




National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

October 4, 2012

MEMORANDUM FOR: James M. Reynolds, Deputy Director
Labor and Employee Relations Division

FROM: 
Ricardo Miranda, Assistant Chief Steward
HUD Council of AFGE Locals, Council 222

SUBJECT: Request for Information on Social Security Numbers Breach

The HUD Council of AFGE Locals, Council 222 (referred to herein as “the Council”) is submitting this information request to the U.S. Department of Housing and Urban Development (referred to herein as “the Department”) pursuant to 5 U.S.C. Section 7114(b)(4).

The standard adopted by the 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 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); Dept. of Navy, Portsmouth Naval Shipyard and Portsmouth FEMTC, 4 FLRA 619, 624 (1980).*

Particularized Need

On Monday, October 1, 2012, the Department's Office of the Chief Human Capital Officer sent an email to all employees that there was a security breach of all Departmental employees' personally identifiable information (PII) particularly employees' names and Social Security Numbers. An employee inadvertently sent an email containing an Excel file with all Departmental employees' names and Social Security Numbers. As a result, on Tuesday, October 2, 2012, the Council demanded to bargain the Department's response to this PII security breach.

The Council, as exclusive representative of the bargaining unit, requires information for full and proper discussion and analysis in order to engage in mid-term bargaining on the Department's response to and remedial action for the breach of AFGE bargaining-unit employees' personally identifiable information (Social Security Numbers). The information requested below will be utilized to confer and discuss with bargaining-unit employees the facts

concerning the nature and extent of the security breach of the personally identifiable information (Social Security Numbers), formulate bargaining proposals and counterproposals, and advise employees on how to mitigate their liability for identity theft and financial fraud. Information items #1 through #6 requested below are needed to understand the specific facts of the breach of employees' personally identifiable information, verify the type and extent of data disseminated, and the Department's response to the breach to contain the further dissemination of employees' Social Security Numbers. The Council needs to understand, analyze, and evaluate the Department's response to the breach of the personally identifiable information in order to formulate bargaining proposals and counterproposals if there are further measures that the Department can take to protect the privacy of employees' Social Security Numbers and contain and mitigate employees' liability to potential identify theft and financial fraud. Information items #7 and #8 are needed in order to assess if the Department's response is sufficient to properly mitigate and contain the employees' liability to identity theft and financial fraud to be able to formulate bargaining proposals and counterproposals accordingly.

In the provision of the information requested below, please include information and documentation about non-bargaining unit employees because it is the Council's understanding that the email containing employees' Social Security Numbers was sent to all employees including non-bargaining-unit employees.

Information Requested

Therefore, the Council requests the following information, including any documentation in paper, electronic and other form justifying the requested information:

1. A copy of the email actually sent to bargaining-unit employees, including the attachments, that breached bargaining-unit employees' personally identifiable information (Social Security Numbers). You may sanitize Social Security Numbers and any other information subject to the Privacy Act;
2. Any documents in whatever written format (emails, memos, reports, letters, hand-written notes, etc.) showing that the email sent with bargaining-unit employees Social Security Numbers were removed from the Department's servers;
3. Any documents in whatever written format (emails, memos, letters, reports, hand-written notes, etc.) explaining how and why the breach of bargaining-unit employees' personally identifiable information (Social Security Numbers) occurred;
4. Any documents in whatever written format (emails, memos, reports, letters, hand-written notes, etc.) demonstrating all steps or actions taken by the Department to cure the breach of bargaining-unit employees' personally identifiable information (Social Security Numbers) and/or to prevent a future reoccurrence of such a breach of Social Security Numbers data;
5. A copy of any emails of employees who may have forwarded the email containing bargaining-unit employees' Social Security Numbers to another email address;

6. Any documents in whatever written format (emails, memos, reports, letters, hand-written notes, etc.) showing how the Department responded to the forwarding of the email containing the breach of personally identifiable information (Social Security Numbers) by employees to other email addresses, if applicable, to contain the further dissemination of employees' Social Security Numbers;
7. Any documents in whatever written format (emails, memos, reports, letters, hand-written notes, etc.) showing how the Department determined that fraud liability insurance for \$25,000 was sufficient coverage for affected bargaining-unit employees' whose Social Security Numbers were disseminated; and
8. Any documents in whatever written format (emails, memos, reports, letters, hand-written notes, etc.) showing how the Department made its decision that one year of credit-monitoring services was sufficient coverage for affected bargaining-unit employees' whose Social Security Numbers were disseminated.

This information is or should be normally maintained by HUD in its regular course business. The information should be reasonably available and accessible and is necessary for a full and proper discussion. There is no inconsistency with the provisions of the Privacy Act, 5 U.S.C. 552a related to the information being requested; however, if there is, the Department may sanitize the information subject to the Privacy Act accordingly. AFGE Council 222 has established the right to such information to fulfill its representational duties towards the bargaining unit employees.

The FLRA has held 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). The FLRA has found that information was "reasonably available" which required three weeks effort to compile. *See Department of Health and Human Services, Social Security Administration, and AFGE, Local 3302*, 36 FLRA 943 (August 31, 1990). According to the FLRA, information is "reasonably available" which required approximately 150 staff hours of effort to compile. *See Department of Air Force, Sacramento Air Logistics Center, and AFGE, Local 1857*, 37 FLRA 987 (October 15, 1990).

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). According to FLRA case law, 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).

The Union requests that the above specified information be furnished as soon as possible, and prior to bargaining so that the Council can formulate bargaining proposals for the

mid-term bargaining. If this request is denied, in whole or in part, please state in writing the name, position title, and grade of the official making the decision, and the statutory, regulatory, or contractual citation it is based upon.

If the Agency is unable to fulfill any request in full, please fulfill it in non-objectionable part, and articulate any denial in detail and/or the Agency's interest in non-disclosure at the time that it denies the request for information. *See U.S. Department of Justice, Immigration and Naturalization Service, Northern Region, Twin Cities, Minnesota*, 51 FLRA 1467, 1473 (1996), *reconsideration denied*, 52 FLRA 1323 (1997), *aff'd*, 144 F.3d 90 (1998); *IRS-Kansas City*, 50 FLRA at 670 (1995).

If you have any further questions regarding this memo, please contact me at (787) 274-5883. Thank you in advance for providing this information.