



American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO


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President

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June 5, 2023

MEMORANDUM FOR: Lori Michalski, Chief Human Capital Officer
Sonya Gaither, Director of Employee & Labor Relations, Office of
the Chief Human Capital Officer
Damon Smith, General Counsel

FROM: Salvatore Viola, President, AFGE Council 222 

SUBJECT: Unfair Labor Practice Grievance of the Parties: C: Drive Data
Collection

Pursuant to Article 51, Sections 51.01(2), 51.01(3), 51.04, and 51.15 of the 2015 HUD-AFGE Collective Bargaining Agreement (CBA) and the Federal Service Labor-Management Relations Statute (Statute) at 5 U.S.C. § 7103(a)(9)(B) and (C), § 7121(b)(1)(C)(i), and § 7116(a) and (d), AFGE National Council 222 of HUD Locals (Council 222 or Union) files this Unfair Labor Practice Grievance of the Parties (ULP-GOP) against the Department of Housing and Urban Development (HUD or the Agency) concerning the Agency's demand to collect information from Union officials' hard drives.

On May 19, 2023, Samuel P. Stein, Senior eDiscovery Advisor for the HUD Office of General Counsel (OGC), demanded access to and a copy of all data on the hard drive (C: drive) of Tracy Vargas, Regional Vice President for Council 222 Region 6 and President of Local 3138. Mr. Stein gave the reason for copying Ms. Vargas's data in an email on that date: "OGC needs to collect data from your PC's hard drive (C: drive) for eDiscovery purposes in a potential litigation matter. The C: drive data collection is necessary to satisfy eDiscovery obligations as required by the Federal Rules of Civil Procedure as part of discovery for anticipated litigation . . . This is related to the AFGE Local 222 v. U.S. Department of Housing and Urban Development litigation." See Exhibit 1.

On or about that date, HUD OGC also required access to and a copy of all data on the hard drives (C: drives) of AFGE Local 476 Steward Chris McLennon and Local 476 President Cynthia Carter.

Unfair Labor Practices, Violations of the CBA, and Violations of Other Rules

In demanding access to and copying or attempting to copy the hard drives of Union officials, the Agency committed unfair labor practices by violating the Statute, including but not limited to the following:

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1. 5 U.S.C. § 7116(a)(1) by interfering with, restraining, or coercing any employee in the exercise by the employee of any right under Chapter 71.
2. 5 U.S.C. § 7116(a)(2) by discouraging membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment.
3. 5 U.S.C. § 7116(a)(8) by otherwise failing or refusing to comply with any provision of 5 U.S.C. Chapter 71. This includes but is not limited to violating 5 U.S.C. § 7102, which provides that “Each employee shall have the right to form, join, or assist any labor organization . . . freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.”

Additionally, the Agency violated the CBA, including but not limited to the following Articles:

1. Article 6, Section 6.02, which provides that “Any employee of the Department shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.”
2. Article 48, Section 48.01, which provides that “The parties recognize the need for private space for employee representational duties.” Given the transition to digital/electronic media for working and storage, “private space” includes computers as well as physical rooms and storage cabinets.
3. Article 48, Section 48.06, which provides that “(1) Union representatives shall be allowed use of E-Mail/LAN for representational purposes and for routine Union business” and that “(2) E-mail may be used by union representatives to communicate directly with Management concerning representational matters; to communicate with other union representatives . . . and to communicate with bargaining unit employees concerning appropriate representational matters.”
4. Article 51, Section 51.01, which provides that “This Article constitutes the sole and exclusive procedure for the resolution of grievances by employees of the bargaining unit and between the parties,” and Section 51.15(3), which states, “If the response is not satisfactory, the grieving party may refer the matter to arbitration.”
5. Article 52, Section 52.08, which provides that “The parties shall exchange and discuss stipulations, proposed exhibits, and proposed settlement no later than seven (7) days prior to the hearing.”
6. Article 52, Section 52.09, which provides that “The parties shall exchange witness lists and also provide them, to the Arbitrator no less than seven (7) days in advance of the hearing, and shall include a brief summary statement of the expected testimony of each witness.”

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Agency attorneys also knowingly violated the Rules of Professional Conduct Rule 4.2. Virtually all state bars have adopted a form of the American Bar Association (ABA) Model Rule 4.2 of the Rules of Professional Conduct. Rule 4.2 provides, “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” The District of Columbia Bar, the Georgia Bar, the Wisconsin Bar, and the Washington State Bar, among others, have adopted the language of Model Rule 4.2 as their own rule 4.2 of their codes professional responsibility. Government lawyers are generally obligated to follow the rules of professional conduct for the bars to which they are admitted and where they practice.

Background

On or about May 19, 2023, the Union was made aware that the Agency was seeking to copy Ms. Vargas’s entire hard drive. Ms. Vargas and AFGE Council 222 President Salvatore Viola inquired multiple times (such as on May 19 and May 26) about the subject of the litigation that prompted the demand for the data. Mr. Stein responded only “AFGE Local 222 v. U.S. Department of Housing and Urban Development litigation.”

As of both May 19 and May 26 and the present, the parties have no litigation in or heading to a U.S. District Court that would be titled as such, nor is there any “Local 222” in the HUD AFGE organization.

On May 19 and again on May 30, 2023, Mr. Stein referred the Union’s question about the subject of the litigation to James Radcliffe and Deandre Jackson, of OGC. Neither Mr. Radcliffe nor Mr. Jackson responded to Ms. Vargas’s or Mr. Viola’s emails to identify the specific topic of the litigation.

Mr. Radcliffe, assisted by Mr. Jackson, is representing HUD in the matter of the Union’s ULP-GOP regarding Anti-Harassment/Supplement 18. Supplement 18, regarding the Agency’s implementation of an anti-harassment policy, is a supplement to the CBA and is incorporated into the CBA. The Union has invoked arbitration in this matter, but a hearing has not been scheduled yet. As an administrative case, it would be referred to as “AFGE Council 222 (Union) and United States Department of Housing and Urban Development,” with a case number.

On May 30, 2023, Mr. Viola sent an email advising HUD to cease and desist from attempting to collect the hard drive data from Ms. Vargas.

On or about June 1, 2023, the Union learned that HUD also had contacted AFGE Local 476 Steward Chris McLennon and Local 476 President Cynthia Carter to collect data from their hard drives.

On June 1, 2023, the Union’s attorney, Stephen Caldwell, sent an email to the Agency denying the request to collect data from Ms. Vargas’s hard drive, and directing the Agency to immediately return any information that it had already collected. See Exhibit 2.

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On June 2, 2023, Union officials Salvatore Viola, Ricardo Miranda, and Jerry Gross, with their attorney Stephen Caldwell, participated in a conference call with James Radcliffe, Jeana Poloni, and Mary Evans of OGC.

The purpose of the June 2 call was to discuss scheduling an arbitration hearing for the Anti-Harassment/Supplement 18 arbitration, in which Mr. Caldwell is representing the Union. During the phone call, Mr. Radcliffe and Ms. Poloni informed the Union that the Anti-Harassment/Supplement 18 matter is the “litigation” for which HUD needed to collect data from Union officials’ hard drives.

Mr. Radcliffe also stated during the phone call that:

- OGC had specifically sent litigation hold memoranda to the Union officials who had served on the Union’s Supplement 18 negotiating team.
- In addition to Ms. Vargas, OGC had contacted Ms. Carter, Mr. Mclennon, and Mr. Viola; Mr. Radcliffe was unaware at the time that Mr. Viola is retired from HUD. All four of these individuals had signed Supplement 18 on behalf of the Union, as had a fifth individual who Mr. Radcliffe knew was retired.
- Mr. Radcliffe had not replied to Mr. Viola’s or Ms. Vargas’s email inquiries about the subject of the litigation because they are represented by counsel, so he is prohibited from contacting them directly.

