



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

June 30, 2021

MEMORANDUM FOR: Sonya Gaither, Director, Labor and Employee Relations Division,
AHE

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

SUBJECT: 5 U.S.C. § 7114(b)(4) Request for Information for Real Estate
Assessment Center's (REAC) changes in official duty stations and
locality pay for affected REAC employees

AFGE National Council of HUD Locals No. 222 (referred to herein as "AFGE Council 222" or "the Union") 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)

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); Dept. of Navy, Portsmouth Naval Shipyard and Portsmouth FEMTC, 4 FLRA 619, 624 (1980). A particularized need statement does not have to be so specific as to require a union to reveal its strategy or the identity of potential grievants. See Internal Revenue Service, Kansas City, 50 FLRA 661 (1995).*

"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 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 an arbitration hearing should HUD management deny the Union's January 29, 2021 Grievance of the Parties (GOP) concerning Real Estate Assessment Center (REAC) affected employees' changes in official duty stations and locality pay. Therefore, a less intrusive means is not available.

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." 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). Please also be advised that according to FLRA case law, information requested under 5 U.S.C. § 7114(b)(4) is not limited to documentation and can be in the form of describing information. *See U.S. Veterans Administration and AFGE Local 3314*, 28 FLRA 260, 261 (July 29, 1987).

Information Requested

1. Please provide a list of all affected REAC bargaining-unit employees by name, title, and then duty station who the Agency notified in May of 2021 that their official duty stations would be changed to the local commuting areas where their homes are located. This is publicly available information not subject to the Privacy Act in accordance with OPM regulation at 5 CFR § 293.311.
2. Please provide a copy of the position descriptions of all affected REAC bargaining-unit employees who the Agency notified in May of 2021 that their official duty stations would be changed to the local commuting areas where their homes are located. The position

description is publicly available information not subject to the Privacy Act in accordance with OPM regulation at 5 CFR § 293.311.

3. Please provide a copy of the email, memorandum, letter and/or whatever written document that informed each of the affected REAC bargaining-unit employees that their official duty stations would be changed to the local commuting areas where their homes are located.
4. Please provide a copy of the Standard Form (SF) 50 for the period when each employee was first hired contained in the Official Personnel Folder for each of the affected REAC bargaining-unit employees—who the Agency notified in May of 2021 that their official duty stations would be changed to the local commuting areas where their homes are located—identifying the official duty station/worksites in the SF 50 Duty Station blocks 38 and 39. You may sanitize the Social Security Number and Date of Birth contained in the SF 50, but not the names in the SF 50s. 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 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).*
5. Please provide any and all documents related to how HUD and REAC determined the official duty station/work site of record in that initial SF 50 in “Duty Station” blocks 38 and 39 of the Standard Form 50 when each affected REAC bargaining-unit employee was first hired by HUD. Affected REAC bargaining-unit employee is anyone who the Agency notified in May of 2021 that his/her official duty stations would be changed to the local commuting areas where his/her home is located.
6. Please provide a copy of the Standard Form (SF) 52 and SF 50 for the proposed new official duty station/work site for each of the affected REAC bargaining-unit employees who the Agency notified in May of 2021 that their official duty stations would be changed to the local commuting areas where their homes are located. You may sanitize the Social Security Number and Date of Birth contained in the SF 50, but not the names in the SF 50s. 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 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).*
7. Please provide a copy of the travel authorizations and travel vouchers for the past three years (June 2018 – June 2021) from the Concur travel system for each of the affected REAC bargaining-unit employees who the Agency notified in May of 2021 that their official duty stations would be changed to the local commuting areas where their homes

are located. You may sanitize the Social Security numbers, dates of birth, home addresses, government travel card account numbers, etc. contained in any of the documents, but not the names of the employees. 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 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).*

