union's request sought "all Federal statutes, CFR's, rules, regulations, HUD Department-wide policy, OPM policy, past practices, any notifications of release, and any and all written justifications" that would authorize an attorney representing the Agency the right to possess and utilize the grievant's personnel folder without her consent at the April 28, 1999 arbitration.

The Union stated that the information was needed to, among other things, determine whether the attorney abused his authority when he used an employee's personnel file without the employees consent, and, if so, whether such misconduct should be pursued as grievances, unfair labor practices, prohibited personnel practices, or EEO

1

The title of the transcript is corrected to change the Case No. "DA-CA-90569" to "DA-CA-90596."

complaints, and to seek money damages under the Privacy Act.

Respondent's Reply

On June 10, 1999, the Agency response to the request was submitted by the attorney representing the Agency in the arbitration and filed with the arbitrator. With respect to all of the requests for information generally, the response stated in a footnote that the Agency objected to the:

. . . overly broad scope of [the Union's] requests, relevancy, and the articulated purpose to gather post-hearing 'evidence.' Objection also is made because the request lacks specificity to allow the Agency to make a reasoned judgment as [to] whether certain data must be disclosed; the Union fails to articulate justifiable need and interest in the requested data; and some of the data requested is not reasonabl[y] available. (G.C. Exh. 5, p. 1-2.)

The Respondent went on to state in response to the specific request in Item 4 that it maintained an Official Personnel File (OPF) under various statutory and regulatory provisions, which were cited, and concluded that the "[d]isclosure of the OPF to an agency official who needs the information in the performance of his official duties [is] a routine use authorized under 5 U.S.C. § 552a(b)," citing two court cases. The Respondent did not provide the statutory, regulatory, or court cases cited in the response.

On April 20, 2000 and May 16, 2000, after the complaint had been filed on November 30, 1999, the Respondent provided to the Union copies of the statutes, regulations, and court cases cited in its June 10, 1999 letter as well as copies of the HUD regulation that implements the Privacy Act. The Respondent asked that the Union "specifically identify additional material that I may be able to provide." (Resp. Exh. 2, 3).

While acknowledging receipt of this material, Union President Pleasant testified that she has not received HUD policies or past practices or notifications of release, as requested, and the Union still needs that data.

Item 10

Item 10 requested signed and authorized SF-52 and SF-50 forms, all position descriptions, all justifications, and all classified documents for all accretion of duty promotions of New Orleans office employees by name, title,

series and grade in the Southwest Region from 1993 through 1998, including the accretion of duty promotions of Marvel M. Robertson and Lorraine Butler.

The Union stated it needed the information to gather evidence that, based on past practices, Lisa Abdul-Khaliq should have been promoted for performing higher-graded collateral duties for the past three years; gather evidence that all accretion of duty promotions are not based on employees qualifications; gather evidence to show that several accretion of duty promotions were issued without regard for time-in-grade requirements; gather evidence that several accretion of duty promotions were reassignments to positions with higher growth potential without competition; gather evidence that Khaliq was the victim of disparate treatment; and perform its statutory obligations to represent the grievant and enforce the collective bargaining agreement.

Union President Pleasant testified that although she went ahead and filed her post-hearing brief in the arbitration and the arbitrator rendered an opinion in favor of the grievant (Lisa Abdul-Khaliq) in September 1999, she still needs the requested information to enforce the arbitration award, to file other grievances or unfair labor practices on the part of Abdul-Khaliq based on disparate treatment for her Union activity, and to enforce fair and equal treatment under the contract for other employees.

Respondent's Reply

In addition to the general objection noted above, the Agency responded:

Please refer to the list that the Agency provided in Agency's Response to Request No. 2 of your April 22, 1999 request.

By the April 22, 1999 request, the Union had requested only the "name, title, series and grade in the Southwest Region from 1993 through 1998, including the accretion of duty promotion" and these data had been supplied by the Respondent on or about April 26, 1999 in the context of the then pending arbitration. (G.C. Exh. 17). However, unlike the April 22, 1999 request, the May 24, 1999 Union request sought all of the backup documents for all accretion of duty promotions of New Orleans office employees listed in the Agency response to the first request.

