

UNITED STATES OF AMERICA FEDERAL LABOR RELATIONS AUTHORITY CHARGE AGAINST AN AGENCY	FOR FLRA USE ONLY Date Filed: Case Number:
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Charged Activity or Agency**Name:** DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Headquarters**Address:** 451 7th Street, SW**Phone No.:** (202) 402-2087 **Fax No.:****Charged Activity or Agency Contact Information****Email:** joseph.sullivan@hud.gov**Name:** Mr. Joseph Sullivan**Title:** Director**Address:** 451 7th Street, SW, Room 2150, Washington, DC 20410**Phone No.:** (202) 402-2087 **Fax No.:****Charging Party (Labor Organization or Individual)****Name:** AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**Address:** 451 7th Street, SW**Phone No.:** (202) 402-5763 **Fax No.:****Charging Party Contact Information****Email:** mark.l.matulef@hud.gov**Name:** Dr. Mark L Matulef**Title:** Chief Steward**Address:** 451 7th Street, SW, Room 10249, Washington, DC 20410**Phone No.:** (202) 402-5763 **Fax No.:** (202) 708-2537**5. Which subsection(s) of 5.U.S.C. 7116(a) do you believe have been violated?**

(a)(1)

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles:

The Agency has refused to provide information to the Union in preparation for mid-term bargaining, as defined by Article 49 of the collective bargaining agreement between HUD and AFGE Council 222 (the Contract). This information is essential for bargaining the implementation and impact of policies, practices, and procedures incorporated in the Agency's Personal Security Handbook 755.1. Section 49.02 of the Contract says, in particular, the Agency and Union will bargain over proposed changes in policies, practices, and procedures. Although the Agency has stated that it has no current policies, practices, and procedures related to the subject matter of the Handbook, this is not the case. The subject matter of the Handbook covers ongoing Agency (and government-wide), although the Agency may not have prepared written policies or procedures. Little information on these operations has been provided to employees in particular the Agency's policies, procedures, and practices concerning review of employees for suitability under Chapter 2 of the Handbook. The Agency has established already an Office of Adjudications that operates in the area of suitability reviews. Operations by this office can include actions against employees. By not providing information on the current policies, procedures, and practices in areas covered by the Handbook, the Union will not be able to assess the impact of the proposed changes to policies and procedures proposed in the Handbook. What the Agency has done, in essence, is to deny the Union baseline information on current policies, practices, and procedures.

On behalf of Council 222, I am filing this ULP charge. I will provide documentation in support of the charge by attaching one or more files.

The Union submitted four information requests in accordance with 5 U.S.C. 7114(b)(4), each time providing greater clarification of the information requested and providing a more particularized need for the information. It should have been clear from the outset, however, that the information was requested in support of bargaining over the impact and implementation of the handbook for example, in order to develop proposals relevant to the Agency's programs covered by the handbook.

The Agency repeatedly rebuffed the information request, arguing variously:

Lack of a particularized need

Insufficient particularized need

Non-negotiability of certain subjects of the Handbook (despite providing the Union notice of the handbook and inviting bargaining on its impact and implementation)

Mischaracterization of the purpose of information requests as related to position classification

Lack of explanation of how the Union would use the information

These arguments are unfounded. The Union has provided detailed statements of particularized need in successive requests for information. The implementation and impact of the Handbook is already the subject of pending negotiations. The Union is not seeking information related to the classification of positions. The Union does not have to provide the Agency with its bargaining strategy prior to negotiations.

The following is a summary of key dates and communications between the Agency and the Union concerning the information request:

May 26, 2016. The Union files its first information request. The request specifies the need for the information as preparation for mid-term bargaining, including the need to know how the Handbook departs from current policies, practices, and procedures.

June 9, 2016. The Agency provides a relatively small amount of information, but refuses to provide all of the information, stating that the Union failed to specify a particularized need. The Agency states that it has no current policy in the subject matter covered by the Handbook. Also, the Agency states that the Handbook codifies the requirements of all executive agencies, in particular suitability reviews.

June 14, 2016. The Union files its second information request and Demand to Bargain the impact and implementation of the Handbook. The request reiterates the particularized need as preparation for mid-term bargaining. The Union clarifies its need for the information in order to explain the nature, scope, and rationale for the proposed change in policies, practices, and procedures under the Contract at Section 49.03(4). The Union's communication observes that the Agency's response indicates that there are already policies and practices in compliance with government-wide regulations.

June 22, 2016. The Agency provides another small amount of information, but continues to assert that the Union has not specified a particularized need. The Agency adds that the Union cannot bargain on security and suitability. Also, the Agency states, incorrectly, that the Union is requesting classification of certain positions, and the Agency questions how the information request is related to the Union's representational duties.

June 27, 2016. The Union responds that it was not seeking classification of positions or information about security and suitability compliance, but information about the impact of the policies, practices, and procedures on the bargaining unit.

July 6, 2016. The Union files its third information request. In response to the Agency's arguments against releasing the information, the Union states that upcoming bargaining is over the impact of the security policy, not the policy itself, and to ensure that employees receive appropriate Union representation in actions against them by the Agency.

July 27, 2016. The Union files its fourth information request, providing greater detail on its need for the information. Also, the Union amends its information request to obtain information on the number of

bargaining unit employees covered by suitability reviews, adjudications, and actions against employees based on such reviews and adjudications, as well as the policies, procedures, protocols, and forms used in such reviews, adjudications, and actions.

July 27, 2016. The Agency responds by stating that the Agency and Union need to schedule negotiations, and does not provide any more information.

August 5, 2016. The Union informs the Agency in an e-mail between chief negotiators that it has still not received information in response to its July 6 information request.

September 8, 2016. The Union informs the Agency in an e-mail between the chief negotiators that it has still not received information requested. The messages points out also that the Agency has not responded to all of the information requests.

September 8, 2016. The Agency sends an e-mail between the chief negotiators on planned negotiations but does not address the information request.

Chief negotiators are Jerry Gross for the Union and Anita Crews, Human Resources Specialist, for the Agency.

The following is a discussion of the bases for the Union's charge:

The Agency failed to abide by the terms of the contract with respect to information requests as part of the mid-term bargaining process. Under Section 49.03(4), Information to the Union on Mid-Term Changes, the Contract states that the notice of proposed changes in policy or past practice must contain:

- (a) Copy of the current policy or past practice;
- (b) The nature, scope, and rationale for the proposed change;
- (c) A copy or statement of the proposed new policy or practice; and
- (d) The proposed implementation date.

The Agency has not provided information on the current policy or past practice. In its response to the Union on June 9, the Agency said it had no current policy. Yet, the Union knows that the Agency has conducted suitability adjudications through its representational activities so, there must be a current policy or practice. Furthermore, the Agency has said that the Handbook implements government-wide requirements that are not new requirements. The Union's information request seeks information on the number of investigations, adjudications, and actions against employees within the past five years in order to learn more about current policies and practices, and in order to effectively determine the impact of the proposed policy and procedures. Implicit in Section 49.03 is the right of the Union to request information related to mid-term bargaining. The section states, in relevant part: Any requests for further information by the Union shall not delay the commencement of negotiations. Once negotiations begin, the parties may modify their initial proposals and/or submit counter-proposals upon receipt of

previously unavailable information related to the scope of the negotiations. The Agency has stated its opposition to providing information requested by the Union. At this time, the Union is not seeking FLRA involvement in whether the Agency is meeting its other mid-term bargaining obligations under Article 49 of the Contract, although the Agency's refusal to provide information could be viewed as an anticipated breach of the Contract.

The Union provided sufficient particularized need for the information. The information requested is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. The Union has provided approximately 30 pages of justification for requesting information related to the subject matter of the Handbook. The Union's request is based, largely, on the need to compare current and proposed policies, practices, and procedures, in order to determine the impact of these changes as provided for in Article 49 of the Contract. Furthermore, the Union needs the information to determine any regional or local impact of the policy, practice, and procedure changes, which might affect the right to bargain by AFGE's local HUD unions or groups of local HUD unions under Council 222's regional structure. The information request goes also to the scope of the Handbook's impact for example, by addressing the positions affected by various provisions of the Handbook and the geographic location of these positions. Also, the information request goes to the Union's representational duties. The Union does not receive notice of investigations or adjudications related to the subject matter of the Handbook, and it is not clear that the Union receives notice on a regular basis of actions against employees arising from such investigations or adjudications. The bargaining unit is deprived of the Union's full representation when the Union is not informed of agency activities that concern the investigation, adjudication of concerns, or actions against bargaining unit employees. Union communications of May 6, June 14, July 6, and July 27 provide sufficient particularized need to support the information request.

The Agency's responses do not contain sufficient bases for protecting the information requested. The Agency has not provided evidence in support of refusal to provide the information requested. On the contrary, the Agency has made only general statements that it will not provide the information because the Union cannot bargain over security policies. In addition, the Agency's own practices indicate that it will negotiate with the Union over the implementation and impact of security matters. For example, the Contract ratified in 2015 incorporates MOUs and Supplements on implementation of a homeland security Presidential Directive and PIV cards, negotiated under the previous contract.

The Agency's rejection of the request was based on misstatements about what the Union was requesting. The Agency stated in its June 22 memo that the Union was requesting classification of positions and information about security programs. The Union responded on June 27 by stating that it was not seeking position classifications or information about security programs.

The Agency is not entitled to a statement of need that is so specific that it reveals the Union's negotiating strategy. The Agency's June 9 response suggests that the Agency has a right to know how the Union plans to use the information in upcoming negotiations and that it would reevaluate the request if the Union provided this information. The Agency does not have a right to this information from the Union under the Labor-Management Statute or the Contract. There is nothing in law that requires the Union to reveal its negotiations strategy, other than provisions in Article 49 related to the Union's presentation of proposals. The Agency is not entitled to greater detail on how the Union plans to use the information it has requested. The Union must provide particularized need, which it has done by stating that the information will be used to prepare for upcoming mid-term bargaining.

7. Have you or anyone else raised this matter in any other procedure?

No

If yes, where?

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON ALL PERSONS IDENTIFIED IN BOX #3 BY:

Email
In Person

Fax
Comm.Delivery

First Class Mail
Certified Mail

Dr. Mark L Matulef

Signed: Dr. Mark L Matulef

Type or Print your name

Your Signature

Date



American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

451 7th Street, SW, Suite 3172
Washington, DC 20410

Holly Salamido, President
E-mail: Holly.Salamido@hud.gov

Phone: 202-202-5243
Fax: 202-708-7638

May 26, 2016

MEMORANDUM FOR: Anita O. Crews, Human Resources Specialist, Employee & Labor Relations Division

FROM: Jerry Gross, Steward, AFGE Council 222 of HUD Locals

SUBJECT: Demand to Bargain and Request for Information – Draft Personnel Security and Suitability Policy and Procedures Handbook 755.1

This is in response to the Department's Article 49 Notice of May 17, 2016, regarding HUD's proposal to implement a new Personnel Security and Suitability Policy and Procedures Handbook.

Council 222 provides the following request for information and preliminary demands to bargain over the proposed implementation of the Personnel Security and Suitability Policy and Procedures Handbook.

1. **Written Responses:** Management shall provide written responses regarding the Union's proposals provided below within five business days of receipt of this memo.
2. **Meeting Time:** Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating once all requested information has been provided. Negotiations shall not begin until all requested information has been supplied to the Union.
3. **Status Quo:** The status quo will remain and the Department will not implement any of the changes associated with the new handbook until all bargaining is completed in accordance with the Agreement.
4. **Notice to Union:** The Department shall notify Council 222 when actions affect more than one Local or members of the bargaining unit in general, and shall notify each individual Local when actions affect one or more of that Local's bargaining unit. Notice shall be provided as soon as determinations are made that will affect one or more bargaining unit employees, and no later than the time the employees or their supervisors or managers are notified of any current, pending, or proposed actions.
5. **Accountability and Identification:** All correspondence sent by the Department, including the Personnel Security Division, related to personnel security and suitability matters shall include the name of the responsible official.
6. **Employee Rights:** All correspondence sent by the Department related to an individual's personnel security and/or suitability shall include information about the employee's rights, include their rights to seek help and representation from the Union.