After the phone conference, Mr. Radcliffe provided the litigation hold memoranda and some of the employees’ certifications in response. See Exhibit 3.

Discussion

Timeliness

This ULP-GOP is based on the May 19, 2023, demand for access to and copy of all data on Ms. Vargas’s hard drive, and similar demands for access to and copies of all data on Ms. Carter’s and Mr. Mclennon’s hard drives. The act of demanding to collect data followed the delivery of litigation hold memoranda. Although those memoranda were delivered to the affected employees—Mr. Mclennon, Ms. Carter, and Ms. Vargas—on or about January 20, 2023 (despite being dated December 2022),¹ those memoranda set a threatening and coercive tone that carried over to the May 19 demands and influenced the employees’ responses to those demands to access the hard drives. Furthermore, the litigation hold memoranda prohibited the recipients from discussing the matter with anyone else, directing them to “avoid using HUD’s instant messaging

¹ The litigation hold memoranda were signed by James Froembling, Regional Counsel, Region X, with DocuSign date stamps of December 14, 2022 (to Mr. Mclennon), December 15, 2022 (to Mr. Viola), and December 16, 2022 (to Ms. Carter and Ms. Vargas).

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to discuss the above-referenced case or parties,” thereby preventing the Union and its counsel from learning about the litigation hold memoranda in a timely manner.

While the litigation hold memoranda were delivered in January 2023, their contents make it clear that their application continues through to the present: “Tangible materials or ESI received by employees or other individuals subsequent to the date of this letter must be preserved in the same manner.” Thus, while the January 20 litigation hold memoranda pre-date the time limits for a grievance, their contents are relevant to this grievance.

Protected, Privileged, and Confidential Union Material

The contents of Union officials’ hard drives include protected and confidential material such as emails and documents related to employees they are representing and topics of representation. Union communications with and about the bargaining unit constitute protected activity. Demanding to search Union officials’ computers—not only their Agency-provided laptops but also on their privately owned devices (see Exhibit 3)—interferes with that protected activity and violates confidentiality, thereby interfering with and violating the rights granted under Article 48 in addition to Section 7116(a)(1) of the Statute. AFGC Council 222 has never waived this right, nor has HUD established any overriding need for the information. As Mr. Caldwell noted in his email (Exhibit 2), only the Union and not the affected employees acting in their individual capacity may waive claims of privilege that belong to the Union.

Unfair Labor Practices

The Agency interfered with, restrained, and coerced the affected employees who were exercising their rights under 5 U.S.C. Chapter 71 and discouraged membership in the Union by discriminating in connection with conditions of employment. The attempt or actual copying of data from the employees’ hard drives interfered with their rights to participate in protected activities and to maintain the confidentiality of privileged Union information. Mr. Stein wrote in an email of May 30, 2023, “We are only collecting the C: drive data for now as a sort of snapshot for the sake of preservation.” In other words, the Agency was collecting all of the information from the affected employees’ hard drives without limit; this would include extensive records about bargaining unit employees and Union matters that are confidential and protected. As Mr. Radcliffe admitted in the June 2 telephone call and as the correspondence from Mr. Stein noted, the Agency sought only Union materials from AFGC Council 222’s negotiators for Supplement 18 on HUD’s anti-harassment policy, and they wanted to copy the employees’ entire hard drives in order to ensure they captured everything associated with Supplement 18.

The Agency’s targeting of employees who had served on a Union negotiating team further interfered with employees exercising their statutory rights and serves to discourage membership in the Union. Asserting that the affected employees had “a duty to preserve all evidence related to this litigation,” the Agency knowingly and willfully sought protected information that the Union officials had created, gathered, and/or maintained exclusively in the context of and due to their Union roles.

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Moreover, in attempting to collect information from Union officials about the Union's activities, positions, and strategies, in order to benefit the Agency in an adversarial proceeding, the Agency interfered with the Union officials' rights to act in the interests of the bargaining unit. While Agency personnel carrying out Agency-directed assignments may have a duty to preserve evidence related to litigation, employees serving as Union officials who are performing Union duties have no such obligation with regard to their Union materials. On the contrary, their duty as Union officials is to protect the interests and rights of the Union and the bargaining unit.

The language used in Mr. Stein's May 19 email was coercive in nature: "necessary to satisfy eDiscovery obligations as required by the Federal Rules of Civil Procedure as part of discovery for anticipated litigation." This intimidating language, with words and phrases such as "eDiscovery obligations," "required," "Federal Rules of Civil Procedure," and "anticipated litigation" did not appear to leave the affected employees any choice in the matter. That language was consistent with the litigation hold memoranda, which asserted that "you, and any other individual in possession of materials related to AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS Case No. 231006-00138, have a duty to preserve all evidence" and that "it is essential that you take all necessary steps to suspend immediately, and until the resolution of this matter, knowingly altering, overwriting, deleting, or destroying any ESI [electronically stored information] related to this matter." The Agency thus prohibited Union officials from managing the Union's own data.²

Furthermore, the attempt to collect Union data extended beyond copying HUD-issued laptops. The litigation hold memoranda compounded the attack on the Union's right to confidentiality and protected material by demanding data from the Union officials' privately owned devices: "If you have saved ESI in any location other than on your HUD desktop PC such as a personal laptop, a home computer, a memory stick, or other storage device, you may double click on the My Computer icon, then copy the desired files to a CD-ROM" (Exhibit 3). The Agency also coerced affected personnel by falsely stating in the litigation hold memoranda that "The duty to preserve tangible materials and ESI applies to **all employees who have had any involvement in the underlying matter**" (emphasis added) (Exhibit 3). That duty does not apply to employees who were acting in their roles as Union officials, rather than on behalf of or at the direction of the Agency.

The Agency further coerced employees to comply with the demands for Union privileged information by threatening any eventual departure from the Agency, whether by retirement or to take another position: "In addition, if you are leaving the Department, you must have your automated separation clearance in HIHRTS signed by James R. Froembling, Regional Counsel, Region X. The automated separation clearance in HIHRTS includes a line item related to litigation holds and electronic discovery." Affected employees thus had their futures threatened,

² The litigation hold notices and subsequent certifications of compliance were riddled with errors. These include, among other more serious issues noted above, the reference to Local 222 (there is no such Local; this indicates the Agency's failure to understand the structure of the Agency's largest union and exclusive representative of bargaining unit employees at HUD) and the statement that the litigation hold notices were sent to the recipients on January 20, 2022, instead of 2023.

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either their eventual pensions or possible promotions in other agencies, if they did not turn over Union data to the Agency.

All these acts of targeting and the various forms of interference and coercion created fears of penalty or reprisal due to the affected employees' exercise of their rights to join or assist the Union.

Contract Violations

Just as the Agency violated 5 U.S.C. § 7116, it similarly violated Article 6 by interfering with employees' rights to join or assist the Union without fear of penalty or reprisal, and by failing to afford the affected employees the required protection in their exercise of such rights, as has been described above.

The Agency also violated Article 48 by interfering with the Union's right to privacy and its right to use Agency email and networks for Union purposes while maintaining Union confidentiality. Demanding to copy the entire hard drives that store Union privileged material violates the Union rights to confidentiality. Even though the hard drives are on laptops issued by the Agency, just as the Agency would not break into offices or file cabinets that it provided to the Union for Union-related use, the Agency would similarly be expected to respect the Union's digital files and materials.

In asserting that the Agency had the right under the Federal Rules of Civil Procedure to copy Union officials' electronically stored data, the Agency violated Article 51, which provides the "sole and exclusive procedure" for resolving grievances; the Federal Rules of Civil Procedure do not apply to the conduct of the Anti-Harassment Policy/Supplement 18 arbitration and to the procedures that lead up to the arbitration. Under the Statute at 5 U.S.C. § 7121(a) and (b), the procedures in the CBA are "the exclusive administrative procedures for resolving grievances" for matters that fall within the CBA's coverage, and "any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration." Arbitration is not litigation, and the Federal Rules of Civil Procedure do not ordinarily govern a federal labor relations arbitration. Therefore, a litigation hold also does not apply and is not appropriate.