On April 20, 2000 after the complaint had been filed on November 30, 1999, the Respondent provided to the Union

documents concerning the accretion to duties promotions of Marvel Robertson, Dominick A. Pittari, and Lorraine Butler. (Resp. Exh. 2). On May 8, 2000 the Union responded that it needed the information for several others on the April 26, 1999 list, including Dorothy Pleasant, Mona Lisa Dogans, and Virginia Cockerman. (G.C. Exh. 16). On May 16, 2000 the Respondent promised to collect relevant documentation for others on the April 26, 1999 list who had received accretion of duty promotions (Resp. Exh. 3). It is undisputed that the Respondent has not produced the additional documentation.

Findings of Fact

Case No. DA-CA-90737

On or about July 9, 1999 Pleasant, President AFGE Local 3575, submitted a written request for information to the Respondent with a caption relating to a grievance concerning access to the building and workstations by employees, and failure to provide employees with keys and working swipe cards. The Union sought the following information: Documents and forms requesting and authorizing the issuance of keys; documents and forms indicating the name of the employees issued unrestricted swipe cards and keys²; invoices, documents and forms indicating each change of locks and its cost and the reason for the expenditure since 1995; and a copy of the policy, practice, rules, regulations and handbooks authorizing the selection of only certain employees to have keys to the glass doors and unrestricted swipe cards to enter and depart the building before 7:00 a.m. and after 7:00 p.m. (G.C. Exh. 6).

The Union stated the following reasons for needing the information: To pursue its grievance through arbitration and to decide if management repudiated the collective bargaining agreement; to gather evidence to decide if this matter should be pursued by additional unfair labor practice charges and/or grievances; to perform its statutory obligations of representing the bargaining unit and enforcing the agreement; to perform its rights as representatives on the safety and health committee; to determine if the assignment of keys and swipe cards to only

2

In September 1998 the Union requested information concerning the issuance of swipe cards. This request resulted in an unfair labor practice charge which was subsequently dismissed. (Resp. Exh. 4-6). The instant request for information is different as it concerns, in part, "unrestricted" swipe cards.

certain employees constitutes a bypass of the Union to deal directly with employees. (G.C. Exh. 6).

On September 16, 1999 the Respondent responded to the information request but failed to provide the information requested. Respondent stated that employees who were issued keys to HUD offices were not issued receipts for property forms; unrestricted swipe cards and keys were issued to management officials, no unrestricted swipe cards or keys were issued to bargaining unit employees; and services such as changing locks and making keys are provided by the General Service Administration (GSA) and neither HUD office or GSA receives invoices, documents, or forms. (G.C. Exh. 7).

Contrary to Respondent's memo dated September 16, 1999 which stated no bargaining unit employees have unrestricted swipe cards, Pleasant testified that as a bargaining unit employee she has an unrestricted swipe card. Pleasant also testified that forms do exist on who has a swipe card, because when she received her swipe card she had to sign a form. (Tr. 57-58).

On September 29, 1999 the Union responded to Respondent's communication and reiterated its information request regarding the swipe cards and keys. The Union identified the management official who would have initiated, maintained, and approved the information, and alleged that GSA would not have provided changes to locks or keys without documentation. (G.C. Exh. 8). Respondent failed to respond to the Union's September 29, 1999 request or otherwise provide the requested information. (Tr. 55).

Pleasant testified that GSA would be responsible to make the keys based on work requests submitted by the Activity. (Tr. 50, 52). It is noted that on the day of the hearing Respondent provided a copy of a document from GSA regarding the installation of a new swipe card system during June 2000. (Tr. 52-53; G.C. Exh. 18).

Pleasant testified that even if the swipe card system is installed the Union still needs the information as there is a pending grievance and employees still need keys to get to their workstations. Pleasant also testified that, as Union President, she serves on the safety committee and there are safety concerns including concerns for disabled employees. (Tr. 57-59).

Findings of Fact

This case involves two information requests submitted regarding changes that occurred in the Community Planning and Development Division and the Multi-Family Housing Division. On June 9, 1999 the Union submitted a demand to bargain over the changes the two divisions made regarding the realignment of work and the assignment of new workstations without notice or opportunity for the Union to bargain over the changes. Along with the Union's demand to bargain, it submitted these two information requests. (Tr. 77, G.C. Exh. 9, 10). Union President Pleasant had previously reviewed the merit staffing files for positions in these organizations with management personnel, but had not been provided the documentation. (Tr. 103).

