




National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

July 29, 2022

MEMORANDUM FOR: Sonya Gaither, HUD Director of Employee & Labor Relations,
AHE

FROM: 
Ricardo Miranda, Chief Steward, Regions 1, 2 & 4
AFGE National Council of HUD Locals No. 222

SUBJECT: 5 U.S.C. § 7114(b)(4) Request for Information #3 for Unfair Labor
Practices (ULPs) and Collective Bargaining Agreement (CBA)
Violations Grievance of the Parties Concerning Preemptive
Exclusion for Remote Work Eligibility

The American Federation of Government Employees (AFGE) National Council of HUD Locals No. 222 (referred to herein as “AFGE Council 222,” “the Union,” or “the Council”) is submitting this information request to the U.S. Department of Housing and Urban Development (referred to herein as “HUD,” “the Department,” “Management,” or “the Agency”) pursuant to 5 U.S.C. § 7114(b)(4).

Standards for Provision of Information Requested under 5 U.S.C. § 7114(b)(4)

In accordance with U.S.C. § 7114(b)(4)(B), the Agency is required to furnish to the Union data, which is reasonably available and necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. The duty to provide information to a union applies not only to information needed to negotiate an agreement, but also to data relevant to its administration and the full range of a union’s representational responsibilities under the Federal Service Labor-Management Relations Statute (Statute) including bargaining, contract administration, processing a grievance, representing an employee in proposed discipline, and determining whether to file a grievance or Unfair Labor Practice (ULP). *See Department of Health and Human Services (HHS), Social Security Administration (SSA) and AFGE Local 3302, 36 FLRA 943 (1990); Federal Aviation Administration (FAA), National Air Traffic Controllers Association (NATC) et al., 55 FLRA 254, 259-60 (1999); and Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) and National Weather Service Employees Organization, MEBA, 30 FLRA 127, 141 (1987).*

The standard adopted by the U.S. Federal Labor Relations Authority (FLRA) requires a union requesting information under 5 U.S.C. § 7114(b)(4) to establish a particularized need for the

information by articulating with specificity why it needs the requested information including the uses to which the union will put the information, and the connection between those uses and the union's representational responsibilities under the Federal Service Labor-Management Relations Statute (Statute). See *Internal Revenue Service, Washington, DC, and Internal Revenue Service, Kansas City Service Center, Kansas City, MO and NTEU and NTEU, Chapter 66*, 50 FLRA 661 (1995); *VA and AFGE Local 3314*, 28 FLRA 260, 265 (1987); and *Dept. of Navy, Portsmouth Naval Shipyard and Portsmouth FEMTC*, 4 FLRA 619, 624 (1980). In *Internal Revenue Service, Washington, D.C. and Kansas City, MO*, 50 FLRA 661 (1995), Footnote 13, regarding a union's particularized need, the FLRA stated:

However, **a request need not be so specific as, for example, to require a union to reveal its strategies** or compromise the identity of potential grievants who wish anonymity. See, for example, *NLRB v. FLRA*, 952 F.2d at 530 ("Necessarily, the bargainers are not obliged to reveal their strategies[.]"); *American Federation of Government Employees, AFL-CIO v. FLRA*, 811 F.2d 769, 774 (2d Cir. 1987) (court acknowledged that protecting the identity of potential grievants is a justifiable union consideration). Moreover, **the degree of specificity required of a union must take into account the fact that, in many cases, including the one now before us, a union will not be aware of the contents of a requested document.** [emphasis added]

For a Section 7114(b)(4) information request, a union is not required in its Particularized Need to describe the exact nature of any alleged misapplication or violation of policy, procedure, law or regulation by the agency. See *Health Care Financing Administration and AFGE Local 1923*, 56 FLRA 156 (March 17, 2000).

"It is well established that under section 7114(b)(4) of the Statute the exclusive representative is entitled to information that is necessary to enable it to carry out effectively its representational responsibilities, including information which will assist it in the **investigation, evaluation and processing of a grievance.**" [emphasis added] *National Labor Relations Board and National Labor Relations Board Union Local 6*, 38 FLRA 506 (November 28, 1990). An exclusive representative is entitled to receive information that meets the criteria of 5 U.S.C. § 7114(b)(4) in preparation for an arbitration hearing. See *Federal Aviation Administration, New England Region, Burlington, MA and National Association of Air Traffic Control Specialists*, 38 FLRA 1623 (1991); and *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001).