The Statute contains no provision imposing a duty on a union to respond to information or pre-hearing discovery requests from an agency. No statutory or other legal right exists that grants a federal agency the right to request discovery-type information from a union representing bargaining unit employees within the agency.

The "eDiscovery obligations as required by the Federal Rules of Civil Procedure" (Exhibit 1) do not apply in the matter of the Anti-Harassment/Supplement 18 arbitration; they especially do not apply to Union officials regarding their Union duties and obligations. Instead, Article 52 governs the "discovery" rules for arbitrations involving the Union and the Agency. The Agency violated those Article 52 negotiated arbitration procedures, which require the parties to exchange—not surreptitiously collect—stipulations, exhibits, proposed settlements, witness lists, and summaries of expected testimony at least seven days before a hearing. In this matter, the hearing is yet to be scheduled and will not take place before late October 2023.

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The Agency ignored the fact that, in grievance and arbitration proceedings, “discovery” generally goes one way: The Union receives information through information requests pursuant to 5 U.S.C. § 7114(b) of the Statute; the Union is not required to provide information to the Agency other than through the exchange of information pursuant to Article 52. The National Labor Relations Act and federal court rules concerning discovery also do not apply to federal government labor relations, which instead are governed by the Federal Service Labor-Management Relations Statute.

Violations of Other Rules

Under Article 51, Section 51.01(3) of the CBA, the Union may grieve “Any claimed violation . . . of any law, rule, or regulation affecting conditions of employment,” which is also a right under the Statute at 5 U.S.C. § 7103(a)(9)(C). The Agency lawyers involved in the collection (or attempted collection) of Union privileged and confidential data knowingly violated Rule 4.2 of the Rules of Professional Conduct of the District of Columbia, Georgia, Wisconsin, and Washington State bars, among other state bars. Georgia, which is the situs of the arbitration, also adds specific language regarding federal government attorneys to Rule 4.2: “Attorneys for the State and Federal Government shall be subject to this Rule in the same manner as other attorneys in this State.”

The Agency has been aware that the Union was represented by counsel since approximately October 2022, when, in his role as the Union’s counsel in the matter of the Anti-Harassment/Supplement 18 arbitration, Mr. Caldwell interacted with Ginger Burnett of the Agency’s Employee and Labor Relations Division to select an arbitrator. Mr. Radcliffe knew that Mr. Caldwell represented the Union in this matter since November 15, 2022, when Ms. Burnett copied him on an email informing Mr. Caldwell that Mr. James Radcliffe would take over as Agency representative for that arbitration. Mr. Radcliffe acknowledged this in a December 7, 2022, email to Mr. Caldwell, introducing himself to Mr. Caldwell as the HUD attorney assigned to represent the Agency in the Anti-harassment policy arbitration and inquiring about the arbitrator. Mr. Radcliffe had copied Ms. Poloni and Ms. Evans on that email, so they, too, were aware that Mr. Caldwell was representing the Union in the matter. Furthermore, the email chain clearly identifies Mr. Caldwell as an attorney in his signature block at the bottom. See Exhibit 4.

The Agency therefore knew—well before it sent the litigation hold memoranda to Ms. Vargas, Ms. Carter, and Mr. Mclennon in January 2023, and attempted to send a litigation hold memoranda to Mr. Viola, an Agency retiree—that it would be inappropriate to contact directly the Union officials, as the Union was represented by counsel in the matter. OGC clearly knew Mr. Caldwell represented the Union and its officials long before Mr. Stein sent his May 19 email directly to the Union officials requiring them to allow the Agency access to confidential, protected Union materials. Mr. Radcliffe indicated his awareness of the Union’s representation by counsel when he used that fact to excuse his failure to respond to either Ms. Vargas’s or Mr. Viola’s May 19 and May 26 requests for more information about the subject of the litigation.

Thus, the Agency knowingly contacted individuals directly who were represented by counsel when it was to the Agency’s advantage to gather information, in violation of Rule 4.2 of the

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Rules of Professional Conduct. When called upon to answer questions, however, the Agency declined to respond to those individuals because they were represented by counsel.

Conclusion

The Agency, from December 2022 continuing through to the present, knowingly embarked on a series of prohibited activities that constituted a fishing expedition to collect confidential, privileged information from unsuspecting employees who served as Union officials. To make matters worse, the Agency did not limit its efforts to collect data to material related to the Anti-Harassment/Supplement 18 arbitration but sought to collect all protected and confidential Union data that the affected employees may have stored on their hard drives and on other media and even on their own personal devices. The Agency has no right to any documents or copies of communication let alone any copies of Grievant-Union communications, which are confidential and privileged. In doing so, the Agency surreptitiously hid the true subject of its data collection efforts behind the generic and inaccurate case name of “AFGE Local 222 v. U.S. Department of Housing and Urban Development litigation.” Finally, the Agency knowingly and intentionally directly contacted Union officials represented by legal counsel in order to obtain the information it sought—but refused to answer those individuals’ questions about the collection of data based on their representation by counsel.

Meeting

AFGE Council 222 is not requesting a meeting to discuss this Grievance of the Parties. Therefore, in accordance with Article 51, Section 51.15(3) of the HUD-AFGE Agreement, please provide your response within 30 days.

Remedies Requested

To resolve this Unfair Labor Practice Grievance of the Parties, AFGE Council 222 requests the following equitable relief remedies from HUD Management:

- (1) Immediate response to the associated Request for Information, including provision of all requested information.
- (2) Removal of litigation holds and electronic discovery lines from the automated separation clearance in HIRTS from the accounts of the affected employees, and written confirmation from the Agency to the affected employees, the Union, and the Union’s counsel, that such holds have been removed.
- (3) A written commitment from HUD that the Agency and its contractors, including but not limited to Leidos, will cease and desist immediately from collecting data from the PC hard drives of Union officials and former Union officials who may have protected Union information on their computers.
- (4) A written commitment that the Agency will respect the confidentiality and privileged status of Union digital materials and information, including documents, emails, notes

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and any other information that is stored on hard drives and other media, including in Agency networks and in the cloud.

- (5) A written commitment from HUD that the Agency will deliver to Council 222 all hard copies and digital copies of the data collected from the PC hard drives of Union officials; if the physical copies (either paper or digital drives) cannot be delivered, that HUD and its contractors will destroy and not use any data collected from the PC hard drives of Union officials. If the data was collected by a contractor, a copy of HUD's written order to the contractor to destroy the contractor's copy(ies) of the data, and a written confirmation from the contractor that it complied with that order.
- (6) A written commitment from HUD that the Agency will collect data, or have its contractor collect data, for eDiscovery purposes from the PC hard drives of bargaining unit employees who are not or have not been Union officials only when the Agency specifically identifies the subject of potential litigation and not just the names of the parties.
- (7) A written acknowledgment from HUD that the Agency has no discovery rights from the Union for any matter covered by the negotiated grievance and arbitration procedures, and a written commitment from HUD that the Agency will cease and desist from issuing any discovery requests to AFGE Council 222, affiliated AFGE Locals, and Union officials acting in their Union roles, for any pending or future grievances and arbitration cases.
- (8) A written commitment from HUD that the Agency will ensure that when the Agency or its contractor collects data for eDiscovery purposes from the PC hard drives of bargaining unit employees who are not or have not been Union officials, it will ensure that it does not access or collect protected communications between the employees and Union officials.
- (9) Payment of all arbitration fees and expenses in accordance with Article 52, Section 52.04 of the HUD-AFGE Agreement should the Union have to pursue arbitration for denial of this Grievance of the Parties.
- (10) Payment of the Union's attorneys' fees should the Union have to invoke and pursue arbitration for denial of this Grievance of the Parties pursuant to the Back Pay Act of 1966 at 5 U.S.C. § 5596(b)(1)(A)(ii) if any AFGE bargaining-unit employee loses any pay, allowances, or differentials as a result of the matters covered by this ULP-GOP.
- (11) Any other remedy available to the fullest extent of the law, rule, regulation, HUD-AFGE Agreement, policy, past practice, or arbitrator's award. There is no provision in Article 51 or Article 52 of the Agreement that expressly prohibits changes in remedies requested.
- (12) A written agreement, signed by the Agency, that incorporates the above provisions.