Part 1 - Community Planning and Development Division

The information request regarding the changes in the Community Planning and Development Division was submitted to Gregory J. Hamilton, Director, Community Planning and Development and Acting State Coordinator, Romona P. Augillard, Administrative Officer, and Jason Gamlin, Senior Community Builder. The Union requested the following information: A copy of the notice of selection and release date for three employees (Denise Delay, Ira Carter and Henrietta Dobard); copy of the position description and employee performance plan and evaluation system (EPPES) for all employees being assigned new and/or different duties or workloads; copy of SF-52's, placing these three employees in a Community Planning and Development position; list of training to be provided to the employees (Delay, Carter, Dobard and Brenda Thrift); changes to the Community Planning and Development division space plans; and notice of all changes in workloads and workstations. (Tr. 77-78; G.C. Exh. 9).

The Union gave the following reasons for needing the information; enforce the collective bargaining agreement, including Article 5, Section 5.03; exercise the Union's statutory obligation to represent the bargaining unit; gather evidence that the refusal to give notice and an opportunity to bargain is a repudiation of the collective bargaining agreement justifying unfair labor practice charges, grievances, and/or repudiation of office space plans; ensure that bargaining unit employees are not being subjected to disparate treatment in allocation of workload; ensure bargaining unit employees have accurate and current position descriptions and that EPPES reflect employees actual job performance. (Tr. 78; G.C. Exh. 9). In addition, Pleasant testified that the Union needed the documents: To prepare bargaining proposals over the changes; to exercise its statutory obligations of representing the bargaining

unit; to bargain over the changes; to gather evidence to determine if the matter should be pursued through grievances or unfair labor practice charges for failing to notify the Union of changes in working conditions; to bargain over appropriate arrangements of the changes and to ensure that bargaining unit employees assigned additional duties were not victims of disparate treatment in the assignment of work. Pleasant also testified that the Union needed the position descriptions and EPPES to ensure employees were actually doing the jobs they had been selected for or whether they continued to perform the duties of their former positions. (Tr. 78-79).

On June 22, 1999 Respondent responded to the information request. The response merely stated that Pleasant had previously reviewed merit staffing files and that two positions in the Community Planning and Development division had been filled on May 23, 1999, and that a position in the Multi-Family Housing Division had been filled on June 6, 1999. No documents were provided. (G.C. Exh. 11; Tr. 80).

On September 29, 1999, the Union responded to the Respondent's June 22, 1999, memo and requested vacancy announcements for four positions, including three in the Community Planning and Development Division. The Union stated that the reason they needed the information was to enforce the collective bargaining agreement, ensure that bargaining unit employees were being treated in a fair and equitable manner and they were given the opportunity to compete for all positions advertised in the Community and Planning Development division. The Union further stated it wanted to gather evidence to determine whether the matter should be referred to the Office of Inspector General for fraud, waste, abuse and mismanagement of government resources, and to perform its statutory obligation to decide if the matter should be pursued under grievances, unfair labor practice charges or discrimination complaints. (Tr.81-82; G.C. Exh. 12).

The Respondent did not respond to the September 29, 1999 request. (Tr. 82).

Part 2 - Multi-Family Housing Division

On June 9, 1999, along with its demand to bargain over changes in working conditions in the Multi-Family Housing Division, the Union submitted an information request. The information request was in reference to the selection of Anna Barnes in a trainee position. The request sought a copy of the notice of selection of Barnes and her release

date; copy of position descriptions and EPPES of all employees being assigned new and/or different duties, including but not limited to Clara Lewis, Cheryln Wheeler, Virginia Cockerham, Stephanie Duncan and Anna Barnes; copy of the SF-52 form which placed Barnes in the project manager position; list of training to be provided; specific workload adjustments for Barnes while assigned to labor relations; length of time Barnes would be assigned to labor relations; and copies of all changes in workload and workstations. (Tr. 86; G.C. Exh. 10).

The Union stated the following reasons concerning its need for the information: To enforce HUD/AFGE agreement; exercise its statutory obligation of representing bargaining unit and its right to initiate mid-term bargaining; gather evidence that the refusal to give notice and an opportunity to bargain is a repudiation of the agreement; ensure bargaining unit employees are not being subjected to disparate treatment in allocation of workload assignments and to ensure that employees have accurate and current position descriptions and that EPPES reflect actual job performance. The Union stated that the information would be used to enforce the contract, ensure employees were being treated in a fair and equitable manner, pursue its demand to bargain over the changes in working conditions and appropriate arrangements for the implementation of these changes in working conditions. (Tr. 87; G.C. Exh. 10).