In accordance with FLRA case law, please be advised that an information request by a labor organization under 5 U.S.C. § 7114(b)(4) to prepare for an arbitration hearing meets the routine-use exemption at 5 U.S.C. § 552a(b)(3) for judicial and administrative proceedings for the release of documents covered by the Privacy Act. See *Department of the Air Force and NAGE, Local R7-23*, 51 FLRA 675 (December 22, 1995); *Bureau of Indian Affairs (BIA) and NFFE Council of BIA Locals*, 52 FLRA 629 (November 26, 1996); and *General Services Administration and AFGE, Local 2275*, FLRA ALJ SF-CA-00804 (November 18, 2004). The Union needs the names of any individuals contained in the documents requested and disclosed in order to be able to identify potential witnesses for direct or cross examination and rebuttal at the

arbitration hearings due to Management denial's denial of the Union's June 8, 2022, Unfair Labor Practices (ULPs) and Collective Bargaining Agreement (CBA) violations Grievance of the Parties concerning the preemptive exclusions for remote work eligibility for the vast majority of the AFGE bargaining unit. Therefore, a less intrusive means is not available. However, the Agency may sanitize personally invasive information such as home street address, home phone number, Social Security Number, date of birth, etc. contained in the documentation.

Please be further advised that pursuant to U.S. Office of Personnel Management (OPM) regulations at 5 CFR § 293.311, a federal employee's name, title, grade, occupational series, annual salary rate, awards, bonuses, position description, job elements and performance standards, and duty station are publicly available information not subject to the Privacy Act.

Under 5 U.S.C. § 7114(b)(4), HUD is required to furnish to the Union "data which is normally maintained by the Agency in the regular course of business" and "reasonably available." **In *Department of Justice, U.S. Immigration and Naturalization Service (INS), U.S. Border Patrol El Paso, Texas and AFGE National Border Patrol Council, 40 FLRA 792, 804-05 (1991)*, the FLRA found that information was reasonably available even when the agency had to give the union 10,000 documents.** The FLRA has ruled that an agency may be required to produce information that does not exist in the precise format requested, but which can be extracted from records within an agency's control. *See Department of Air Force, Sacramento Air Logistics Center, and AFGE, Local 1857, 37 FLRA 987 (October 15, 1990)*. **An agency is also required to inform a labor union if the requested data does not exist.** *See Social Security Administration and AFGE Local 1164, 39 FLRA 659 (1991)*. Finally, an agency may not destroy information requested under 5 U.S.C. § 7114(b)(4) while the underlying matter is being litigated. *See Social Security Administration, Dallas, TX and AFGE, 51 FLRA 1219 (1996)*.

Information Requested

1. Any and all documents in whatever written format (including, but not limited to: studies, reports, surveys, analyses, memoranda, letters, emails, hand-written notes¹, etc.) that show how the Department considered adjusting the duties to allow for participation in remote work for any and all HUD bargaining-unit positions determined to only be eligible for routine telework. Please do not sanitize names contained in the documents.

2. Any and all documents in whatever written format (including, but not limited to: studies, reports, surveys, analyses, memoranda, letters, emails, hand-written notes², etc.) that show how

¹ The FLRA has also ruled that a supervisor's memory-jogger notes are releasable to a union for an information request under 5 U.S.C. § 7114(b)(4). *See Department of Health and Human Services, Social Security Administration and AFGE Local 1164, 37 FLRA 1277 (October 29, 1990)*. Information about non-bargaining-unit employees is releasable under 5 U.S.C. § 7114(b)(4) for the union to carry out its representational responsibilities. *See U.S. Dept. of Air Force and AFGE Local 1857, 37 FLRA 987 (October 15, 1990)*; and *Department of Labor and AFGE, National Council of Field Labor Locals, 39 FLRA 531 (February 13, 1991)*.

² The FLRA has also ruled that a supervisor's memory-jogger notes are releasable to a union for an information request under 5 U.S.C. § 7114(b)(4). *See Department of Health and Human Services, Social Security Administration and AFGE Local 1164, 37 FLRA 1277 (October 29, 1990)*. Information about non-bargaining-unit employees is releasable under 5 U.S.C. § 7114(b)(4) for the union to carry out its representational responsibilities. *See U.S. Dept.*

the Department considered adjusting the duties to allow for participation in remote work for any and all individual HUD bargaining-unit employees determined to only be eligible for routine telework. Please do not sanitize names contained in the documents.