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Exhibits

1. Correspondence related to collection of data from Tracy Vargas's computer
2. Cease and Desist message from Stephan B. Caldwell, Legal Rights Attorney, American Federation of Government Employees District #5
3. Litigation hold memoranda and employee certifications
4. Email correspondence from Ginger Burnett and James Radcliffe to Stephan Caldwell.

From: Stein, Samuel P <Samuel.P.Stein@hud.gov>
Sent: Friday, May 19, 2023 9:27 AM
To: Vargas, Tracy J <Tracy.J.Vargas@hud.gov>
Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>
Subject: C: Drive Collection - Information Requested

Good morning Tracy,

OGC needs to collect data from your PC's hard drive (C: drive) for eDiscovery purposes in a potential litigation matter. The C: drive data collection is necessary to satisfy eDiscovery obligations as required by the Federal Rules of Civil Procedure as part of discovery for anticipated litigation. The data is only provided to the IT team and then the handling attorney / litigation team for discovery review.

This is related to the AFGE Local 222 v. U.S. Department of Housing and Urban Development litigation.

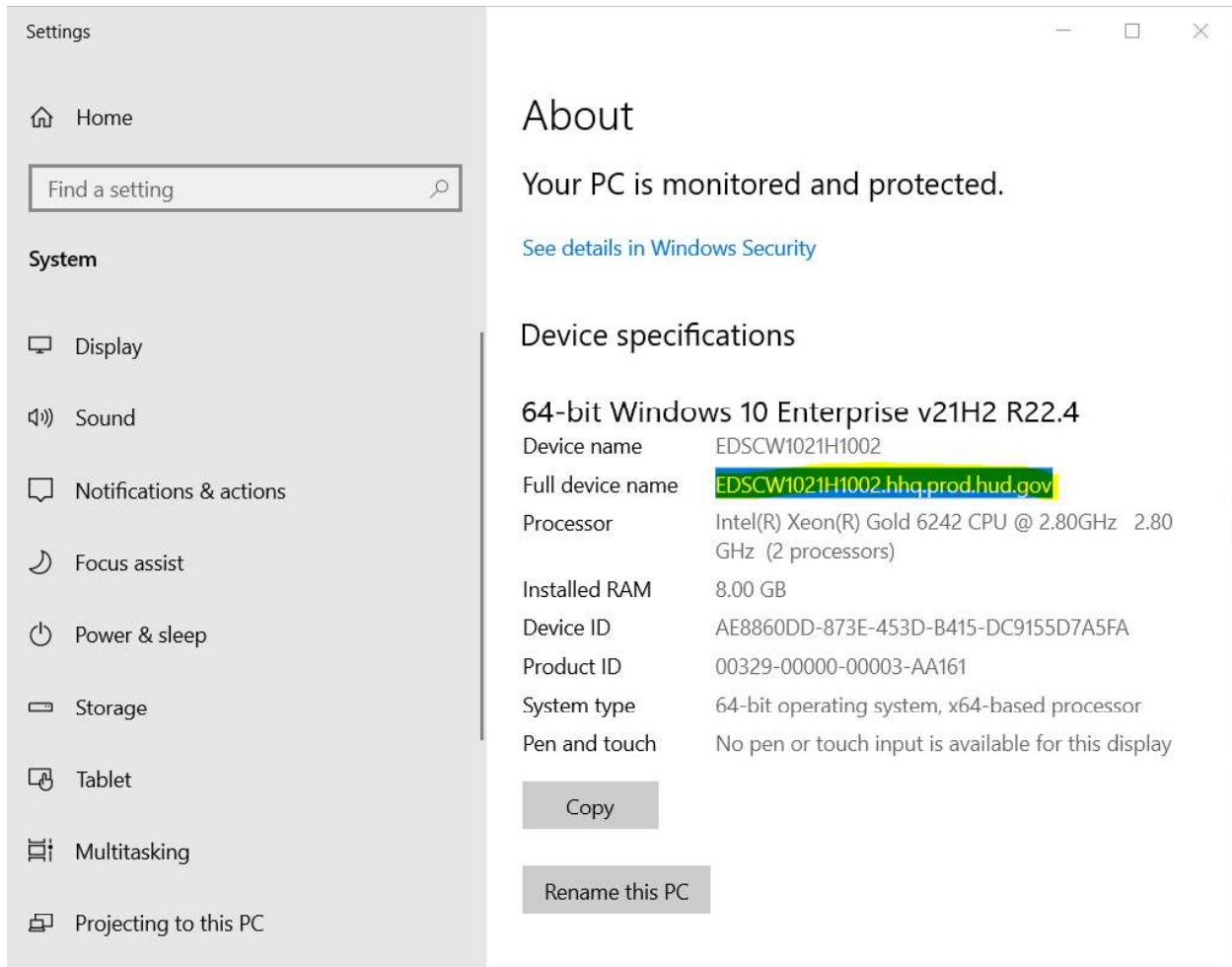
In order to facilitate a remote collection, we need two pieces of information from you as follows:

- Which days of the week you are routinely in a HUD office location *and* roughly what time you are routinely there
 - The latter is important for the team to be able to monitor and confirm whether a capture is complete or needs to be paused if you are going to disconnect for the evening.
- What is your computer name?
 - To find this information as shown below, right click on your Windows Start menu → Click on System → Copy and share the "full device name"

After you have provided the above information, Velu Sinnamalai from our contractor Leidos may contact you via Teams if he has issues with the collection effort. You will be able to use your computer as normal while the data capture is happening. If your laptop does not have the remote collection agent Avamar installed, Velu will install this for you which typically takes about 15-20 minutes before you're able to continue working as normal.

Please let us know if you have any questions in the meantime.

Thank you!



The image shows a screenshot of the Windows Settings application, specifically the 'About' page. The left sidebar contains navigation options: Home, Find a setting (search bar), System, Display, Sound, Notifications & actions, Focus assist, Power & sleep, Storage, Tablet, Multitasking, and Projecting to this PC. The main content area is titled 'About' and features a security notice: 'Your PC is monitored and protected.' with a link to 'See details in Windows Security'. Below this is the 'Device specifications' section, which lists the following information:

- 64-bit Windows 10 Enterprise v21H2 R22.4
- Device name: EDSCW1021H1002
- Full device name: EDSCW1021H1002.hhq.prod.hud.gov
- Processor: Intel(R) Xeon(R) Gold 6242 CPU @ 2.80GHz 2.80 GHz (2 processors)
- Installed RAM: 8.00 GB
- Device ID: AE8860DD-873E-453D-B415-DC9155D7A5FA
- Product ID: 00329-00000-00003-AA161
- System type: 64-bit operating system, x64-based processor
- Pen and touch: No pen or touch input is available for this display

At the bottom of the specifications list, there are two buttons: 'Copy' and 'Rename this PC'.

Sam Stein

Senior eDiscovery Advisor
Department of Housing and Urban Development
Office of General Counsel
Field Management and IT Division
202.402.5458

RE: C: Drive Collection - Information Requested

Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Fri 5/19/2023 2:31 PM

To: Stein, Samuel P <Samuel.P.Stein@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>; salafge <salafge@outlook.com>; Gross, Jerry <jerry.gross@hud.gov>

I am in the office today, and will be Monday May 22.

What litigation is this in respect to, and are there forms that advise of my rights?