On June 22, 1999 Respondent responded to the Union's information request. Respondent's response was the same response provided for the Union's information request in reference to changes in the Community Planning and Development Division. The response merely stated that three of the five positions had been filled. No information was provided. (G.C. Exh. 11; Tr. 88).

As noted above, on September 29, 1999, the Union responded seeking vacancy announcements for four staff positions, including one in the Multi-Family Division. Among other things, as noted above, the Union stated that it needed the information to pursue the changes in working conditions in the Union's demand to bargain and to help enforce the collective bargaining agreement. (Tr. 89-90; G.C. Exh. 12). Respondent failed to respond to the September 29, 1999, request for information. (Tr. 91).

On April 14, 2000 in response to the complaint being issued and the pending hearing, Respondent's chief counsel sent a memo to the Union which stated that management was attempting to gather information responsive to the June 9 and September 29, 1999 information requests and such material would be provided on or before April 20, 2000 or

within 10 days from that date. As of the date of the hearing, May 23, 2000, the Union had not received the requested information. (Tr. 92-93; G.C. Exh. 14, 15).

Discussion and Conclusions

The Authority's Analytical Framework

Under section 7114(b)(4) of the Statute, an agency must furnish information to a union, upon request and "to the extent not prohibited by law," if that information is: (1) "normally maintained by the agency"; (2) "reasonably available"; (3) "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining"; and (4) does not constitute "guidance, advice, counsel or training."

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." *Internal Revenue Service, Washington, DC and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri*, 50 FLRA 661, 669 (1995) (*IRS, Kansas City*). Further, the union's responsibility for articulating its interests in the requested information requires more than a conclusory assertion and must permit an agency to make a reasoned judgment as to whether the disclosure of the information is required under the Statute. *Id.* at 670. The agency is responsible for establishing any countervailing anti-disclosure interests and, like the union, must do so in more than a conclusory way. *Id.*

Case No. DA-CA-90596

Item 4

Item 4 involved, in substance, a Union's request for written justifications authorizing an Agency attorney to possess and utilize an employee's personnel folder without the employee's consent.

Union President Pleasant, while acknowledging receipt from the Respondent of statutes, regulations, and court cases authorizing such access, testified that she has not received "HUD policies or past practices or notifications of release," as requested.

I conclude that HUD regulation implementing the Privacy Act was a complete response to the Union's request for "HUD policies." There is no evidence that the Union responded to the Respondent's May 16 request that it specifically identify any additional material of which it may be aware, such as "past practices, or notifications of release," to further demonstrate that such items exist and should have been furnished. Accordingly, the record demonstrates that, although untimely, the Respondent did finally furnish a full and complete response to the Union's request. The Union failed to furnish a clarification and establish the possible availability of any additional data that might exist.

Although the Respondent has now furnished the information requested, the obligation to furnish information in a timely manner attaches at the time of the request and not after the processing of an unfair labor practice charge. *U.S. Department of Justice, Office of Justice Programs*, 45 FLRA 1022 (1992) (Justice). Respondent failed to furnish the information in a timely manner, and the failure to supply information in response to a union's request for information in a timely manner violates sections 7116(a)(1), (5) and (8) of the Statute. *U.S. Department of the Treasury, United States Customs Service, Southwest Region, Houston, Texas*, 43 FLRA 1362 (1992); *Justice*, 45 FLRA at 1026-27.

Item 10

Item 10 of the May 24, 1999 Union request sought, in substance, all of the backup documents for all accretion of duty promotions in the New Orleans office. After the complaint was filed the Respondent provided some, but not all, of the requested data. Respondent now asserts that the request is moot as it involved the resolved arbitration of one individual and the Union failed to establish a further particularized need.

The record reflects that, during the arbitration, the Union became aware of other employees who had received accretion of duty promotions and subsequently requested the information in item 10, indicating in the initial request that it was also referring to other individuals besides the grievant and specifically identifying several additional individuals in subsequent correspondence. The Union stated, in part, that it needed the information to gather evidence that all accretion of duty promotions are not based on employees qualifications; gather evidence to show that several accretion of duty promotions were issued without regard for time-in-grade requirements; and gather evidence that several accretion of duty promotions were reassignments

to positions with higher growth potential without competition.