7. Position Designation Requirements: The Department shall notify the Union any time a sensitivity designation or security clearance level for an existing bargaining unit position is changed if that change may affect an incumbent's ability to continue serving in that position or that change requires the employee to be subject to a new investigation.
8. Investigations: The Department shall notify the Union any time a bargaining unit employee is required to undergo a new or post-appointment investigation.
9. Suitability Determinations: The Department shall notify the Union any time a bargaining unit employee's suitability is investigated or referred to OPM or another agency or contractor for investigation.
10. Information Status: The Department shall keep the Union and affected employees informed of the status of any ongoing investigations. The Department shall provide written updates no less than monthly and shall immediately notify the Union and affected employees of the final determination when an investigation is completed. The Department shall provide a complete copy of all investigative reports and their conclusions and recommendations, whether prepared by the Department, OPM, or another agency or contractor to the employee and the Union immediately upon receipt or completion of the report.
11. Accuracy of Information: The Department shall ensure that all information used in an investigation or referred to OPM or another agency or contractor is complete and accurate.
12. Treatment of Employees: The Department shall ensure that all actions taken, including investigations, referrals to OPM, adverse actions, and placement on administrative leave are appropriate and applicable to the employee's position and alleged actions. The Department shall not place employees on administrative leave without specific evidence that the employee poses a threat to other employees, themselves, government property or government data. Barring those situations, all employees shall be treated as "innocent until found guilty;" i.e., until an investigation is concluded by the Department, OPM, or another agency or contractor and a finding that the employee poses a security risk or is unsuitable for federal employment is issued, the employee will be permitted to continue in the present position and will be treated with respect and courtesy.
13. No Discrimination or Retaliation: The Department shall not in any way discriminate against or retaliate against any employee who is or has undergone a security investigation or suitability determination. Until a finding that the employee poses a security risk or is unsuitable for federal employment is issued, the employee will continue to have all the usual benefits of any other employee, including but not limited to within-grade increases, training opportunities, performance bonuses. The Department shall not apply different performance standards to any affected employee than it does to other employees with similar position descriptions.
14. Handbook Applicability: The parties agree that Handbook 755.1, dated ____, provides the responsibilities and processes for the Department and employees to follow regarding

personnel security and suitability matters. Where there is a conflict between this Agreement and the Departmental policies, this Agreement will prevail, provided that there is no conflict between this Agreement and requirements under law, statute, or government-wide regulations. The Department shall immediately notify the Union any time that changes in law, statute, or government-wide regulations require a modification of the Handbook or Department procedures and policies.

The following is a Union request for information under U.S. Code § 7114 (b)(4):

Please provide the following information to Jerry Gross, Steward, AFGE Council 222, jerry.gross@hud.gov. I may be reached at 703-280-9063 or 202-402-5199, mailing address: 451 7th Street, S.W., Room 3142, Washington, DC 20410.

INFORMATION REQUESTED:

1. Current Practice: The Department has stated that there is no current policy in effect on this matter. Please provide a description of how the proposed handbook changes the handling of security and suitability matters within the Agency. **PARTICULARIZED NEED**: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.
2. Government Mandate: Please provide a copy of any and all materials, documents, directions, and/or Executive Orders from OMB, OPM, the White House, or any other agency mandating, directing, or proposing the issuance of this handbook. **PARTICULARIZED NEED**: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.
3. Sensitivity and Security Level Designations: By geographic location and office, the current number of bargaining unit positions, the position description numbers, and the names of incumbents for each sensitivity designation or security clearance level. **PARTICULARIZED NEED**: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.
4. Investigations: For each bargaining unit employee who has been investigated for security and/or suitability concerns during the past four years, please provide:
 - a. The geographic location and office of the employee.

- b. The position title, position description number, and grade of the employee.
- c. The beginning and ending dates of each investigation, or, if the investigation is still open, information to that effect.
- d. The agency conducting the investigation; e.g., HUD, OPM, contractor (by name).
- e. The reason for the investigation; e.g., tax liens, false statements on hiring documents, arrests.
- f. The results of the investigation.
- g. Action taken during the course of the investigation, if any; e.g., reassignment, administrative leave, including start and end or effective dates of such action.
- h. The sex, race, and ethnic identification of the employee.

PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit. The Union also requires the information to understand how investigations and suitability determinations currently affect bargaining unit personnel, in order to both formulate proposals and responses and also to determine if employees are treated fairly and equitable. The Union requests information for the past four years in order to include both the current two years of the Department's present administration and the two years before that, to provide a comprehensive picture of how security matters are handled by the Agency.

PRIVACY ACT: As no personally identifiable information is requested, the Privacy Act does not apply to this information request.

PUBLIC INTEREST: Disclosure of the requested information would provide both employees and the public with a better understanding of how the Department handles security and suitability matters. In addition to using the information in the context of this negotiation, the Union is considering preparing a report for the bargaining unit and other interested parties.

These are preliminary proposals only, and the Union reserves the right to bargain or amend or add proposals, including information requests, in accordance with Article 49 of the collective bargaining agreement. I will serve as the chief negotiator and contact for this matter.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

MEMORANDUM FOR: Jerry Gross, AFGE, Local 476

FROM: Anita O Crews, HR Specialist, Labor and Employee Relations

SUBJECT: Demand to Bargain and Request for Information – Draft Personnel Security and Suitability Policy and Procedures Handbook 755.1

This is a response to your demand to bargain and information request sent to me on May 26, 2016 regarding HUD's proposal to implement a new Personnel Security and Suitability Policy and Procedures Handbook.

You submitted the following demand to bargain proposals:

1. **Written Responses:** Management shall provide written responses regarding the Union's proposals provided below within five business days of receipt of this memo.

Management Response: There is no policy or agreement that requires management to respond to proposal(s) in five days.

2. **Meeting Time:** Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating once all requested information has been provided. Negotiations shall not begin until all requested information has been supplied to the Union.

Management Response: Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating. Covered by Article 49.03

3. **Status Quo:** The status quo will remain and the Department will not implement any of the changes associated with the new handbook until all bargaining is completed in accordance with the Agreement.

Management Response: Covered by Article 49.07(1)

4. **Notice to Union:** The Department shall notify Council 222 when actions affect more than one Local or members of the bargaining unit in general, and shall notify each individual Local when actions affect one or more of that Local's bargaining unit. Notice shall be provided as soon as determinations are made that will affect one or more bargaining unit employees, and no later than the time the employees or their supervisors or managers are notified of any current, pending, or proposed actions.

Management Response: Covered by Article 49.03

5. **Accountability and Identification:** All correspondence sent by the Department, including the Personnel Security Division, related to personnel security and suitability matters shall include the name of the responsible official.

Management Response: All correspondence sent by the Department, including the Personnel Security Division, related to personnel security and suitability matters shall include the name of the responsible official and/or agency.

6. **Employee Rights:** All correspondence sent by the Department related to an individual's personnel security and/or suitability shall include information about the employee's rights, include their rights to seek help and representation from the Union.

Management Rights: Covered by Article 1

7. **Position Designation Requirements:** The Department shall notify the Union any time a sensitivity designation or security clearance level for an existing bargaining unit position is changed if that change may affect an incumbent's ability to continue serving in that position or that change requires the employee to be subject to a new investigation.

Management Response: Management Agree

8. **Investigations:** The Department shall notify the Union any time a bargaining unit employee is required to undergo a new or post-appointment investigation.

Management Response: The Department shall notify the bargaining unit employee when he/she is required to undergo a new or post-appointment investigation unless it falls under Article 1.03.

9. **Suitability Determinations:** The Department shall notify the Union any time a bargaining unit employee's suitability is investigated or referred to OPM or another agency or contractor for investigation.

Management Response: The Department shall notify the bargaining unit employee when their suitability status is being investigated or referred to OPM or another agency or contractor for investigation unless it falls under Article 1.03.

10. **Information Status:** The Department shall keep the Union and affected employees informed of the status of any ongoing investigations. The Department shall provide written updates no less than monthly and shall immediately notify the Union and affected employees of the final determination when an investigation is completed. The Department shall provide a complete copy of all investigative reports and their conclusions and recommendations, whether prepared by the Department, OPM, or another agency or contractor to the employee and the Union immediately upon receipt or completion of the report.

Management Response: The Department shall provide a complete copy of all investigative reports and their conclusions and recommendations, whether prepared by the Department, OPM, or another agency or contractor to the employee and the Union immediately upon receipt or completion of the report. Following the guidelines of 5 CFR 731.103

11. **Accuracy of Information:** The Department shall ensure that all information used in an investigation or referred to OPM or another agency or contractor is complete and accurate.

Management Response: Agree

12. **Treatment of Employees:** The Department shall ensure that all actions taken, including investigations, referrals to OPM, adverse actions, and placement on administrative leave are appropriate and applicable to the employee's position and alleged actions. The Department shall not place employees on administrative leave without specific evidence that the employee poses a threat to other employees, themselves, government property, or government data. Barring those situations, all employees shall be treated as "innocent until found guilty;" i.e., until an investigation is concluded by the Department, OPM, or another agency or contractor and a finding that the employee poses a security risk or is unsuitable for federal employment is issued, the employee will be permitted to continue in the present position and will be treated with respect and courtesy.

Management Response: Agree – Change "employee" to "AFGE BU"

13. **No Discrimination or Retaliation:** The Department shall not in any way discriminate against or retaliate against any employee who is or has undergone a security investigation or suitability determination. Until a finding that the employee poses a security risk or is unsuitable for federal employment is issued, the employee will continue to have all the usual benefits of any other employee, including but not limited to within-grade increases, training opportunities, performance bonuses. The Department shall not apply different performance standards to any affected employee than it does to other employees with similar position descriptions.

Management Response: Agree – Change "employee" to "AFGE BU".

14. **Handbook Applicability:** The parties agree that Handbook 755.1, dated ____, provides the responsibilities and processes for the Department and employees to follow regarding personnel security and suitability matters. Where there is a conflict between this Agreement and the Departmental policies, this Agreement will prevail, provided that there is no conflict between this Agreement and requirements under law, statute, or government-wide regulations. The Department shall immediately notify the Union any time that changes in law, statute, or government-wide regulations require a modification of the Handbook or Department procedures and policies.

Management Response: Agree

The doctrine was established in the FLRA decision in *Social Security Administration*, 93 FLRR 1-1148, 47 FLRA 1004 (FLRA 1993). The FLRA explained that an agency should be free from the requirement to continue negotiations over conditions of employment already resolved through previous bargaining.

INFORMATION REQUESTED:

1. **Current Practice:** The Department has stated that there is no current policy in effect on this matter. Please provide a description of how the proposed handbook changes the handling of security and suitability matters within the Agency. **PARTICULARIZED NEED:** The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

Management Response: Agency follows regulatory suitability/security, IAW 5 CFR 731.

<http://www.ecfr.gov/cgi-bin/text-idx?SID=7a93d6f09f8af6b032477946d43b3776&mc=true&node=pt5.2.731&rgn=div5>

2. **Government Mandate:** Please provide a copy of any and all materials, documents, directions, and/or Executive Orders from OMB, OPM, the White House, or any other agency mandating, directing, or proposing the issuance of this handbook.
PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

Management Response: 5 CFR 731.102 – see link above

3. **Sensitivity and Security Level Designations:** By geographic location and office, the current number of bargaining unit positions, the position description numbers, and the names of incumbents for each sensitivity designation or security clearance level.
PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

Management Response: **Please see message below.

4. **Investigations:** For each bargaining unit employee who has been investigated for security and/or suitability concerns during the past four years, please provide:
 - a. The geographic location and office of the employee.
 - b. The position title, position description number, and grade of the employee.
 - c. The beginning and ending dates of each investigation, or, if the investigation is still open, information to that effect.
 - d. The agency conducting the investigation; e.g., HUD, OPM, contractor (by name).
 - e. The reason for the investigation; e.g., tax liens, false statements on hiring documents, arrests.
 - f. The results of the investigation.
 - g. Action taken during the course of the investigation, if any; e.g., reassignment, administrative leave, including start and end or effective dates of such action.
 - h. The sex, race, and ethnic identification of the employee.

PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

The Union also requires the information to understand how investigations and suitability determinations currently affect bargaining unit personnel, in order to both formulate proposals and responses and also to determine if employees are treated fairly and equitably. The Union requests information for the past four years in order to include both the current two years of the Department's present administration and the two years before that, to provide a comprehensive picture of how security matters are handled by the Agency.

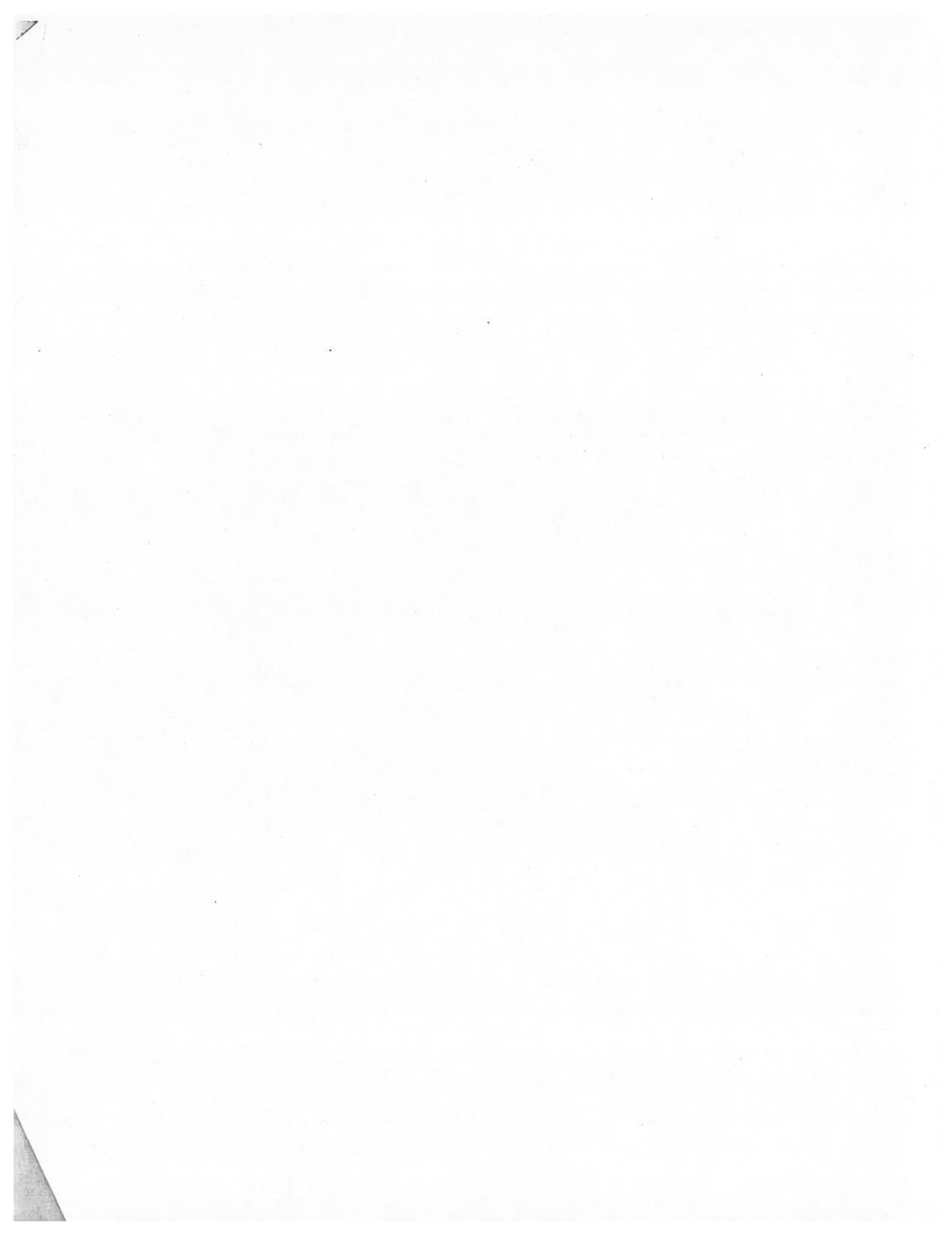
Management Response for No. 3 & 4. ** In Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri, 50 FLRA 661 (1995) (enclosed), the Federal Labor Relations Authority (Authority) established an analytical framework for determining whether information is "necessary" under section 7114(b)(4) of the Statute. In brief, the Authority stated that a union making a request under 5 USC § 7114 (b) (4) must establish a "particularized need" for the requested information by articulating, with specificity, why it needs the information, including the uses to which the information will be put, and the connection between those uses and the union's representational responsibilities under the Statute. The Authority further stated that a union's burden will not be satisfied merely by showing that requested information is or would be relevant or useful, but that the union must demonstrate that the information is "required in order for the union to adequately represent its members." It should also be noted it appears you are asking for information on position classification.

It is not apparent from your request why the Union needs the information, including the uses to which the information will be put, nor is it apparent how the Union plans to use the information in the performance of representational duties. Accordingly, I'm asking that the Union articulate a "particularized need" for the requested information with as much clarity as possible. Once this is done, we will re-evaluate your request.

For any further questions, please contact me at Labor and Employee Relations, 202-402-2207.

Thanks

cc Michael Stein
Keisha Hurst





U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

MEMORANDUM FOR: Jerry Gross, AFGE, Local 476

FROM: Anita O Crews, HR Specialist, Labor and Employee Relations

SUBJECT: Demand to Bargain and Request for Information – Draft Personnel Security and Suitability Policy and Procedures Handbook 755.1
(**Management Response 3 Information Request**)

~~This is a response to your demand to bargain and information request sent to me on June 14, 2016, regarding HUD's proposal to implement a new Personnel Security and Suitability Policy and Procedures Handbook.~~

You submitted the following demand to bargain proposals:

1. Current Practice: The Department has stated that there is no current policy in effect on this matter. Please provide a description of how the proposed handbook changes the handling of security and suitability matters within the Agency.

PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

Management Response: Agency follows regulatory suitability/security, IAW 5 CFR 731.

<http://www.ecfr.gov/cgi-bin/textidx?SID=7a93d6f09f8af6b032477946d43b3776&mc=true&node=pt5.2.731&rqn=div5>

Union Response: Contrary to HUD's original claim, management's response shows that there is a current policy and practice in effect, which the Department failed to provide in its initial notice. Management's abbreviated response states that HUD currently follow the government-wide regulations. Management's response fails to explain how the proposed handbook will change the handling of security and suitability matters within HUD. HUD is **required** to explain "[t]he nature, scope, and rationale for the proposed change" of the new policy and practice in accordance with

Article 49.03(4). The Union specifically requests that the Department explain the nature, scope, and rationale of the change: In other words, what changes from the past and current practice of following the established government-wide regulations? What new requirements are imposed on bargaining unit employees? How are they otherwise affected?

The Department is obligated to provide the Union with a complete and accurate explanation of how the proposed handbook will change the way security and suitability matters are handled with HUD.

Management Response 3: The Department does not have a policy and handbook in place but follow the Authorities and References listed on Page 5 – Draft Handbook 755.1. The Personnel Security/Suitability Handbook does not change any processes or programs currently in place within the Personnel Security Division. The handbook was developed to codify executive agency regulatory requirements and document HUD's compliance to and awareness of the programs and processes. Further, 5 CFR 731, Suitability; and 5 CFR 1400, Designation of National Security Positions are the governing documents used to ensure HUD's compliance with all the reform efforts of the program(s).

2. Government Mandate: Please provide a copy of any and all materials, documents, directions, and/or Executive Orders from OMB, OPM, the White House, or any other agency mandating, directing, or proposing the issuance of this handbook.

PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

Management Response: 5 CFR 731.102 – see link above

Union Response: The cited reference does not direct, mandate or propose the issuance of this handbook. If there is any document or material that does so, please provide a copy to the Union.

Management Response 3: 5 CFR 731 authorizes the Department to act under delegation authority from OPM. That section is 731.103(c) as follows:
Agencies exercising authority under this part by delegation from OPM must adhere to OPM requirements as stated in this part and OPM's issuances described in § 731.102(c). Agencies must also implement policies and maintain records demonstrating that they employ reasonable methods to ensure adherence to these OPM issuances.

731.102(b) as follow: Agency personnel screening programs may be based on procedures developed by OPM. Currently, the Department does not have a written policy and handbook in place but follows the Authorities and References listed on Page 5 – Draft Handbook 755.1

Also and external reviews of HUD's Personnel Security/Suitability Programs, by OIG, GAO, and OPM cited the absence of such guidance for the agency.

3. Sensitivity and Security Level Designations: By geographic location and office, the current number of bargaining unit positions, the position description numbers, and the names of incumbents for each sensitivity designation or security clearance level.

PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

Management Response for No. 3 & 4. ** In Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri, 50 FLRA 661 (1995) (enclosed), the Federal Labor Relations Authority (Authority) established an analytical framework for determining whether information is "necessary" under section 7114(b)(4) of the Statute. In brief, the Authority stated that a union making a request under 5 USC § 7114 (b) (4) must establish a "particularized need" for the requested information by articulating, with specificity, why it needs the information including the uses to which the information will be put, and the connection between those uses and the union's representational responsibilities under the Statute. The Authority further stated that a union's burden will not be satisfied merely by showing that requested information is or would be relevant or useful, but that the union must demonstrate that the information is "required in order for the union to adequately represent its members." It should also be noted it appears you are asking for information on position classification.

It is not apparent from your request why the Union needs the information, including the uses to which the information will be put, nor is it apparent how the Union plans to use the information in the performance of representational duties. Accordingly, I'm asking that the Union articulate a "particularized need" for the requested information with as much clarity as possible. Once this is done, we will re-evaluate your request.

Union Response: The Union's stated particularized need in this information request is exactly the same as in items 1 and 2. The Union questions the validity of management's assertions that "[i]t is not apparent from your request why the Union needs the information..." as the stated need was sufficient for management to respond to the first two requests, yet is not sufficient for requests 3 and 4. Nevertheless, the following additional explanation is provided:

Why the Union needs the information: Much of the proposed guidance relates to the sensitivity and classification of the information handled by employees. The Union needs to know for each sensitivity designation or security clearance level how many bargaining unit employees, their positions (as identified by position description numbers), and the names of the incumbents, and their geographic location in order to determine the extent to which the bargaining unit represented by each Local may be affected by the proposed guidance on personnel security and suitability. The Union needs to know the position description numbers in order to review the position descriptions to determine the extent of the potential impact. The Union needs to

know the names of the bargaining unit employees for each position as more than one incumbent may occupy identical position descriptions.

The uses to which the information will be put: The Union will use the information to gather information within its Locals and to reach out to affected personnel to determine the impact that the proposed guidance may have on them. The Union will also use the information to determine appropriate bargaining proposals. The Union may also use the information to decide which Locals are most appropriately represented on its negotiating team. The Union may also use the information to analyze its correlation to complaints received from bargaining unit employees related to working conditions.

The connection between those uses and the union's representational responsibilities under the Statute: The information is essential to the Union as bargaining proposals may differ if, for example, 90% of bargaining unit employees have nonsensitive designations than if 50% have critical-sensitive designations with secret clearances. The Union has a duty to represent the interests of the bargaining unit in negotiations, and it cannot do so without knowing what those interests are. For example, if a number of *affected* employees are represented by one Local and none by another, the Union might adjust proposals related to training or select different negotiating team members. The Union may approach negotiations differently if few field office employees are affected. The Union may also use the information to analyze more effective ways to represent employees if there appears to be a correlation between working conditions and sensitivity designations or clearances; for example, if higher designations correlate to either higher stress or more job satisfaction.

Management Response 3: See Below

4. Investigations: For each bargaining unit employee who has been investigated for security and/or suitability concerns during the past four years, please provide:

- a. The geographic location and office of the employee.
- b. The position title, position description number, and grade of the employee.
- c. The beginning and ending dates of each investigation, or, if the investigation is still open, information to that effect.
- d. The agency conducting the investigation; e.g., HUD, OPM, contractor (by name).
- e. The reason for the investigation; e.g., tax liens, false statements on hiring documents, arrests.
- f. The results of the investigation.
- g. Action taken during the course of the investigation, if any; e.g., reassignment, administrative leave, including start and end or effective dates of such action.
- h. The sex, race, and ethnic identification of the employee.