Tracy J. Vargas

Senior Management Analyst

National Servicing Center, OSFAM/FHA

Department of Housing and Urban Development

301 NW 6th Street. Ste. 200

Oklahoma City, Ok 73102

P: 405/609/8457

F: 405/609/8421


RE: C: Drive Collection - Information Requested

Stein, Samuel P <Samuel.P.Stein@hud.gov>

Fri 5/19/2023 3:00 PM

To: Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>; Radcliffe, James W <James.W.Radcliffe@hud.gov>

 1 attachments (4 MB)

HUD eDiscovery Training 20230504.pptx;

Hi Tracy,

This is related to the AFGE Local 222 case as mentioned below. James and Deandre, who are copied here, represent the OGC litigating team for the matter. I cannot answer any questions specific to the recent litigation hold or this case (James would have to answer those).

Regarding your question about rights and responsibilities for these sorts of requests, our team coincidentally just gave a HUD-wide training two weeks ago which answers some of this. I'd suggest taking a look at slides 11 through 17 of the attached deck, in particular.

When you have a moment or two this afternoon or next week, please do let us know about the two questions highlighted in yellow below.

Many thanks!

Sam Stein
OGC Field Management and IT Division
202.402.5458

RE: C: Drive Collection - Information Requested

Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Fri 5/19/2023 3:34 PM

To: Stein, Samuel P <Samuel.P.Stein@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>; Radcliffe, James W <James.W.Radcliffe@hud.gov>

Sir

1. I am available Monday, May 22, from 8:30 to 2:30.

2. Device name FTWL73896LKJPL2

*Full device name FTWL73896LKJPL2.ftw.prod.hud.gov

*Processor Intel(R) Core(TM) i7-7600U *CPU @ 2.80GHz 2.90 GHz

*Installed RAM 16.0 GB (15.9 GB usable)

*Device ID 4E799AC0-0BD9-4C3D-89EF-87205A9176BB

*Product ID 00329-00000-00003-AA392

*System type 64-bit operating system, x64-based processor

*Pen and touch Pen and touch support with 10 touch points

Tracy J. Vargas

Senior Management Analyst

National Servicing Center, OSFAM/FHA

Department of Housing and Urban Development

301 NW 6th Street. Ste. 200

Oklahoma City, Ok 73102

P: 405/609/8457

F: 405/609/8421

RE: C: Drive Collection - Information Requested

Stein, Samuel P <Samuel.P.Stein@hud.gov>

Fri 5/19/2023 3:42 PM

To: Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>; Radcliffe, James W <James.W.Radcliffe@hud.gov>

Thanks for the quick response, Tracy!

I've passed along your information to the Leidos team. They can often complete these requests without contacting or interrupting you. You will only hear from them if they run into an issue.

It's possible, though, that they will not be able to get to this this Monday (short notice). Is Monday your regular day in the HUD office?

Much appreciated,

Sam Stein
OGC Field Management and IT Division
202.402.5458

RE: C: Drive Collection - Information Requested

Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Fri 5/19/2023 3:49 PM

To: Stein, Samuel P <Samuel.P.Stein@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>; Radcliffe, James W <James.W.Radcliffe@hud.gov>

No, Thursday is but I will be taking some leave next week and do not intend to be in the office Thursday. I will be teleworking.

The kids are out for summer, and I am taking some time to be with them before all the camps and summer craziness begins. ●

Tracy J. Vargas

Senior Management Analyst

National Servicing Center, OSFAM/FHA

Department of Housing and Urban Development

301 NW 6th Street. Ste. 200

Oklahoma City, Ok 73102

P: 405/609/8457

F: 405/609/8421

RE: C: Drive Collection - Information Requested

Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Fri 5/26/2023 8:41 AM

To: Stein, Samuel P <Samuel.P.Stein@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>; Radcliffe, James W <James.W.Radcliffe@hud.gov>

Dear Sir

May I be advised of what litigation this is in regards to? I have yet to be able to identify what litigation this is in reference to...

I understand the concept of E-Discovery. However, I am unsure of what matter this is in regards to.

Tracy J. Vargas

Senior Management Analyst

National Servicing Center, OSFAM/FHA

Department of Housing and Urban Development

301 NW 6th Street. Ste. 200

Oklahoma City, Ok 73102

P: 405/609/8457

F: 405/609/8421

<External Message> Re: C: Drive Collection - Information Requested

Sal Viola <salafge@outlook.com>

Fri 5/26/2023 10:12 AM

To: Vargas, Tracy J <Tracy.J.Vargas@hud.gov>; Stein, Samuel P <Samuel.P.Stein@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>

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Mr. Stein,

What litigation are you referring to ? I find your email violating the confidentiality of union internal communications. Please identify the litigation you are referring to. If this is an investigation, please state so.

Thank you.



RE: C: Drive Collection - Information Requested

Stein, Samuel P <Samuel.P.Stein@hud.gov>

Tue 5/30/2023 7:31 AM

To: Radcliffe, James W <James.W.Radcliffe@hud.gov>; Jackson, Deandre C <Deandre.C.Jackson@hud.gov>

Cc: Gross, Jerry <jerry.gross@hud.gov>; Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Good morning James and Deandre,

Could you connect with Tracy regarding questions about this litigation?

Thanks,

Sam Stein
OGC Field Management and IT Division
202.402.5458


RE: <External Message> Re: C: Drive Collection - Information Requested

Stein, Samuel P <Samuel.P.Stein@hud.gov>

Tue 5/30/2023 7:44 AM

To: salafge <salafge@outlook.com>; Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>

 1 attachments (104 KB)

RE: C: Drive Collection - Information Requested;

Good morning Sal,

As attached, I've already asked the OGC Region X litigating team that submitted the data request to discuss this with Tracy. The case name is identified in my original email below. My OGC FMITD team only assists with directing and processing these requests and I do not know much more than the case name that I already shared.

To be clear, we are currently only preserving data from HUD government accounts and devices which are always subject to these types of requests per our duties under the Federal Rules of Civil Procedure.

Sam Stein
OGC Field Management and IT Division
202.402.5458

Re: <External Message> Re: C: Drive Collection - Information Requested

Sal Viola <salafge@outlook.com>

Tue 5/30/2023 9:55 AM

To: Stein, Samuel P <Samuel.P.Stein@hud.gov>; Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>

Good morning, Sam,

Thank you for your response.

Can you please refer to me the name of the attorney in OGC who requested this information from Tracy Vargas's PC hard drive?

Again, I understand your role and thank you for conveying this information to me. While it is true that HUD devices and employees' government accounts can be subject to Federal Civil Procedure, this is a Council 222 vs HUD civil case, and our confidentiality cannot be violated.

It's like providing a football Team's playbook to the opposing team before a game .

Also, **OIG is not investigating Tracy Vargas for misconduct during representational activities.**

Even a criminal investigation being represented by the union meet does not meet the overriding need to violate confidentiality of union communications.

I look forward to getting the requested information from you today.

Thanks, in advance.

Sal



RE: <External Message> Re: C: Drive Collection - Information Requested

Stein, Samuel P <Samuel.P.Stein@hud.gov>

Tue 5/30/2023 10:05 AM

To: salafge <salafge@outlook.com>; Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>; Radcliffe, James W <James.W.Radcliffe@hud.gov>

Hi Sal,

James Radcliffe is the OGC Region X attorney that is responsible for this matter.

At this stage, our IT team has only been asked to help preserve data so I cannot help much more on questions about this case.

Sam Stein
OGC Field Management and IT Division
202.402.5458

Re: <External Message> Re: C: Drive Collection - Information Requested

Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Tue 5/30/2023 10:53 AM

To: Stein, Samuel P <Samuel.P.Stein@hud.gov>;salafge <salafge@outlook.com>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>;Gross, Jerry <jerry.gross@hud.gov>;Radcliffe, James W <James.W.Radcliffe@hud.gov>

Dear Sir

I am available this week for this effort.