I conclude that the Union articulated its need with the requisite particularity and provided sufficient information for the Respondent to make a reasoned judgment concerning disclosure. "[I]f the Respondent was unclear about the reason the Union needed the requested information, then the Respondent should have sought clarification from the Union." *Health Care Financing Administration*, 56 FLRA No. 79 slip op. at 11, n.3 (July 26, 2000) (HCF A).

Respondent violated sections 7116(a)(1), (5) and (8) by failing to furnish all of the requested information and, as to the information it did furnish, by failing to furnish it in a timely manner.

Case No. DA-CA-90737

The information requested in this case concerns a variety of documents dealing with access to the HUD space in New Orleans, including the issuance of keys and swipe cards. The Respondent contends that the Union failed to establish a particularized need, and the underlying objective of the request, access to the Agency work space, will be made moot by the installation of the card reader system.

The Union's request mentioned a grievance or possible grievance relating to access to the building or workstations and failure to provide employees with keys and working swipe cards. As Counsel for the General Counsel points out, the future alleviation of possible employee access problems by the installation of a card reader system will not necessarily resolve the grievance and does not make moot Respondent's statutory obligation to provide information requested under the Statute at the time it was requested and the responsibility of the Authority to enter an order enforcing that obligation.

I conclude that the Union articulated its need with the requisite particularity and provided sufficient information for the Respondent to make a reasoned judgment concerning disclosure. The Union referred, among other things, to its need for the information to pursue the grievance or unfair labor practices and to perform its responsibilities on the safety and health committee. As set forth above, the Union supplemented information at the hearing indicating that the documents exist which requires, at least, a further response from the Respondent.

Although the language of Respondent's initial response is unclear, even if it sufficiently indicated that no documents existed concerning the issuance of keys, that no unrestricted swipe cards were issued to bargaining unit employees, and that neither it nor GSA had any documentation concerning changing locks or keys, the Union disputed this in its reply of September 29, 1999. The Union named the specific management officials who would have the desired information and alleged that GSA would not change locks or make keys without documentation. It was then incumbent upon the Respondent to conduct a further search or respond in some manner to the Union's additional information request. As the Authority stated in *IRS, Kansas City*, 50 FLRA at 670, "[w]e conclude that applying a standard which requires parties to articulate and exchange their respective interests in disclosing information serves several important purposes. It 'facilitates and encourages the amicable settlements of disputes . . . ' and, thereby, effectuates the purposes and policies of the Statute. 5 U.S.C. § 7101(a)(1)(C). It also facilitates the exchange of information, with the result that both parties' abilities to effectively and timely discharge their collective bargaining responsibilities under the Statute are enhanced. In addition, it permits the parties to consider and, as appropriate, accommodate their respective interests and attempt to reach agreement on the extent to which requested information is disclosed."

It is concluded that the Respondent violated sections 7116(a)(1), (5) and (8) by not supplying the requested information or clarifying that the information did not exist.

Case No. DA-CA-90739

The Respondent contends that the June 9 and September 29, 1999 requests for information concerning changes in two divisions also failed to establish a particularized need for the information.

I conclude that the Union articulated its need with the requisite particularity and provided sufficient information for the Respondent to make a reasoned judgment concerning disclosure. As noted above, "[I]f the Respondent was unclear about the reason the Union needed the requested information, then the Respondent should have sought clarification from the Union." *HCFA*, supra.

The Respondent's June 22, 1999 response was basically non-responsive to the Union's request for specific documents. Its claim that the Union president had

previously reviewed some of the requested documents did not satisfy its obligation to furnish the information.

Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, El Paso, Texas, 43 FLRA 697, 708 (1991) *rev'd and enforcement denied on other grounds sub nom. DOJ, INS v. FLRA*, 991 F.2d 285 (5th Cir. 1993).³ The Respondent failed to establish any countervailing anti-disclosure interests, and failed to respond at all to the September 29, 1999 request.

The record establishes that, together with the above-resolved contentions of the Respondent, the statutory requirements for disclosure of the information in these three cases have been met. The Respondent's refusal to respond or to provide the requested information in a timely manner was inconsistent with its obligations under section 7114(b)(4) of the Statute and therefore violated sections 7116(a)(1), (5) and (8) of the Statute, as alleged.

Counsel for the General Counsel requests that a notice to all employees be signed by Louis Ybarra, Acting Secretary Representative, Fort Worth, Texas, rather than Jason Gamlin, Senior Community Builder, the person in the New Orleans office normally responsible for providing the Union with information. Union President Pleasant testified that Mr. Gamlin was responsible for the failure to supply the information in these cases, failed to comply with a settlement agreement in January 1999 to provide information which was first requested in 1998, and has failed to comply with other settlement agreements.