Particularized Need

On June 8, 2022, AFGE Council 222 filed an Unfair Labor Practices (ULPs) and collective bargaining agreement (CBA) violations Grievance of the Parties (GOP) concerning the Department's preemptive exclusions that broad groups of AFGE bargaining unit employees who constitute the vast majority of the bargaining unit are ineligible for remote work. In the June 8, 2022, GOP the Union argued that the Department did not take appropriate consideration of the employees' duties, assignments, and functions; that Management did not address how those determinations would specifically affect the Department's business needs in violation and repudiation of multiple provisions of National Supplement 33 for the Department's implementation of Flexiplace Policy, especially the eligibility criteria and basis of denial for remote work. In the June 8, 2022, ULPs and CBA violations GOP on remote work, the Union also alleged that Management violated the Federal Service Labor-Management Relations Statute, National Supplement 34, other HUD-AFGE collective bargaining agreement (Agreement) provisions, the Telework Enhancement Act of 2010, and reserved the right to grieve and raise any other violation, misinterpretation, or misapplication of any applicable provision of the HUD-AFGE collective bargaining agreement, law, rule or regulation on the subject matter being grieved.

Only July 8, 2022, the Department denied the Union's June 8, 2022, GOP on remote work. On July 27, 2022, AFGE Council 222 timely invoked arbitration due to HUD's July 8, 2022, denial of the Union's June 8, 2022, GOP on remote work.

The Union needs Information Requests #1 and #2 in order to examine the evidence and efforts the Agency made to consider adjustment of employee duties to allow for participation in remote work in accordance with Section 16 of Supplement 33 on remote work. It is necessary to disclose managers' and/or employees' names in the documents for Information Requests #1 and #2 for the Council to be able to identify possible witnesses to testify at the arbitration hearings on remote work due to Management's denial of the Union's June 8, 2022, GOP on remote work. In sum, AFGE Council 222 needs all of the information requested above to meet its burden of proof by a preponderance of the evidence for the June 8, 2022, Unfair Labor Practices and collective bargaining agreement violations Grievance of the Parties (GOP) and arbitration hearings concerning remote work that the Department in fact violated Section 16 of Supplement 33 on remote work. This information requested will also be used to submit documentary evidence and identify and prepare witnesses for direct examination, cross-examination, and rebuttal for arbitration hearings. Therefore, a less intrusive means is not available to collect this information because the Union needs to be able to identify potential witnesses' names.

of Air Force and AFGE Local 1857, 37 FLRA 987 (October 15, 1990); and Department of Labor and AFGE, National Council of Field Labor Locals, 39 FLRA 531 (February 13, 1991).

Deadline to Furnish the Information Requested

Please provide the information requested above in 21 days (i.e., by August 19, 2022) so that the Union has sufficient time to examine the documentary evidence, prepare witness lists, interview witnesses, and, based on this information requested, identify relevant documentary evidence to be submitted into evidence at the arbitration hearings for the denial of the Council's June 8, 2022, Grievance of the Parties on remote work. The Union notes that it is an Unfair Labor Practice in violation of 5 U.S.C. § 7116(a)(1), (5) and (8) not to timely furnish documentation in response to an information request under 5 U.S.C. § 7114(b)(4), which the FLRA defines as timely to meet the Union's representational responsibilities. See *Bureau of Prisons, Lewisburg Penitentiary and AFGE Local 148*, 11 FLRA 639 (1983); *Department of Defense Dependent Schools and North Germany Area Council, Overseas Education Association*, 19 FLRA 790 (1985); and *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001). Please be advised that in *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001), the FLRA found that the agency committed an Unfair Labor Practice even though the union submitted the information request under 5 U.S.C. § 7114(b)(4) only five days prior to the arbitration hearing and the agency provided the information on the day of the arbitration hearing as it was untimely for the union to meet its representational responsibilities.

Please do not attempt to interpret any part of this request that you may not understand. If you have any questions concerning this request, or if you do not understand any part of this request, please contact me at [REDACTED] or via email at Ricardo.Miranda@hud.gov.

I appreciate your cooperation in timely processing and furnishing the information requested. Thank you in advance.

cc: D'Andra Hankinson, HUD Deputy Director, Employee and Labor Relations Division
Salvatore T. Viola, AFGE Council 222 President
Jerry Gross, AFGE Council 222 Steward
AFGE Council 222 Executive Board
AFGE Local Presidents at HUD