I would like to understand the methodology for sweeping my C drive for information; for example, will specific search terms be utilized as relative to this particular litigation?

Will it only be the C drive to be accessed?

If you could provide the mechanics of the process, it would be greatly appreciated. I will review the E-Discovery information you previously provided in case I missed this information.

With much respect and gratitude,

Tracy J. Vargas

Senior Management Analyst

National Servicing Center, OSFAM/FHA

Department of Housing and Urban Development

301 NW 6th Street. Ste. 200

Oklahoma City, Ok 73102

P: 405/609/8457

F: 405/609/8421

RE: <External Message> Re: C: Drive Collection - Information Requested

Stein, Samuel P <Samuel.P.Stein@hud.gov>

Tue 5/30/2023 11:05 AM

To: Vargas, Tracy J <Tracy.J.Vargas@hud.gov>;salafge <salafge@outlook.com>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>;Gross, Jerry <jerry.gross@hud.gov>;Radcliffe, James W <James.W.Radcliffe@hud.gov>

Hi Tracy,

In terms of availability, there is not much for you to do besides providing the computer name information and in office schedule. Our eDiscovery contractor can normally complete these data capture jobs in the background without interrupting your day and without any participation on your end.

At this stage, search terms are not used since the data is not being reviewed by OGC. We are only collecting the C: drive data for now as a sort of snapshot for the sake of preservation. For some other types of data, it is possible for our IT teams to ensure "preservation in place" (on the back end) by simply flagging an account for litigation hold status. This is not possible for data on HUD workstations, however, so we instead need to collect the data when an OGC litigating team asks us to preserve someone's local C: drive data.

If the matter proceeds to a litigation stage where discovery and document review are needed, our team would then help the litigating team apply search terms/key words to cull down the data prior to OGC's review.

Sam Stein
OGC Field Management and IT Division
202.402.5458

Re: <External Message> Re: C: Drive Collection - Information Requested

Sal Viola <salafge@outlook.com>

Tue 5/30/2023 11:16 AM

To: Stein, Samuel P <Samuel.P.Stein@hud.gov>;Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>;Gross, Jerry <jerry.gross@hud.gov>;Radcliffe, James W <James.W.Radcliffe@hud.gov>

Hi Sam,

Your response is troubling .

As President of AFGE Council 222, I cannot give permission for the Agency to have access to all communication to Council 222's internal communications.

We will be talking to our attorney who is representing us on one of the arbitrations.

I also suspect that by collective the Hard Drive data, Trace is susceptible to other actions involving her union representational duties .

In the meantime, please cease and desist any further activity on this matter.



<External Message> Re: C: Drive Collection - Information Requested

Sal Viola <salafge@outlook.com>

Tue 5/30/2023 2:24 PM

To: Radcliffe, James W <James.W.Radcliffe@hud.gov>

Cc: OGC E-DISCOVERY <OGCE-DISCOVERY@hud.gov>; Gross, Jerry <jerry.gross@hud.gov>; Radcliffe, James W <James.W.Radcliffe@hud.gov>; Stein, Samuel P <Samuel.P.Stein@hud.gov>; Miranda, Ricardo <Ricardo.Miranda@hud.gov>; Vargas, Tracy J <Tracy.J.Vargas@hud.gov>

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Mr. Radcliffe ,

The Agency claims that it is somehow entitled to access to a Union Official's hard drive for litigation . In this case, specifically it's your request that the eDiscovery contractor copy Regional Vice President Tracy Vargas's computer hard drive as a data capture job for your review. Apparently, you plan to use this data capture for a litigation between AFGE Council 222 and HUD.

I am demanding that OGC cease and desist from allowing the eDiscovery Company contractor to data capture any information from Ms. Vargas' computer.

This computer contains communication between bargaining unit employees and Ms. Vargas as their union representative. These communications and documents are confidential and also privileged.

The FLRA has recognized communications between a unit employee and a union official occurring in the course of protected activity are confidential. *U.S. Department of Veterans Affairs, 56 FLRA No. 117 (2000)(Veterans Affairs); Long Beach Naval Shipyard, Long Beach, California, 44 FLRA 1021 (1992)(Long Beach Naval Shipyard). See also*

Union representatives have the statutory right to maintain the confidentiality of their conversations with employees they are representing and any interference with that right violates section 7116(a)(1) of the Statute, unless the right has been waived or an extraordinary need for the information has been established. AFGE Council never waived nor it intends to ever waive this right .

Our conversations and communications with the Bargaining Unit constitute protected activity and are entitled to confidentiality. *Long Beach Naval Shipyard, 44 FLRA at 1038; Customs Service, 38 FLRA at 1308-09. See also U.S. Department of Labor, Employment and Training Administration, San Francisco, California, 43 FLRA 1036, 1039-40 (1992)(engagement of a contractual right is protected activity under section 7102 of the Statute).*

The Agency has no right to any documents or copies of communication let alone any copies of its Grievant-Union communications, which are confidential and/or privileged.

2. The Agency ,again, has no right to pre-hearing information unless mutually agreed upon, including a unilateral and unbalanced request that the Union produce copies of any document they intend to introduce at hearing in this case.

The Agency has the burden of proof of showing that it was entitled to discovery. There is nothing that should pierce that confidentiality even if a criminal investigation existed.

Cease and desist immediately or charges will be filed including an ethical complaint against you to the Bar Association.

Salvatore Viola





Jerry Gross <hjgrosz@gmail.com>

Re: Cease and Desist Discovery Request from Ms. Vargas

Stephan Caldwell <Stephan.Caldwell@afge.org>

Thu, Jun 1, 2023 at 6:16 PM

To: "Samuel.P.Stein@hud.gov" <Samuel.P.Stein@hud.gov>

Cc: "Tracy.J.Vargas@hud.gov" <Tracy.J.Vargas@hud.gov>, "Radcliffe, James W" <James.W.Radcliffe@hud.gov>, "hjgrosz@gmail.com" <hjgrosz@gmail.com>, salafge <salafge@outlook.com>, Ricardo Miranda <rmnyrican1@gmail.com>, "Hankinson, D'andra A" <Dandra.A.Hankinson@hud.gov>

Mr. Stein,

The Agency's request for Tracy Vargas's computer Hard Drive is unmolested by facts and legal authority to overcome the Union's privilege claims objections; therefore, the request is denied. (See 5/30/2023 email from Sal Viola).

If the request is made for a pending action, name the case with the FMCS number or Case Number, the Agency attorney handling the case, and the Arbitrator or Judge assigned to the case. The Union will file the appropriate motions to that court or Arbitrator. More important, the Agency attorney assigned to that case should know the discovery request goes through the Union attorney or the Union officer representing the Union, not Ms. Vargas. Seeking discovery directly from Ms. Vargas, rather than contacting the Union President, Sal Viola, who is well known, calls into question the Agency's conduct and its ethical obligations. If Ms. Vargas has turned over information to you or Mr. Radcliffe, it is demanded that the information is returned to me by COB today, June 1, 2023.

I will not entertain any replies to this email that are not supported by legal authority and facts that give the Agency the right to seek discovery, when no case is pending, from a Union officer that has well-established claims of privilege to be asserted against turning over the computer hard drive. On May 30, 2023, the President of AFGE Council Local 222, Sal Viola explained the issues of privilege with relevant legal authority on why the hard drive will not be turned over. In response to his email, the Agency has not asserted any legal authority to justify its request for the hard drive to be turned over to the Agency in connection with an Agency generalized litigation hold. Further, claims of privilege belong to the Union, not to an individual, so the Union's privilege can only be waived by the Union, which the Union has not done.