PARTICULARIZED NEED: The Union has a particularized need for this information in order

to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit. The Union also requires the information to understand how investigations and suitability determinations currently affect bargaining unit personnel, in order to both formulate proposals and responses and also to determine if employees are treated fairly and equitable. The Union requests information for the past four years in order to include both the current two years of the Department's present administration and the two years before that, to provide a comprehensive picture of how security matters are handled by the Agency.

Management Response for No. 3 & 4. ** In Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri, 50 FLRA 661 (1995) (enclosed), the Federal Labor Relations Authority (Authority) established an analytical framework for determining whether information is "necessary" under section 7114(b)(4) of the Statute. In brief, the Authority stated that a union making a request under 5 USC § 7114 (b) (4) must establish a "particularized need" for the requested information by articulating, with specificity, why it needs the information, including the uses to which the information will be put, and the connection between those uses and the union's representational responsibilities under the Statute. The Authority further stated that a union's burden will not be satisfied merely by showing that requested information is or would be relevant or useful, but that the union must demonstrate that the information is "required in order for the union to adequately represent its members." It should also be noted it appears you are asking for information on position classification.

It is not apparent from your request why the Union needs the information, including the uses to which the information will be put, nor is it apparent how the Union plans to use the information in the performance of representational duties. Accordingly, I'm asking that the Union articulate a "particularized need" for the requested information with as much clarity as possible. Once this is done, we will re-evaluate your request.

Union Response: The Union's stated particularized need in this information request is exactly the same as in items 1 and 2. The Union questions the validity of management's assertions that "[i]t is not apparent from your request why the Union needs the information..." as the stated need was sufficient for management to respond to the first two requests, yet is not sufficient for requests 3 and 4. Nevertheless, the following additional explanation is provided:

Why the Union needs the information: The Union needs the stated information related to security and suitability investigations over the past four years to analyze how the current practices have affected the bargaining unit in order to evaluate the likely impact of the new policy on bargaining unit employees. The Union also needs to know the geographic location of investigated employees to determine which Locals have been most affected. The Union needs to identify each investigated employee, and his/her place in the organization, to accurately evaluate how current policies affect the bargaining unit. The reason for the investigation is required in order for the Union to determine if certain reasons are more prevalent than others, if those reasons are adequately addressed in the handbook, and whether the Union needs to take steps to ensure the bargaining unit is adequately educated about such reasons. The Union needs to know who conducted the investigations to better understand how such matters have been handled by the Department in recent years, and to decide how that may affect our approach to bargaining. The Union needs to know the results of the investigation, actions taken during the investigation, and

the affected employees' demographic information in order to determine if such investigations have been conducted fairly and equitably, as the Union has received numerous complaints from the bargaining unit in recent years.

The uses to which the information will be put: The Union will use the information to gather information related to its Locals and to reach out to affected personnel to determine the impact that the proposed guidance may have on them. The Union will also use the information to determine appropriate bargaining proposals. The Union may also use the information to decide which Locals are most appropriately represented on its negotiating team. The Union may also use the information to analyze its correlation to complaints received from bargaining unit employees related to working conditions. The Union will use the information to evaluate whether investigations are closed out in a timely manner, whether employees are treated equitably, and whether certain offices have a higher incidence of investigations. The Union will also use the information to evaluate the relevance of who conducts the investigation to the outcomes and other data related to the investigations. The Union may choose to publish its findings in either a report or on its website. Such information may be informative and educational to both the bargaining unit and the general public. *The connection between those uses and the union's representational responsibilities under the Statute:* The information is essential to the Union as bargaining proposals may differ if, for example, only two bargaining unit employees from a single Local were investigated than if 300 bargaining unit employees from several Locals were. The Union also needs the information in order to effectively represent employees who raise complaints that may lead to grievances, whether to educate them on their rights and responsibilities as well as on Departmental practices, or to energetically represent them in cases of unfair or discriminatory treatment. If the Union has a record of the Department's actions in recent years, the Union can more effectively represent the bargaining unit employees.

The Union will address any remaining differences between management and the Union regarding the Union's proposals, and will consider whether adding to or amending those proposals is appropriate after receiving management's response to the requested information. The Union has made clear its need for the information, and will consider any further refusal to provide such information a violation of management's obligations under the Statute.

Management Response 3: 3 & 4

This information request excessively interferes with management rights under Section 7106(a)1 of the Statute. You are requesting classification of positions which is a matter that is excluded from the definition of conditions of employment by section 7103 (a)14(b) of the Statute. Management will not divulge the internal security process. Again, why you need this information when the union cannot negotiate security and suitability. The Union's request provides virtually no explanation as to how its representation duties are, or can be, impacted by the methods of compliance the Agency chooses to implement security and suitability. Department will continue to follow the same guidelines and policies that are govern by OPM that are in place today. Again, the procedures and guidelines in the policy and handbook are the same from what is being used currently.

For any further questions, please contact me at Labor and Employee Relations, 202-402-2207.

Thanks

cc Michael Stein
Keisha Hurst



American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

451 7th Street, SW, Suite 3172
Washington, DC 20410

Holly Salamido, President
E-mail: Holly.Salamido@hud.gov

Phone: 202-202-5243
Fax: 202-708-7638

June 22, 2016

MEMORANDUM FOR: Anita O. Crews, Human Resources Specialist, Employee & Labor
Relations Division

FROM:  Jerry Gross, Steward, AFGE Council 222 of HUD Locals

SUBJECT: Demand to Bargain (2) – Draft Personnel Security and Suitability Policy and
Procedures Handbook 755.1

This is in response to management's response of June 9, 2016, to Council 222's May 26 request for information and demand to bargain over HUD's May 17, 2016, proposal to implement a new Personnel Security and Suitability Policy and Procedures Handbook. The Union replied on June 14 to management's response regarding the Union's information request; management's information response failed to provide specific and direct answers to the Union's requests.

As stated in previous communications, the Union has clearly demonstrated its particularized need for the requested information, and cannot finalize its proposals or begin negotiating until we have had ample time to review and analyze the requested information.

With regard to the preliminary proposals submitted by Council 222 on May 26, the Union provides below comments and/or counterproposals (in blue) to management's responses of June 9. The Union notes that a number of management's responses (in red) indicate that a proposal is either not required or is covered by the collective bargaining agreement. As those two categories cover the entire possibility of proposals, management's response seems to indicate an unwillingness to engage in genuine negotiations. Agreement is noted in green below.

1. **Written Responses:** Management shall provide written responses regarding the Union's proposals provided below within five business days of receipt of this memo.
Management Response: There is no policy or agreement that requires management to respond to proposal(s) in five days.
Union Response: There is no policy or agreement that prohibits setting a time frame for responses, and the Union notes that management has agreed to similar proposals in many instances. This is proposed as a means of ensuring that the discussion proceeds in a timely manner; it was in management's interest as the Department initiated the proposal to establish a new policy.
2. **Meeting Time:** Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating once all requested information has been provided. Negotiations shall not begin until all requested information has been supplied to the Union.
Management Response: Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating. Covered by Article 49.03

Union Response: As noted in our June 14 memorandum regarding management's response to the Union's request for information, the two Union requests for information that management refused to answer directly address the scope of the impact of the proposed new policy. Management has provided only the following statement regarding the nature, scope, and rationale for the change in policy: "The goal of the Department of Housing and Urban Development's (HUD), Personnel Security and Suitability Program (PSSP), is to ensure the Department will employ and retain only those persons who meet all federal requirements for suitability and whose employment or conduct will not jeopardize the efficiency of the civil service or pose a risk to national security pursuant to 5 CFR §§ 731 and 1400." That statement does not address the scope; the Union's request for information regarding sensitivity and security level designations and information related to past investigations will address the scope of the proposed policy's application to the bargaining unit.

3. **Status Quo**: The status quo will remain and the Department will not implement any of the changes associated with the new handbook until all bargaining is completed in accordance with the Agreement.

Management Response: Covered by Article 49.07(1)

Union Response: Article 49.07 addresses negotiability disputes. This issue is covered by Article 49.08, which covers impasse procedures. Under 49.08(2), mutual consent is required to implement the agreed-upon terms. The Union does not consent to implementing the new policy until all bargaining is completed. Agreement to terms noted below does not imply consent to implementation of the proposed handbook.

4. **Notice to Union**: The Department shall notify Council 222 when actions taken under the Personnel Security and Suitability Policy and Procedures Handbook 755.1 affect more than one Local or members of the bargaining unit in general, and shall notify each individual Local when actions affect one or more of that Local's bargaining unit. Notice shall be provided as soon as determinations are made that will affect one or more bargaining unit employees, and no later than the time the employees or their supervisors or managers are notified of any current, pending, or proposed actions.

Management Response: Covered by Article 49.03

Union Response: Article 49.03 refers to mid-term changes in personnel policies, practices, and general conditions of employment. The Union intended this paragraph to refer to actions taken under the proposed Personnel Security Handbook. See wording inserted in blue above to add clarity.

5. **Accountability and Identification**: All correspondence sent by the Department, including the Personnel Security Division, related to personnel security and suitability matters shall include the name of the responsible official.

Management Response: All correspondence sent by the Department, including the Personnel Security Division, related to personnel security and suitability matters shall include the name of the responsible official and/or agency.

Union Response: The phrase "and/or agency" is unacceptable. The Union has multiple

examples of correspondence from the Personnel Security Division that are signed "PERSONNEL SECURITY DIVISION." The absence of a responsible individual's name serves as both an inappropriate intimidation tactic and an improper failure to accept accountability and responsibility. The Union agrees with "Miss Manners" that government employees should be both accountable and transparent: "Are you not prepared to be accountable for the information you are giving them? ...Miss Manners defends the right to privacy in personal situations, but advocates transparency in business. Surely a government agency has nothing to hide." *Washington Post*, June 9, 2016.

6. **Employee Rights:** All correspondence sent by the Department to a bargaining unit employee related to that individual's personnel security and/or suitability shall include information about the employee's rights, include their rights to seek help and representation from the Union.

Management Rights: Covered by Article 1

Union Response: Please explain how Article 1 applies and why the Department is opposed to informing employees of their rights. The Union is willing to insert the wording shown above in blue to clarify that this statement applies only to bargaining unit employees.

7. **Position Designation Requirements:** The Department shall notify the Union any time a sensitivity designation or security clearance level for an existing bargaining unit position is changed if that change may affect an incumbent's ability to continue serving in that position or that change requires the employee to be subject to a new investigation.

Management Response: Management Agree

8. **Investigations:** The Department shall notify the Union any time a bargaining unit employee is required to undergo a new or post-appointment investigation.

Management Response: The Department shall notify the bargaining unit employee when he/she is required to undergo a new or post-appointment investigation unless it falls under Article 1.03.

Union Response: Management's counterproposal does not address the Union's concern. As Article 1.03 describes those employees who are excluded from the bargaining unit, they would not be covered by the phrase "bargaining unit employee" included in the proposal above. Additionally, the Union requests notification in these cases similar to the notification provided when other significant circumstances affecting bargaining unit employees.

9. **Suitability Determinations:** The Department shall notify the Union any time a bargaining unit employee's suitability is investigated or referred to OPM or another agency or contractor for investigation.

Management Response: The Department shall notify the bargaining unit employee when their suitability status is being investigated or referred to OPM or another agency or contractor for investigation unless it falls under Article 1.03.

Union Response: Management's counterproposal does not address the Union's concern. The Union requests notification in these cases similar to the notification provided when other significant circumstances affecting bargaining unit employees.

10. **Information Status:** The Department shall keep the Union and affected employees informed of the status of any ongoing investigations. The Department shall provide written updates no less than monthly and shall immediately notify the Union and affected employees of the final determination when an investigation is completed. The Department shall provide a complete copy of all investigative reports and their conclusions and recommendations, whether prepared by the Department, OPM, or another agency or contractor to the employee and the Union immediately upon receipt or completion of the report.

Management Response: The Department shall provide a complete copy of all investigative reports and their conclusions and recommendations, whether prepared by the Department, OPM, or another agency or contractor to the employee and the Union immediately upon receipt or completion of the report. Following the guidelines of 5 CFR 731.103

Union Response: Management's response does not address the concern that reports often do not reach a "completion" or "finalized" stage, and employees are left under a cloud of unproved accusations. The Union requests regular updates to ensure that all employees are treated fairly, that employees and the Union are made aware of all accusations and findings in order to be able to answer them, and that any unjust or unproved accusations are promptly resolved. The regulations cited by management do not prohibit such status reports.