As part of its remedial orders, the Authority typically directs the posting of a notice signed by the highest official of the activity responsible for the violation. *E.g., U.S. Department of Veterans Affairs, Washington, DC*, 48 FLRA 1400, 1402 (1994). The Authority has stated that by requiring the highest official to sign the notice, a respondent "signif[ies] that the Respondent acknowledges its obligations under the Statute and intends to comply with those obligations." *Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center*,

3

The Authority held in *Veterans Administration Regional Office, Denver, Colorado*, 10 FLRA 453, 456-57 (1982) that the requirement under section 7114(b)(4)(B) that an agency "furnish" information means to "give" a single copy of the data without charge. However, the Authority also noted recently in *IRS, Kansas City*, 50 FLRA at 671, that it expected the parties to consider "alternative forms or means of disclosure that may satisfy both a union's information needs and an agency's interests in information."

McClellan Air Force Base, California, 35 FLRA 217, 220 (1990). Accordingly, consistent with Authority precedent, the recommended order will require the highest official of the activity, the Senior Community Builder, to sign the notice. *U.S. Department of Transportation, Federal Aviation Administration, Standiford Air Traffic Control Tower, Louisville, Kentucky*, 53 FLRA 312, 322 (1997). Of course, voluntary compliance with a final order of the Authority is expected, and any failure to comply with a final order of the Authority would be appropriately raised at the compliance stage of the proceedings to the Regional Director pursuant to 5 C.F.R. § 2423.40(e).

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

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, it is hereby ordered that the United States Department of Housing and Urban Development, Louisiana State Office, New Orleans, Louisiana, shall:

1. Cease and desist from:

(a) Failing to furnish information requested by the American Federation of Government Employees, Local 3475, AFL-CIO, under the Statute in a timely manner.

(b) Failing to respond to information requests submitted by the American Federation of Government Employees, Local 3475, AFL-CIO, under the Statute in a timely manner.

(c) In any like or related manner, interfering with, restraining, or coercing its 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 the American Federation of Government Employees, Local 3475, AFL-CIO, the remaining data it requested concerning Item 10 of its request on May 24, 1999 and the remaining information concerning its requests dated June 9, July 9, and September 29, 1999.

(b) Post at its facilities in New Orleans, Louisiana, where bargaining unit employees represented by

the American Federation of Government Employees, Local 3475, AFL-CIO 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 Senior Community Builder, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other 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.

(c) 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 herewith.

Issued, Washington, DC, September 8, 2000.

GARVIN LEE OLIVER
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 United States Department of Housing and Urban Development, Louisiana State Office, New Orleans, Louisiana, 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 to provide the American Federation of Government Employees, Local 3475, AFL-CIO, the exclusive representative of a unit of our employees, in a timely manner, information requested for representational purposes in accordance with section 7114(b)(4) of the Statute.

WE WILL NOT fail to respond, in a timely manner, to information requests submitted by the American Federation Government Employees, Local 3475, AFL-CIO, for representational purposes in accordance with section 7114(b)(4) of the Statute.

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

WE WILL furnish the American Federation of Government Employees, Local 3475, AFL-CIO, the remaining data it requested concerning Item 10 of its request on May 24, 1999 and the remaining information concerning its requests dated June 9, July 9, and September 29, 1999.

WE WILL respond to information requests, in a timely manner,

submitted by the American Federation Government Employees, Local 3475, AFL-CIO, and we will provide information requested for representational purposes in accordance with section 7114(b)(4) of the Statute.

(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 any of 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 and whose telephone number is: (214)767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case Nos. DA-CA-90596, DA-CA-90737 & DA-CA-90739, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Mary Silvis-Larson, Esquire
Federal Labor Relations Authority
525 Griffin Street, Suite 926
Dallas, TX 75202

P168-060-223

Timothy Hartzler, Chief Counsel
HUD, Suite 100
625 Silver Avenue, SW.
Albuquerque, NM 87102

P168-060-224

Dorothy Pleasant, Representative
AFGE, Local 3475
P.O. Box 56445
New Orleans, LA 70156

P168-060-225

REGULAR MAIL:

President
AFGE, AFL-CIO
80 F Street, NW.
Washington, DC 20001

CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: SEPTEMBER 8, 2000
WASHINGTON, DC