Thank you,

*Stephan B. Caldwell, Esq.**Legal Rights Attorney*

American Federation of Government Employees

District #5

6724 Church Street

Suite 2

Riverdale, Georgia 30274

Phone: 678-216-6687

Fax 770-907-2051



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 WASHINGTON, DC 20410-0500
 OFFICE OF GENERAL COUNSEL

ATTORNEY/CLIENT PRIVILEGE AND CONFIDENTIAL
COMMUNICATION

LITIGATION HOLD MEMORANDUM

MEMORANDUM FOR: Christopher McLennon, Records and Information Management
 Specialist, HHQ

JAMES FROEMBLING Digitally signed by: JAMES FROEMBLING
 DN: CN = JAMES FROEMBLING C = US O = U.S. Government OU =
 Department of Housing and Urban Development, Office of Administration
 Date: 2022.12.14 16:10:57 -0800

FROM: James Froembling, Regional Counsel, Region X

SUBJECT: Litigation Hold Memorandum - Mandatory Preservation of ESI and Paper Records
 of AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS
Case No. 231006-00138

On or around October 6, 2022, the American Federation of Government Employees (“AFGE”) Local 222 advised the agency that it was invoking arbitration on its grievance of the parties. In the grievance, the Union is alleging the U.S. Department of Housing and Urban Development (“HUD”) (1) committed an unfair labor practice by repudiating Supplement 18 of the HUD-AFGE Agreement (“Agreement”) and failing to negotiate in good faith; (2) violated Sections 49.06(k), 49.06(n), 53.05, 53.06, and 53.07 of the Agreement; and (3) violated various sections of Supplement 18.

In light of this potential litigation, you, and any other individual in possession of materials related to AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS Case No. 231006-00138, have a duty to preserve all evidence related to this litigation or to the parties, including federal or agency records, any electronically stored information (ESI), and other tangible evidence (notes, journals, etc.).

Please forward to James W. Radcliffe, Trial Attorney, Region X at james.w.radcliffe@hud.gov the names of any individuals (*i.e.*, supervisors, managers, attorneys, paralegals, legal technicians, employees, former employees, GTR/GTMs, contracting officers, program clients, custodian of documents, system administrators, *etc.*) who may be in possession of materials, including ESI, related to this litigation. James W. Radcliffe is responsible for forwarding a copy of this memorandum to any other identified individuals who may be in possession of ESI or other materials related to this litigation.

You must preserve tangible materials and ESI for purposes of the above-referenced litigation as defined here:

- **Tangible materials** includes (1) all documents (drafts circulated to others for official purposes and containing unique information, such as notes, highlighting, *etc.* should also be preserved) or other materials in whatever form, including, but not limited to, personal or desk files, emails and attachments, correspondence, calendars, files, notes, reports, memoranda, spreadsheets, tables, telephone logs, contracts, forms, surveys, books, papers, photographs, drawings, machine-readable materials, data, and other documentary material, regardless of physical form or characteristics, and whether stored in electronic form or as a “hard copy” (*i.e.*, on paper).
- **Electronically Stored Information (“ESI”)** includes all information and documents that are stored or generated on HUD and personal computer systems or tablets including your desktop PC, laptop, iPad, Blackberry (or other similar device), and any other computer, drive, disk, CD-ROM, memory stick, or other storage device; in databases, spreadsheets, or software; and any other location where electronic materials might be stored. This includes, but is not limited to, the types of information listed above that may be found on your local and network drives including C: and G: (home directory) drives, email box (including Inbox, Outbox, Sent folder, Trash folder, Archive folder, any other email folders), SharePoint data; system data and files (e.g., iRems, HEMS, *etc.*), and any other electronically-stored communications, instant messages, text messages, word processing documents, spreadsheets, audio and video recordings and transcripts, and correspondence. ESI must be preserved in its “native” form in order to preserve metadata (*i.e.*, creation and modification history of a document, *etc.*).

Because ESI is easily deleted, modified, or corrupted, **it is essential that you take all necessary steps to suspend immediately, and until the resolution of this matter**, knowingly altering, overwriting, deleting, or destroying any ESI related to this matter. In addition, it is recommended that you avoid using HUD’s instant messaging to discuss the above-referenced case or parties. It is your responsibility to work with professional IT staff to assist in this preservation requirement. Failure to preserve such materials or information may result in monetary or other sanctions against the Department.

The immediate steps to be taken by your office on receipt of this memorandum should include:

- **Discontinuing** your own alteration, overwriting, deleting, or destruction of all ESI related to this matter.
- **Preserving** tangible documents and ESI as described above. You are responsible for coordinating and cooperating with OGC and IT staff to preserve your ESI.
- **Identifying** additional individuals within the Department who may possess tangible materials and ESI related to this matter. The name(s) of any individual who you believe may possess materials or ESI related to this matter should be

forwarded to James W. Radcliffe. He will notify this individual(s) that such materials are to be preserved and ESI is not to be deleted or destroyed.

- **Documenting** your efforts to preserve related materials in writing. It is recommended that you maintain a handwritten log documenting your preservation efforts, including any requests to the OCIO to perform ESI data retrievals or searches, efforts to print hard copies of documents (including emails) for files, and efforts to locate where tangible materials and ESI is stored. This log should be clearly labeled as a “Preservation log” and, along with this memorandum, be maintained, as applicable, in the program office’s official file and counsel’s official litigation file.
- **Completing** the “Certification of Compliance with Litigation Hold” attached to this memorandum. You must return the completed certification to the appropriate Associate General Counsel, Regional Counsel, or his/her designee within two weeks of receiving this memorandum.

The duty to preserve tangible materials and ESI applies to all employees who have had any involvement in the underlying matter. For example, an employee who was involved with the above-referenced matter for only a short time or drafted only a single document or email related to the underlying matter would have a duty to preserve those materials related to the litigation.

Although this Memorandum does not request you produce any documents at this time, this is an inevitable step in the discovery process and you may wish to begin preparing for production now as you ensure your materials are preserved. This may include printing all ESI, including email; storing all relevant emails in a Folder dedicated to this matter; and compiling all information in chronological, or other appropriate order for the case file.

As part of the Department’s eDiscovery obligations, if you have been identified as a recipient of a litigation hold due to possession of ESI, the Office of General Counsel may request that the HUD contractor preserve and store all ESI in a dedicated secure server until litigation is no longer reasonably anticipated. If a case proceeds to discovery, your data may be searched by keyword in an effort to respond to a discovery request and meet the Department’s e-discovery obligations.

NOTE: If you have saved ESI in any location other than on your HUD desktop PC such as a personal laptop, a home computer, a memory stick, or other storage device, you may double click on the My Computer icon, then copy the desired files to a CD-ROM. For additional help in copying files, you may contact the OGC E-Discovery Team at (855) 342-6756 (Toll Free) or the HUD National Help Desk at 1-888-297-8689, option 9.

This preservation order is ongoing and should continue until a final resolution of this case and its closure. You should receive a closure letter from the Associate General Counsel, Regional Counsel, or his/her designee upon the final resolution of a case matter. Tangible materials or ESI received by employees or other individuals subsequent to the date of this letter

must be preserved in the same manner. In addition, if you are leaving the Department, you must have your automated separation clearance in HIRTS signed by James R. Froembling, Regional Counsel, Region X. The automated separation clearance in HIRTS includes a line item related to litigation holds and electronic discovery.

Thank you for your time and cooperation in this very important matter. The failure to preserve ESI could result in costly sanctions against the Department. Should you have any questions, please do not hesitate to contact James W. Radcliffe at james.w.radcliffe@hud.gov.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500
OFFICE OF GENERAL COUNSEL

**ATTORNEY/CLIENT PRIVILEGE AND CONFIDENTIAL
COMMUNICATION**

LITIGATION HOLD MEMORANDUM

MEMORANDUM FOR: Salvatore Viola, Program Analyst, Region II

JAMES FROEMBLING Digitally signed by: JAMES FROEMBLING
DN: CN = JAMES FROEMBLING C = US O = U.S. Government OU =
Department of Housing and Urban Development, Office of Administration
Date: 2022.12.15 15:28:48 -0500

FROM: James Froembling, Regional Counsel, Region X

SUBJECT: Litigation Hold Memorandum - Mandatory Preservation of ESI and Paper Records
of AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS
Case No. 231006-00138

On or around October 6, 2022, the American Federation of Government Employees (“AFGE”) Local 222 advised the agency that it was invoking arbitration on its grievance of the parties. In the grievance, the Union is alleging the U.S. Department of Housing and Urban Development (“HUD”) (1) committed an unfair labor practice by repudiating Supplement 18 of the HUD-AFGE Agreement (“Agreement”) and failing to negotiate in good faith; (2) violated Sections 49.06(k), 49.06(n), 53.05, 53.06, and 53.07 of the Agreement; and (3) violated various sections of Supplement 18.