11. **Accuracy of Information:** The Department shall ensure that all information used in an investigation or referred to OPM or another agency or contractor is complete and accurate.

Management Response: Agree

12. **Treatment of Employees:** The Department shall ensure that all actions taken, including investigations, referrals to OPM, adverse actions, and placement on administrative leave are appropriate and applicable to the AFGE bargaining unit employee's position and alleged actions. The Department shall not place AFGE bargaining unit employees on administrative leave without specific evidence that the AFGE bargaining unit employee poses a threat to other employees, themselves, government property, or government data. Barring those situations, all AFGE bargaining unit employees shall be treated as "innocent until found guilty;" i.e., until an investigation is concluded by the Department, OPM, or another agency or contractor and a finding that the employee poses a security risk or is unsuitable for federal employment is issued, the AFGE bargaining unit employee will be permitted to continue in the present position and will be treated with respect and courtesy.

Management Response: Agree – Change "employee" to "AFGE BU"

Union Response: Concur. See change noted above in blue.

13. **No Discrimination or Retaliation**: The Department shall not in any way discriminate against or retaliate against any AFGE bargaining unit employee who is or has undergone a security investigation or suitability determination. Until a finding that the AFGE bargaining unit employee poses a security risk or is unsuitable for federal employment is issued, the AFGE bargaining unit employee will continue to have all the usual benefits of any other employee, including but not limited to within-grade increases, training opportunities, performance bonuses. The Department shall not apply different performance standards to any affected AFGE bargaining unit employee than it does to other employees with similar position descriptions.

Management Response: Agree – Change “employee” to “AFGE BU”

Union Response: Concur. See change noted above in blue.

14. **Handbook Applicability**: The parties agree that Handbook 755.1, dated ____, provides the responsibilities and processes for the Department and employees to follow regarding personnel security and suitability matters. Where there is a conflict between this Agreement and the Departmental policies, this Agreement will prevail, provided that there is no conflict between this Agreement and requirements under law, statute, or government-wide regulations. The Department shall immediately notify the Union any time that changes in law, statute, or government-wide regulations require a modification of the Handbook or Department procedures and policies.

Management Response: Agree

These are preliminary proposals only, and the Union reserves the right to bargain or amend or add proposals, including information requests, in accordance with Article 49 of the collective bargaining agreement.

Matulef, Mark L

From: Gross, Jerry
Sent: Wednesday, July 06, 2016 1:40 PM
To: Crews, Anita O
Subject: Re: Proposed Personnel Security Handbook
Attachments: Union3-Security Handbook.pdf

Hi Anita,

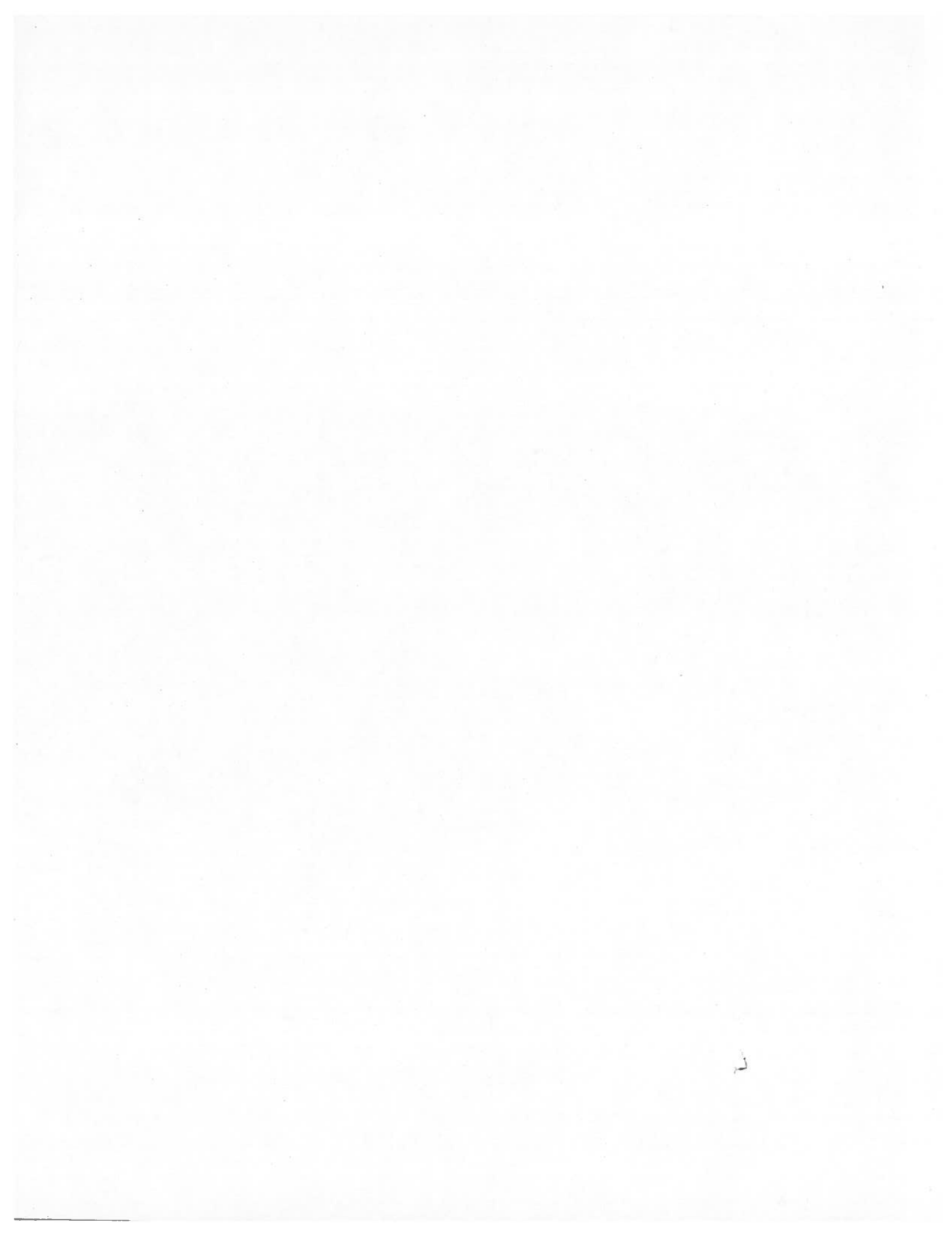
Due to a combination of summer leave plans and work schedules of the Union team members, the team will not be available to meet for negotiations until September. The team currently consists of Mark Matulef, Amy Schwartz, Dorothy Crowwillard, and me.

It does not make sense to schedule travel until management responds to the Union's information requests #3 and 4. The requested data is directly related to the scope of the effect of a personnel security handbook on the bargaining unit. The Union previously documented our particularized need for the requested information and cannot finalize our proposals or begin negotiating until we have had ample time to review and analyze a complete response to the requested information. Please see the Union's response (attached) on this matter.

Jerry

From: Crews, Anita O
Sent: Tuesday, June 28, 2016 4:43:00 PM
To: Gross, Jerry
Subject: Mgt Response demand to bargain -Personnel Security 062216 - DTB ONLY

This is a response to your demand to bargain sent to me on June 22, 2016 regarding HUD's proposal to implement a new Personnel Security and Suitability Policy and Procedures Handbook. Please send me tentative dates, management is very interested in getting this done. Thanks





American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

451 7th Street, SW, Suite 3172
Washington, DC 20410

Holly Salamido, President
E-mail: Holly.Salamido@hud.gov

Phone: 202-202-5243
Fax: 202-708-7638

July 6, 2016

MEMORANDUM FOR: Anita O. Crews, Human Resources Specialist, Employee & Labor
Relations Division

FROM: Jerry Gross, Steward, AFGE Council 222 of HUD Locals

SUBJECT: Union 3 Demand to Bargain and Request for Information – Draft Personnel Security
and Suitability Policy and Procedures Handbook 755.1

This is in response to your June 22, 2016, memo providing Management Response 3 to Council 222's request for information. This memo also adds proposals and additional information requested under U.S. Code § 7114 (b)(4) to those previously submitted.

I. Prior Information Request:

Thank you for the information provided for information requests 1 (current practice) and 2 (government mandate).

Management's answer to information requests 3 (sensitivity and security level designations) and 4 (investigations) continues to be nonresponsive. In those requests, the Union requested information related to the various sensitivity designations and security clearance levels of positions occupied by bargaining unit employees, and information related to security and suitability investigations of bargaining unit employees

Management has stated in response to those requests:

This information request excessively interferes with management rights under Section 7106(a)1 of the Statute. You are requesting classification of positions which is a matter that is excluded from the definition of conditions of employment by section 7103 (a)14(b) of the Statute. Management will not divulge the internal security process. Again, why you need this information when the union cannot negotiate security and suitability. The Union's request provides virtually no explanation as to how its representation duties are, or can be, impacted by the methods of compliance the Agency chooses to implement security and suitability. Department will continue to follow the same guidelines and policies that are govern by OPM that are in place today. Again, the procedures and guidelines in the policy and handbook are the same from what is being used currently.

The requested information is at the core of the scope of the impact of the proposed handbook. Management has provided only its rationale for implementing the proposed handbook:

The goal of the Department of Housing and Urban Development's (HUD), Personnel Security and Suitability Program (PSSP), is to ensure the Department will employ and retain only those persons who meet all federal requirements for suitability and whose

employment or conduct will not jeopardize the efficiency of the civil service or pose a risk to national security pursuant to 5 CFR §§ 731 and 1400.

Management has not provided information related to the scope of the policy, as required under Article 49.03(4). The requested data is directly related to the scope of the effect of a personnel security handbook on the bargaining unit. The Union previously documented our particularized need for the requested information (see Attachment A), and cannot finalize its proposals or begin negotiating until we have had ample time to review and analyze a complete response to the requested information.

Following is the Union's reply to the points raised by the June 22 Management Response 3:

A. This information request excessively interferes with management rights under Section 7106(a)1 of the Statute.

An agency's right to determine its internal security practices under 5 U.S.C § 7106(a)(1) includes the right to determine the policies and take actions which are part of its plan to secure or safeguard its personnel, its physical property, and its operations. *National Federation of Federal Employees, Local 2050 and Environmental Protection Agency*, 36 FLRA 618, 625 (1990) (EPA). The Union's requests for "the current number of bargaining unit positions, the position description numbers, and the names of incumbents for each sensitivity designation or security clearance level" by geographic location and for data related to "each bargaining unit employee who has been investigated for security and/or suitability" does not interfere with the Department's right to determine its internal security practices. These are information requests only and do not in any way interfere with management rights.

B. You are requesting classification of positions which is a matter that is excluded from the definition of conditions of employment by section 7103 (a)14(b) of the Statute.

The Union is not requesting that any positions be classified, nor are we offering any opinions on or proposals related to the classification of positions. As stated above, the Union has asked for information regarding bargaining unit positions to know how many and which ones are at the different sensitivity designations and security clearances and for information related to past security and/or suitability investigations of bargaining unit employees to understand the scope of the impact of the proposed handbook on the bargaining unit.

C. Management will not divulge the internal security process.

The Union is unclear as to what internal security process management will not divulge. The Union's information requests 3 and 4 address data, not processes.

D. Again, why you need this information when the union cannot negotiate security and suitability.

Management's rights under are 5 U.S.C § 7106(a)(1) mitigated by 5 U.S.C § 7106 (b), which states, "Nothing in this section shall preclude any agency and any labor organization from

negotiating... (2) procedures which management officials of the agency will observe in exercising any authority under this section; or (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.” The Union requires the requested information to effectively negotiate procedures that affect the working conditions of the bargaining unit and to determine, propose, and negotiate appropriate arrangements for employees who may be adversely affected by management’s exercise of its authority under section 7106.

E. The Union’s request provides virtually no explanation as to how its representation duties are, or can be, impacted by the methods of compliance the Agency chooses to implement security and suitability.