Particularized Need

On June 29, 2021, the Union filed a Grievance of the Parties (GOP) on behalf of all affected REAC bargaining-unit employees who the Agency notified in May of 2021 that their official duty stations would be changed to the local commuting areas where their homes are located. REAC is doing this as a basis to cut the locality pay of the affected REAC employees. In the GOP, the Union argues that the Agency incorrectly determined the official duty stations/worksites of the affected REAC employees in violation of OPM regulation at 5 CFR § 531.605(a)(2); this regulation states that if the employee's work involves recurring travel or the employee's work location varies on a recurring basis, the official worksite determination by the agency is “subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work.” The affected REAC bargaining-unit employees hold full-time, recurring travel positions such as Construction Analysts who regularly travel and perform their work throughout the entire United States well beyond the geographic limits of the local commuting areas where their homes are located. Therefore, the Agency's and REAC's determination of the official duty stations as the local commuting area where the affected REAC employees' homes are located is arbitrary, capricious, unreasonable and an abuse of discretion.

Information Requested #1 and #3 are needed for the Union to be able to identify all of the affected REAC bargaining-unit employees as possible witnesses to testify at an arbitration hearing if that Agency denies AFGE Council 222's June 29, 2021 GOP. Arbitration is the next step of the Grievance Procedures if management denies the Grievance of the Parties in accordance with Article 51, Section 51.15(3) and Article 52, Sections 52.01 and 52.02 of the 2015 HUD-AFGE collective bargaining agreement. The Union needs Information Requested #1 (position titles), #2 (position descriptions) and #7 (travel authorizations and travel vouchers) to be able to demonstrate that the positions encumbered by the affected REAC bargaining-unit employees are full-time, recurring travel positions and that the location of the work performed is regularly occurring throughout the entire United States well beyond the geographical limits of the local commuting areas of the employees' homes; this will demonstrate that the HUD and REAC are violating OPM regulation at 5 CFR § 531.605(a)(2). Information Requested #1 (duty station), #4 (SF 50 for official duty station/worksites upon hire) and #6 (SF 52 and SF 50 for the proposed new official duty station/worksites) are needed in order for the Union to be able to identify the locality pay rates for the before and after official duty stations/worksites and calculate the back pay and interest owed to the affected REAC bargaining-unit employees as the SF 50s and SF 52s identify the Grade and Step pay levels for the arbitrary and capricious change in official duty stations/worksites and locality pay, which is one of the remedies requested in the

Union's June 29, 2021 GOP. AFGE Council 222 needs Information Requested # 5 to examine the documentary evidence and rationale why the Agency initially assigned the affected REAC bargaining-unit employees to the higher locality pay areas upon hiring; the Union suspects that the Agency correctly used its discretion to determine the higher locality pay areas upon hiring because there was no one predominant locality pay area where the work was being performed by these full-time, recurring travel positions throughout the entire United States.

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 29, 2021 Grievance of the Parties (GOP) that the Department and REAC violated OPM regulation at 5 CFR § 531.605(a)(2) by arbitrarily and capriciously determining that the affected REAC bargaining-unit employees' official duty stations/worksites are the local commuting areas near their homes. This Information Requested will also be used to submit documentary evidence and identify and prepare witnesses for direct examination, cross-examination and rebuttal for an arbitration hearing should management deny AFGE Council 222's June 29, 2021 GOP. Arbitration is the next step of the Grievance Procedures if management denies the Grievance of the Parties in accordance with Article 51, Section 51.15(3) and Article 52, Sections 52.01 and 52.02 of the 2015 HUD-AFGE collective bargaining agreement. Therefore, a less intrusive means is not available to collect this information because the Union needs to be able to identify potential witnesses' names.

Deadline to Furnish the Information Requested

Please provide the information requested above in 30 days (i.e., by July 30, 2021) so that the Union has sufficient time to evaluate the evidence and meet the deadline to invoke arbitration should management deny AFGE Council 222's June 29, 2021 Grievance of the Parties. 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.

If HUD is not able to timely furnish the documentation for this information request under 5 U.S.C. § 7114(b)(4), then the Union requests an extension of the 25-day deadline to invoke arbitration until at least 25 days after HUD provides the information requested.

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 (787) 525-7149 or via email at Ricardo.Miranda@hud.gov.

Your cooperation in this important matter is greatly appreciated. Thank you in advance.

cc: Ashley Sheriff, REAC Director, PE
Salvatore T. Viola, AFGE Council 222 President