The Union has not raised questions to date about the methods of security and suitability compliance that the Agency chooses to implement. Instead, the Union has requested data that will reveal the extent of the possible impact of the proposed handbook on the bargaining unit. The Union has provided a lengthy and detailed explanation (see Attachment A) of how that information is necessary for the Union to perform its representational duties.

II. Additional Information Request:

The information requests below are numbered sequentially following those that were previously submitted on May 26 and again on June 14, 2016.

5. Public Trust Positions: By geographic location and office, the current number of bargaining unit positions, the position description numbers, and the names of incumbents for each employee occupying a position designated as a “public trust” position.

PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department’s reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

Why the Union needs the information: The proposed guidance includes practices related to investigations of employees in public trust positions. The Union needs to know the extent to which the bargaining unit may be affected by the implementation of policies related to such positions. The Union needs to know the geographic locations, offices, and position description numbers to identify the impact on the Union’s regions and locals. The Union needs to know the names of the bargaining unit employees for each position as more than one incumbent may occupy identical position descriptions.

The uses to which the information will be put: The Union will use the information to gather information within its Locals and to reach out to affected personnel to determine the impact that the proposed guidance may have on them. The Union will also use the information to determine appropriate bargaining proposals. The Union may also use the information to decide which Locals are most appropriately represented on its negotiating team. The Union may also use the

information to analyze its correlation to complaints received from bargaining unit employees related to working conditions.

The connection between those uses and the union's representational responsibilities under the Statute: The information is essential to the Union as bargaining proposals may differ if, for example, 90% of bargaining unit employees public trust designations than if 5% do. The Union has a duty to represent the interests of the bargaining unit in negotiations, and it cannot do so without knowing what those interests are. For example, if a number of affected employees are represented by one Local and none by another, the Union might adjust proposals related to training or select different negotiating team members. The Union may approach negotiations differently if few field office employees are affected. The Union may also use the information to analyze more effective ways to represent employees if there appears to be a correlation between working conditions and sensitivity designations or clearances; for example, if higher designations correlate to either higher stress or more job satisfaction.

6. Forms and Form Letters. Please provide a copy of all forms used in implementing the policies and procedures described in proposed Handbook 755.1, and a copy of all form letters and/or standardized letters used to carry out those policies and procedures.

PARTICULARIZED NEED: The Union has a particularized need for this information in order to determine the ways that the new handbook may affect bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.

Why the Union needs the information: The Union needs to be familiar with the Agency's standardized procedures and correspondence in order to fully represent employees with proposals that address discipline, adverse actions, and other matters that may result from implementation of the proposed handbook. The information requested will also provide the Union with information related to Agency procedures related to due process, appeals, notice of right to representation and other areas that relate to representational obligations.

The uses to which the information will be put: The Union will use the information to determine the nature and the extent of the impact that the proposed guidance may have on the bargaining unit. The Union will also use the information to determine appropriate bargaining proposals. The Union may also use the information to analyze its correlation to complaints received from bargaining unit employees related to working conditions.

The connection between those uses and the union's representational responsibilities under the Statute: The information is essential to the Union so that we may prepare responsive and applicable bargaining proposals. The Union has a duty to represent the interests of the bargaining unit in negotiations, and it cannot do so without knowing what those interests are.

III. Additional Proposals:

The proposals below are numbered sequentially following those that were previously submitted on May 26, 2016.

15. Authorities. In all communications related to individual suitability investigations, and/or related to proposed or actual disciplinary or adverse actions against an employee, HUD shall identify to the affected employee and to Union the authorities under which it is taking any action, the limits of HUD's authority, whether HUD is required to refer the matter to an outside authority, such as OPM.
16. Covered Employees. In all communications related to individual suitability investigations, HUD shall clearly identify to affected bargaining unit employees and to the Union whether such action is taken against the person as an *appointee* or as an *employee*, as defined in 5 CFR § 731.101(b).
17. Retained Rights. Any bargaining unit employee who is under investigation for a security or suitability determination shall retain the PIV card, keys, documents, government-issued computers and supplies, and shall be permitted to perform all normally assigned tasks in the usual manner until or unless there is a final finding that the employee is unsuitable. The only exception shall be if the employee presents a clear and present danger to other personnel or to the government's property, systems, or operations. In those cases of clear and present danger, HUD shall document the reasons for considering the employee to be a danger and shall provide a written copy of such documentation, along with a written statement of the proposed actions that will be taken pending the conclusion of a security or suitability investigation to both the affected employee and to the Union.
18. Timely Completion of Reviews. HUD shall complete all suitability investigations within 60 days of initiating an investigation. The Department shall make suitability determinations and take suitability actions for appointees within 60 days, and shall refer to OPM cases that fall under OPM's jurisdiction (e.g., for employees) within 60 days. In cases where the Department is unable to meet the 60-day deadline, HUD shall advise affected bargaining unit employees and the applicable Local by the 60th day of the reason for the delay and the estimated completion date.
19. Referrals to OPM. HUD shall notify the affected bargaining unit employees and the applicable Local whenever a referral is made to OPM for a suitability determination or any other determination or action that may result in an adverse action, suspension, removal, or other disciplinary proceeding.
20. Forms and Form Letters. HUD shall provide the Union with a copy of each form, form letter, or standardized communication that is or will be used to implement 5 CFR Part 731.
21. Information Regarding Appeals. HUD shall provide affected bargaining unit employees and applicable Locals with written information regarding their rights to appeal

determinations and adjudications in all correspondence regarding suitability and security investigations, determinations, or adjudications.

22. Disciplinary or Adverse Actions. Whenever HUD may take any disciplinary or adverse action against a bargaining unit employee under Handbook 755.1 and/or 5 CFR Part 731, HUD shall identify the specific and relevant provisions of HUD Handbooks or government-wide regulations that are being applied to propose or impose disciplinary or adverse actions.

IV. Previous Proposals:

Following are the preliminary proposals submitted by Council 222 on May 26 for your convenience. The Union's comments and/or counterproposals are provided in blue to management's responses (in red) of June 9. Agreement is noted in green below.

1. Written Responses: Management shall provide written responses regarding the Union's proposals provided below within five business days of receipt of this memo.
Management Response: There is no policy or agreement that requires management to respond to proposal(s) in five days.
Union Response: There is no policy or agreement that prohibits setting a time frame for responses, and the Union notes that management has agreed to similar proposals in many instances. This is proposed as a means of ensuring that the discussion proceeds in a timely manner; it was in management's interest as the Department initiated the proposal to establish a new policy.
2. Meeting Time: Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating once all requested information has been provided. Negotiations shall not begin until all requested information has been supplied to the Union.
Management Response: Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating. Covered by Article 49.03
Union Response: As noted in our June 14 memorandum regarding management's response to the Union's request for information, the two Union requests for information that management refused to answer directly address the scope of the impact of the proposed new policy. Management has provided only the following statement regarding the nature, scope, and rationale for the change in policy: "The goal of the Department of Housing and Urban Development's (HUD), Personnel Security and Suitability Program (PSSP), is to ensure the Department will employ and retain only those persons who meet all federal requirements for suitability and whose employment or conduct will not jeopardize the efficiency of the civil service or pose a risk to national security pursuant to 5 CFR §§ 731 and 1400." That statement does not address the scope; the Union's request for information regarding sensitivity and security level designations and information related to past investigations will address the scope of the proposed policy's application to the bargaining unit.

3. **Status Quo**: The status quo will remain and the Department will not implement any of the changes associated with the new handbook until all bargaining is completed in accordance with the Agreement.
Management Response: Covered by Article 49.07(1)
Union Response: Article 49.07 addresses negotiability disputes. This issue is covered by Article 49.08, which covers impasse procedures. Under 49.08(2), mutual consent is required to implement the agreed-upon terms. The Union does not consent to implementing the new policy until all bargaining is completed. Agreement to terms noted below does not imply consent to implementation of the proposed handbook.
4. **Notice to Union**: The Department shall notify Council 222 when actions taken under the Personnel Security and Suitability Policy and Procedures Handbook 755.1 affect more than one Local or members of the bargaining unit in general, and shall notify each individual Local when actions affect one or more of that Local's bargaining unit. Notice shall be provided as soon as determinations are made that will affect one or more bargaining unit employees, and no later than the time the employees or their supervisors or managers are notified of any current, pending, or proposed actions.
Management Response: Covered by Article 49.03
Union Response: Article 49.03 refers to mid-term changes in personnel policies, practices, and general conditions of employment. The Union intended this paragraph to refer to actions taken under the proposed Personnel Security Handbook. See wording inserted in blue above to add clarity.
5. **Accountability and Identification**: All correspondence sent by the Department, including the Personnel Security Division, related to personnel security and suitability matters shall include the name of the responsible official.
Management Response: All correspondence sent by the Department, including the Personnel Security Division, related to personnel security and suitability matters shall include the name of the responsible official and/or agency.
Union Response: The phrase "and/or agency" is unacceptable. The Union has multiple examples of correspondence from the Personnel Security Division that are signed "PERSONNEL SECURITY DIVISION." The absence of a responsible individual's name serves as both an inappropriate intimidation tactic and an improper failure to accept accountability and responsibility. The Union agrees with "Miss Manners" that government employees should be both accountable and transparent: "Are you not prepared to be accountable for the information you are giving them? ... Miss Manners defends the right to privacy in personal situations, but advocates transparency in business. Surely a government agency has nothing to hide." *Washington Post*, June 9, 2016.
6. **Employee Rights**: All correspondence sent by the Department to a bargaining unit employee related to that individual's personnel security and/or suitability shall include information about the employee's rights, include their rights to seek help and representation from the Union.

Management Rights: Covered by Article 1

Union Response: Please explain how Article 1 applies and why the Department is opposed to informing employees of their rights. The Union is willing to insert the wording shown above in blue to clarify that this statement applies only to bargaining unit employees.

7. **Position Designation Requirements:** The Department shall notify the Union any time a sensitivity designation or security clearance level for an existing bargaining unit position is changed if that change may affect an incumbent's ability to continue serving in that position or that change requires the employee to be subject to a new investigation.

Management Response: Management Agree

8. **Investigations:** The Department shall notify the Union any time a bargaining unit employee is required to undergo a new or post-appointment investigation.

Management Response: The Department shall notify the bargaining unit employee when he/she is required to undergo a new or post-appointment investigation unless it falls under Article 1.03.

Union Response: Management's counterproposal does not address the Union's concern. As Article 1.03 describes those employees who are excluded from the bargaining unit, they would not be covered by the phrase "bargaining unit employee" included in the proposal above. Additionally, the Union requests notification in these cases similar to the notification provided when other significant circumstances affecting bargaining unit employees.

9. **Suitability Determinations:** The Department shall notify the Union any time a bargaining unit employee's suitability is investigated or referred to OPM or another agency or contractor for investigation.

Management Response: The Department shall notify the bargaining unit employee when their suitability status is being investigated or referred to OPM or another agency or contractor for investigation unless it falls under Article 1.03.

Union Response: Management's counterproposal does not address the Union's concern. The Union requests notification in these cases similar to the notification provided when other significant circumstances affecting bargaining unit employees.

10. **Information Status:** The Department shall keep the Union and affected employees informed of the status of any ongoing investigations. The Department shall provide written updates no less than monthly and shall immediately notify the Union and affected employees of the final determination when an investigation is completed. The Department shall provide a complete copy of all investigative reports and their conclusions and recommendations, whether prepared by the Department, OPM, or another agency or contractor to the employee and the Union immediately upon receipt or completion of the report.

Management Response: The Department shall provide a complete copy of all investigative reports and their conclusions and recommendations, whether prepared by

the Department, OPM, or another agency or contractor to the employee and the Union immediately upon receipt or completion of the report. Following the guidelines of 5 CFR 731.103

Union Response: Management's response does not address the concern that reports often do not reach a "completion" or "finalized" stage, and employees are left under a cloud of unproved accusations. The Union requests regular updates to ensure that all employees are treated fairly, that employees and the Union are made aware of all accusations and findings in order to be able to answer them, and that any unjust or unproved accusations are promptly resolved. The regulations cited by management do not prohibit such status reports.

11. **Accuracy of Information:** The Department shall ensure that all information used in an investigation or referred to OPM or another agency or contractor is complete and accurate.

Management Response: Agree

12. **Treatment of Employees:** The Department shall ensure that all actions taken, including investigations, referrals to OPM, adverse actions, and placement on administrative leave are appropriate and applicable to the AFGE bargaining unit employee's position and alleged actions. The Department shall not place AFGE bargaining unit employees on administrative leave without specific evidence that the AFGE bargaining unit employee poses a threat to other employees, themselves, government property, or government data. Barring those situations, all AFGE bargaining unit employees shall be treated as "innocent until found guilty;" i.e., until an investigation is concluded by the Department, OPM, or another agency or contractor and a finding that the employee poses a security risk or is unsuitable for federal employment is issued, the AFGE bargaining unit employee will be permitted to continue in the present position and will be treated with respect and courtesy.

Management Response: Agree - Change "employee" to "AFGE BU"

Union Response: Concur. See change noted above in blue.

13. **No Discrimination or Retaliation:** The Department shall not in any way discriminate against or retaliate against any AFGE bargaining unit employee who is or has undergone a security investigation or suitability determination. Until a finding that the AFGE bargaining unit employee poses a security risk or is unsuitable for federal employment is issued, the AFGE bargaining unit employee will continue to have all the usual benefits of any other employee, including but not limited to within-grade increases, training opportunities, performance bonuses. The Department shall not apply different performance standards to any affected AFGE bargaining unit employee than it does to other employees with similar position descriptions.

Management Response: Agree - Change "employee" to "AFGE BU"

Union Response: Concur. See change noted above in blue.

14. **Handbook Applicability:** The parties agree that Handbook 755.1, dated ____, provides the responsibilities and processes for the Department and employees to follow regarding personnel security and suitability matters. Where there is a conflict between this Agreement and the Departmental policies, this Agreement will prevail, provided that there is no conflict between this Agreement and requirements under law, statute, or government-wide regulations. The Department shall immediately notify the Union any time that changes in law, statute, or government-wide regulations require a modification of the Handbook or Department procedures and policies.

Management Response: Agree

These are preliminary proposals only, and the Union reserves the right to bargain or amend or add proposals, including information requests, in accordance with Article 49 of the collective bargaining agreement.



American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

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Washington, DC 20410

Holly Salamido, President
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Phone: 202-202-5243
Fax: 202-708-7638

July 27, 2016

MEMORANDUM FOR: Anita O. Crews, Human Resources Specialist, Employee & Labor
Relations Division

FROM: Jerry Gross, Steward, AFGE Council 222 of HUD Locals

SUBJECT: Union 4 Request for Information – Draft Personnel Security and Suitability Policy
and Procedures Handbook 755.1

This memo adds new information requests under U.S. Code § 7114 (b)(4) to those previously submitted.

Management's notice to the Union regarding proposed implementation of the Personnel Security and Suitability Policy and Procedures Handbook does not comply with the HUD-AFGE collective bargaining agreement (CBA) because it is incomplete. Management has not provided information related to the scope of the policy, as required under Article 49.03(4). The requested data is directly related to the scope of the effect of a personnel security handbook on the bargaining unit. The Union previously cannot finalize its proposals or begin negotiating until we have had ample time to review and analyze a complete response to the requested information.

The information requests below are numbered sequentially following those that were previously submitted on May 26, June 14, and July 6, 2016. Please provide the following information and any records associated with it:

7. Suitability Reviews: Please provide the number of suitability reviews conducted over the past five (5) years, as well as the following details:

- The number of individual AFGE bargaining unit employees (BUEs) covered by such reviews.
- The number of new AFGE BUEs covered by such reviews (less than one year employed by the agency).
- The number of non-new AFGE BUEs covered by such reviews.
- The average number of years of HUD and federal service employment by non-new AFGE BUEs.

8. Adjudications: Please provide the number of "adjudications" conducted over the past five (5) years stemming from suitability reviews, as well as the following details:

- The number of individual AFGE bargaining unit employees (BUEs) covered by such adjudications.
- The number of new AFGE BUEs covered by such adjudications (less than one year employed by the agency).

- The number of non-new AFGE BUEs covered by such adjudications.
- The average number of years of HUD and federal service employment by non-new AFGE BUEs.

9. Post-Review/Adjudication Actions: Please provide the number of suspensions, removals, and other adverse and non-adverse actions proposed following the suitability reviews and/or adjudications described above, and the disposition of such actions, as well as the following details:

- The number of individual AFGE bargaining unit employees (BUEs) covered by such actions.
- The number of new AFGE BUEs covered by such actions (less than one year employed by the agency).
- The number of non-new AFGE BUEs covered by such actions.
- The average number of years of HUD and federal service employment by non-new AFGE BUEs.

10. Review/Adjudication Documentation: Please provide the written regulations, guidance, policies, procedures, protocols, and forms used or otherwise relied upon in the suitability reviews, adjudications, proposed adverse and non-adverse actions, and actual adverse and non-adverse actions covered by items 7 through 9.

PARTICULARIZED NEED (for items 7-10): The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit. It concerns the implementation and impact of the policy and predecessor policies. It concerns the manner in which the agency is implementing the policy and predecessor policies, thereby conveying the scope of the impact of the new policy, which is essential to good faith negotiations as well as required by the CBA. It is essential to the effective representation of BUEs as described generally in the Contract. Also, it is essential to understanding whether the agency has already implemented the policy in advance of negotiations over its implementation and impact.

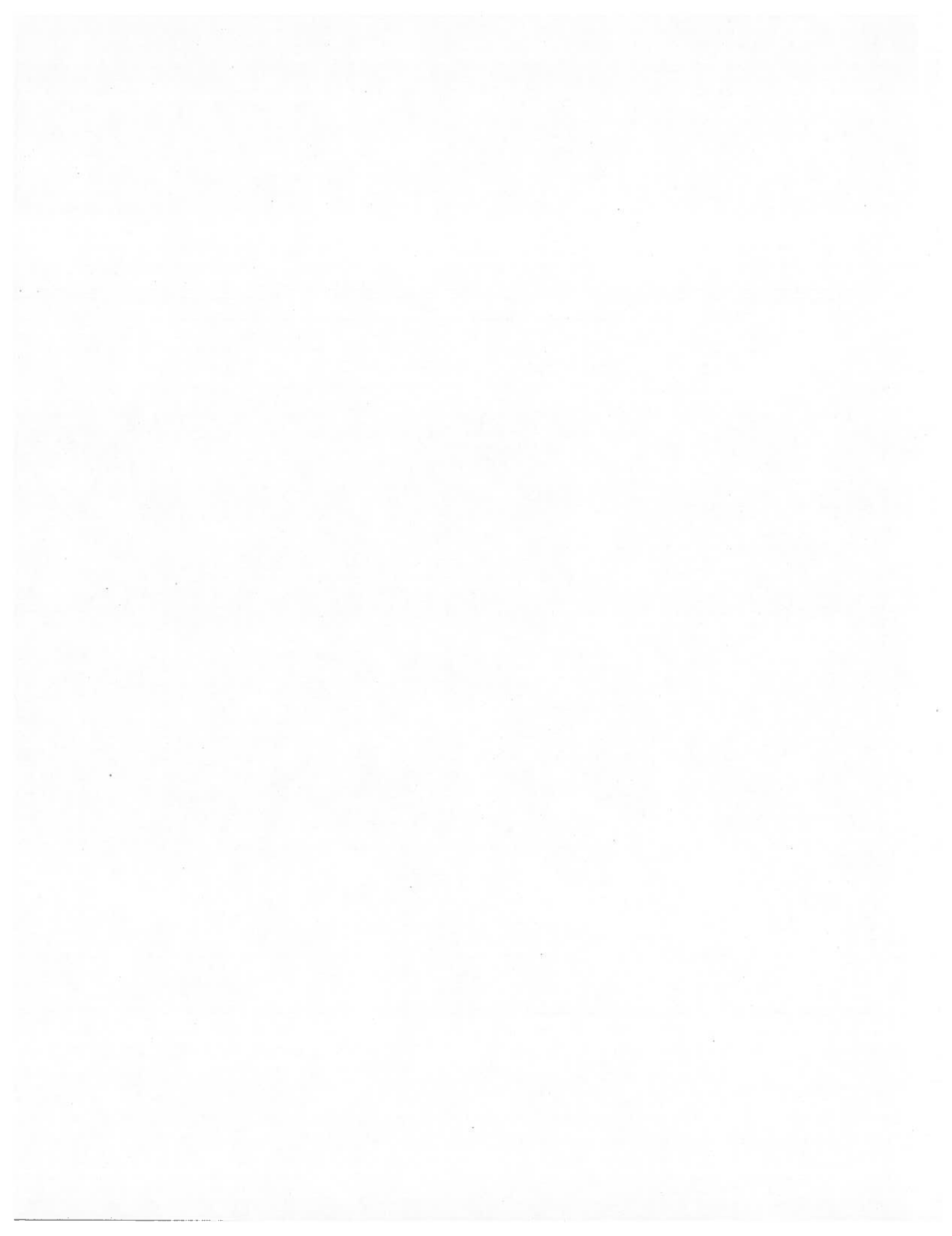
Why the Union needs the information: The Union needs to know the extent to which the bargaining unit may be affected by the implementation of policies related to such positions, and how the bargaining unit has been affected by past policies. The requested information provides union negotiators with a better understanding of how the agency's policies affect the bargaining unit, and enable the Union to determine if particular populations have been subjected to different levels of scrutiny.

The uses to which the information will be put: The Union will use the information to gather information within its Locals and to reach out to affected personnel to determine the impact that the proposed guidance may have on them. The Union will also use the information to determine appropriate bargaining proposals. The Union may also use the information to decide which Locals are most appropriately represented on its negotiating team. The Union may also use the

information to analyze its correlation to complaints received from bargaining unit employees related to working conditions.

The connection between those uses and the union's representational responsibilities under the Statute: The Union's use of the information is directly related to representing the bargaining unit through effective negotiations. The use of the information is also related to understanding the impact of the policy on the bargaining unit to effectively represent individual employees as necessary.

The Union's request for information does not interfere with management rights in any manner. As information requests for existing data, the requests in no way interfere with the Department's right to determine its internal security practices. The information requested does not require management to change or divulge any internal security process in any manner. Additionally, management's rights under are 5 U.S.C § 7106(a)(1) mitigated by 5 U.S.C § 7106 (b), which states, "Nothing in this section shall preclude any agency and any labor organization from negotiating... (2) procedures which management officials of the agency will observe in exercising any authority under this section; or (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials." The Union requires the requested information to effectively negotiate procedures that affect the working conditions of the bargaining unit and to determine, propose, and negotiate appropriate arrangements for employees who may be adversely affected by management's exercise of its authority under § 7106.



Matulef, Mark L

From: Gross, Jerry
Sent: Friday, September 02, 2016 9:00 AM
To: Matulef, Mark L
Subject: Personnel Security Handbook: Information Requests
Attachments: Information Requests - Summary.docx

Hi Mark,

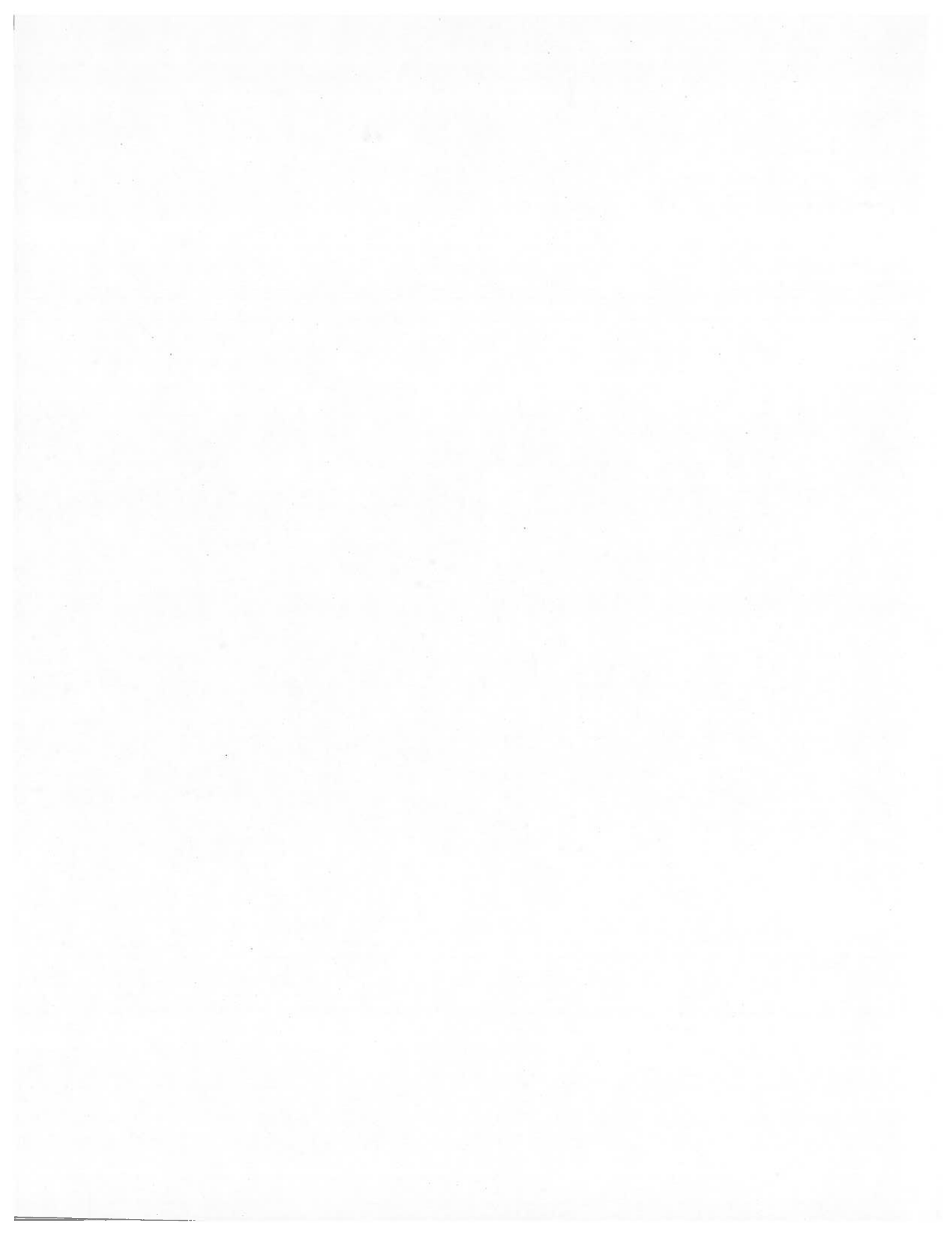
Thanks for taking on the issue of management's refusal to provide the Union with the requested information. The Union's position is that management failed to provide us the scope of the impact of the change; we have no idea how many and which segments of the bargaining unit--if any at all--will be affected by relevant portions of the new handbook. This, naturally, is critical to effectively representing the bargaining unit.

Management's position is that the CBA states that any information requested beyond what is specifically required under article 49 shall not hold up negotiations. Thus, they will ignore our information requests and insist we bargain. Management wants to implement the new handbook before the end of the fiscal year.

Attached is a document that incorporates all of the Union's information requests and management's responses. I've provided the dates of each. Note that management provided no replies to requests 5 and following. Their responses to #3 and 4 were inadequate refusals to provide answers.

Let me know if you want all the originals, and I will forward them to you.

Best,
Jerry



Matulef, Mark L

From: Gross, Jerry
Sent: Thursday, September 08, 2016 8:32 AM
To: Crews, Anita O
Subject: Proposed Personnel Security and Suitability Policy Negotiations

Hi Anita,

It will be necessary to postpone negotiations regarding HUD's proposed Personnel Security and Suitability policy and the related handbook until after WMATA's completion of SafeTrack Surge #9. Due to the commuting challenges presented by Surge #9, I will not be able to come into Washington from September 15 through October 26, the planned dates of that Surge. As permitted in OCHCO's guidance provided below, I will be working from home five days a week during that time period.

As you may recall, management set the time for negotiations as the week of September 19. The Union has not agreed to that date; on the contrary, we have repeatedly advised you that negotiations cannot begin until after management responds to our information requests.

Management has not provided any response at all to several of our requests. These information requests address the scope of the impact of the policy change, which management has not provided. We consider the lack of a response to be an unfair labor practice. The Union has previously obtained FLRA-ordered postings regarding the Department's failure to respond appropriately to the Union's information requests.

I look forward to rescheduling the negotiations once management has responded to the Union's requests for information. As a reminder, management may implement a new policy *only after* bargaining obligations are satisfied.

Thank you,
Jerry

From: OCHCO
Sent: Tuesday, September 6, 2016 4:07 PM
Subject: SafeTrack Surge #9 Communication

Update and Continued Guidance for Use of Workplace Flexibilities During the Washington Metropolitan Area Transit Authority (WMATA) SafeTrack Project

Communication #9—September 2, 2016

SafeTrack Surge # 9 of the WMATA plan identifies continuous single tracking covering the Orange Line from Vienna to West Falls Church effective Thursday, September 15 and ending on Wednesday, October 26 for all weekdays.

Surge #9 will now include four consecutive weekend shutdowns where free shuttle buses replace trains along segments of the Orange Line to complete necessary switch rehabilitation work:

- **September 24-25** – Buses replace trains between Vienna and East Falls Church. Vienna, Dunn Loring and West Falls Church stations will be closed.

- **October 1-2** – Buses replace trains between Vienna and East Falls Church. Vienna, Dunn Loring and West Falls Church stations will be closed.
- **October 8-9** – Buses replace trains between Vienna and West Falls Church. Vienna and Dunn Loring stations will be closed.
- **October 15-16** – Buses replace trains between Vienna and West Falls Church. Vienna and Dunn Loring stations will be closed.

As a reminder, supervisors are encouraged to provide the highest level of flexibility in terms of telework (e.g. up to 5 days of telework, same day recall), arrival times (e.g. allow start times after 9:30 am), liberal leave (e.g. allow use of annual leave or earned credit hours as needed) to all employees that are in need.

HUD supervisors and employees will need to work together to use workplace flexibilities (telework, alternative work schedules, and leave) effectively to help reduce the impact of the SafeTrack Project on the workforce, as well as on the operations of the agency.

Please note the guidance below is still in effect.

Adjustment of Core Hours

Core hours are defined as the hours each day that a full-time employee must be present for work. HUD's current core hours are 9:30 a.m. to 2:30 p.m. **Effective Monday, June 4, 2016, core hours for all employees stationed in the Washington D.C. Metropolitan area will be adjusted to 10 a.m. – 2:30 p.m.** This adjustment will remain in effect throughout the SafeTrack project. In accordance with the AFGE Agreement, Article 16, Section 16.03, for bargaining unit and for nonbargaining unit, employees shall not begin work before 6:00 a.m. local time nor complete work after 7:30 p.m. local time.

Recommendations for Accommodating Workplace Flexibilities

Telework

Supervisors are encouraged to provide the highest level of flexibility in terms of telework (e.g., up to 5 days of telework) but may not require an employee to participate in the Telework Program. The same day recall provision and local commuting area restriction is hereby waived for the duration of the SafeTrack project.

As per the telework policy, teleworkers must be available when working off-site as when working on-site. Teleworkers will be available via email and telephone and will respond to emails and voicemail messages within the timeframe specified in your telework agreement.

As a reminder, employees must have an approved Telework agreement in place to Telework. To learn more about HUD's policy, expectations and requirements for teleworkers, please visit the Telework page referenced below or contact your Telework Coordinator.

Hours of Duty

To ensure HUD employees meet mission needs with the least possible inconvenience to employees, employees will be able to discuss adjustments to their work hours with their supervisors that might enable them to travel to HUD during non-traditional "rush hour" times while still working and/or taking leave to meet their daily work schedule requirements. Supervisory approval of employee work schedules is still required, so that managers can ensure essential work functions can be completed.

Leave Approval

HUD's leave policy remains unchanged. Supervisors should be lenient as it relates to leave requests due to the impact of the SafeTrack project.

Changes to Regular Mode of Transportation

All employees are encouraged to research other modes of transportation such as vanpools, carpools, commuter buses, VRE, MARC, bike to work, etc. Employees who are requesting a mode of transportation change for the upcoming month will have to submit a HUD 80A "Recertification and/or Change" form and submit the updated information to the Transit Subsidy Office. Changes must be made before the 15th of the month to be effective for the upcoming month. Once paperwork is received in the transit office, a confirmation email will be sent to the employee on what actions are needed to have their new mode of transportation paid. Employees are reminded to be proactive and responsible when using the Transit Subsidy Program. Any questions should be directed to (202) 402-2215 or TransitSubsidyProgram@hud.gov.

Miscellaneous

Parking

Normal parking operations and enforcement will continue to be in effect at the Robert C. Weaver building and public parking lots in the Washington, DC Metropolitan area.

HUD Fitness Center

For a limited time, the HUD Fitness Center is offering a free "SafeTrack" membership for new members. "SafeTrack" members will have access to locker rooms and shower facilities only. The fitness center hours of operation are Monday through Friday, 6 a.m. to 7:30 p.m. To learn more and to complete a "SafeTrack" new member application including waivers and emergency contact information, please visit the fitness center, located in B122 or call 202-708-1180.

Resource Information

The references listed below are provided to assist employees and supervisors in locating timely information during the SafeTrack project.

Commuter Feedback	HUDSafeTrackCommuterConcerns@hud.gov
HUDs Telework Policy	http://portal.hud.gov/hudportal/documents/huddoc?id=6251admh.pdf
Transit Subsidy Form HUD 80-A	http://portal.hud.gov/hudportal/documents/huddoc?id=80a.pdf
	http://www.wmata.com/rider_tools/metro_service_status/advisories.cfm?AID=5583
WMATA-SafeTrack	https://wmata.com/rail/safetrack.cfm
Metro Alerts	https://wmata.com/rider_tools/metro_service_status/rail_bus.cfm
Metro Twitter	https://twitter.com/metrorailinfo
Metro Alerts-Signup	https://www.metroalerts.info/CreateAccount.aspx

Available Commuter Services

http://www.wmata.com/rider_tools/metro_service_status/advisories.cfm?AID=5583

- [AMTRAK \(https://www.amtrak.com/home\)](https://www.amtrak.com/home)
- [ART – Arlington Transit \(http://www.arlingtontransit.com/\)](http://www.arlingtontransit.com/)
- [City of Fairfax CUE Bus System \(http://www.fairfaxva.gov/government/public-works/transportation-division/cue-bus\)](http://www.fairfaxva.gov/government/public-works/transportation-division/cue-bus)
- [DASH – Alexandria Transit Company \(http://www.dashbus.com/\)](http://www.dashbus.com/)
- [Fairfax Connector – Fairfax County \(http://www.fairfaxcounty.gov/connector/\)](http://www.fairfaxcounty.gov/connector/)
- [Guaranteed Ride Home \(http://www.commuterconnections.org/commuters/guaranteed-ride-home/\)](http://www.commuterconnections.org/commuters/guaranteed-ride-home/)
- [Loudoun County Transit Commuter Bus \(http://www.loudoun.gov/index.aspx?NID=221\)](http://www.loudoun.gov/index.aspx?NID=221)
- [Maryland Transit Administration \(includes MARC Train and MTA Commuter Bus Service\) \(http://mta.maryland.gov/\)](http://mta.maryland.gov/)
- [Montgomery County Ride On \(http://www.montgomerycountymd.gov/DOT-Transit/\)](http://www.montgomerycountymd.gov/DOT-Transit/)
- [Potomac and Rappahannock Transportation Commission \(PRTC\) – OmniRide \(http://www.prtctransit.org/index.html\)](http://www.prtctransit.org/index.html)
- [TheBus – Prince George’s County \(http://www.princegeorgescountymd.gov/sites/PublicWorks/Transit/TheBus/Pages/default.aspx\)](http://www.princegeorgescountymd.gov/sites/PublicWorks/Transit/TheBus/Pages/default.aspx)
- [Virginia Railway Express \(VRE\) \(http://www.vre.org/\)](http://www.vre.org/)
- [Washington Metro Area Transit Authority \(WMATA\) – Metrobus and Metrorail \(http://www.wmata.com/\)](http://www.wmata.com/)