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You must preserve tangible materials and ESI for purposes of the above-referenced litigation as defined here:

- **Tangible materials** includes (1) all documents (drafts circulated to others for official purposes and containing unique information, such as notes, highlighting, *etc.* should also be preserved) or other materials in whatever form, including, but not limited to, personal or desk files, emails and attachments, correspondence, calendars, files, notes, reports, memoranda, spreadsheets, tables, telephone logs, contracts, forms, surveys, books, papers, photographs, drawings, machine-readable materials, data, and other documentary material, regardless of physical form or characteristics, and whether stored in electronic form or as a “hard copy” (*i.e.*, on paper).
- **Electronically Stored Information (“ESI”)** includes all information and documents that are stored or generated on HUD and personal computer systems or tablets including your desktop PC, laptop, iPad, Blackberry (or other similar device), and any other computer, drive, disk, CD-ROM, memory stick, or other storage device; in databases, spreadsheets, or software; and any other location where electronic materials might be stored. This includes, but is not limited to, the types of information listed above that may be found on your local and network drives including C: and G: (home directory) drives, email box (including Inbox, Outbox, Sent folder, Trash folder, Archive folder, any other email folders), SharePoint data; system data and files (e.g., iRems, HEMS, *etc.*), and any other electronically-stored communications, instant messages, text messages, word processing documents, spreadsheets, audio and video recordings and transcripts, and correspondence. ESI must be preserved in its “native” form in order to preserve metadata (*i.e.*, creation and modification history of a document, *etc.*).

Because ESI is easily deleted, modified, or corrupted, **it is essential that you take all necessary steps to suspend immediately, and until the resolution of this matter**, knowingly altering, overwriting, deleting, or destroying any ESI related to this matter. In addition, it is recommended that you avoid using HUD’s instant messaging to discuss the above-referenced case or parties. It is your responsibility to work with professional IT staff to assist in this preservation requirement. Failure to preserve such materials or information may result in monetary or other sanctions against the Department.

The immediate steps to be taken by your office on receipt of this memorandum should include:

- **Discontinuing** your own alteration, overwriting, deleting, or destruction of all ESI related to this matter.
- **Preserving** tangible documents and ESI as described above. You are responsible for coordinating and cooperating with OGC and IT staff to preserve your ESI.
- **Identifying** additional individuals within the Department who may possess tangible materials and ESI related to this matter. The name(s) of any individual who you believe may possess materials or ESI related to this matter should be

forwarded to James W. Radcliffe. He will notify this individual(s) that such materials are to be preserved and ESI is not to be deleted or destroyed.

- **Documenting** your efforts to preserve related materials in writing. It is recommended that you maintain a handwritten log documenting your preservation efforts, including any requests to the OCIO to perform ESI data retrievals or searches, efforts to print hard copies of documents (including emails) for files, and efforts to locate where tangible materials and ESI is stored. This log should be clearly labeled as a “Preservation log” and, along with this memorandum, be maintained, as applicable, in the program office’s official file and counsel’s official litigation file.
- **Completing** the “Certification of Compliance with Litigation Hold” attached to this memorandum. You must return the completed certification to the appropriate Associate General Counsel, Regional Counsel, or his/her designee within two weeks of receiving this memorandum.

The duty to preserve tangible materials and ESI applies to all employees who have had any involvement in the underlying matter. For example, an employee who was involved with the above-referenced matter for only a short time or drafted only a single document or email related to the underlying matter would have a duty to preserve those materials related to the litigation.

Although this Memorandum does not request you produce any documents at this time, this is an inevitable step in the discovery process and you may wish to begin preparing for production now as you ensure your materials are preserved. This may include printing all ESI, including email; storing all relevant emails in a Folder dedicated to this matter; and compiling all information in chronological, or other appropriate order for the case file.

As part of the Department’s eDiscovery obligations, if you have been identified as a recipient of a litigation hold due to possession of ESI, the Office of General Counsel may request that the HUD contractor preserve and store all ESI in a dedicated secure server until litigation is no longer reasonably anticipated. If a case proceeds to discovery, your data may be searched by keyword in an effort to respond to a discovery request and meet the Department’s e-discovery obligations.

NOTE: If you have saved ESI in any location other than on your HUD desktop PC such as a personal laptop, a home computer, a memory stick, or other storage device, you may double click on the My Computer icon, then copy the desired files to a CD-ROM. For additional help in copying files, you may contact the OGC E-Discovery Team at (855) 342-6756 (Toll Free) or the HUD National Help Desk at 1-888-297-8689, option 9.

This preservation order is ongoing and should continue until a final resolution of this case and its closure. You should receive a closure letter from the Associate General Counsel, Regional Counsel, or his/her designee upon the final resolution of a case matter. Tangible materials or ESI received by employees or other individuals subsequent to the date of this letter

must be preserved in the same manner. In addition, if you are leaving the Department, you must have your automated separation clearance in HIRTS signed by James R. Froembling, Regional Counsel, Region X. The automated separation clearance in HIRTS includes a line item related to litigation holds and electronic discovery.

Thank you for your time and cooperation in this very important matter. The failure to preserve ESI could result in costly sanctions against the Department. Should you have any questions, please do not hesitate to contact James W. Radcliffe at james.w.radcliffe@hud.gov.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500
OFFICE OF GENERAL COUNSEL

**ATTORNEY/CLIENT PRIVILEGE AND CONFIDENTIAL
COMMUNICATION**

LITIGATION HOLD MEMORANDUM

MEMORANDUM FOR: Cynthia Carter, Management Analyst, HHQ

JAMES FROEMBLING Digitally signed by: JAMES FROEMBLING
DN: CN = JAMES FROEMBLING C = US O = U.S. Government OU =
Department of Housing and Urban Development, Office of Administration
Date: 2022.12.16 08:47:35 -0800

FROM: James Froembling, Regional Counsel, Region X

SUBJECT: Litigation Hold Memorandum - Mandatory Preservation of ESI and Paper Records
of AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS
Case No. 231006-00138

On or around October 6, 2022, the American Federation of Government Employees (“AFGE”) Local 222 advised the agency that it was invoking arbitration on its grievance of the parties. In the grievance, the Union is alleging the U.S. Department of Housing and Urban Development (“HUD”) (1) committed an unfair labor practice by repudiating Supplement 18 of the HUD-AFGE Agreement (“Agreement”) and failing to negotiate in good faith; (2) violated Sections 49.06(k), 49.06(n), 53.05, 53.06, and 53.07 of the Agreement; and (3) violated various sections of Supplement 18.

In light of this potential litigation, you, and any other individual in possession of materials related to AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS Case No. 231006-00138, have a duty to preserve all evidence related to this litigation or to the parties, including federal or agency records, any electronically stored information (ESI), and other tangible evidence (notes, journals, etc.).

Please forward to James W. Radcliffe, Trial Attorney, Region X at james.w.radcliffe@hud.gov the names of any individuals (i.e., supervisors, managers, attorneys, paralegals, legal technicians, employees, former employees, GTR/GTMs, contracting officers, program clients, custodian of documents, system administrators, etc.) who may be in possession of materials, including ESI, related to this litigation. James W. Radcliffe is responsible for forwarding a copy of this memorandum to any other identified individuals who may be in possession of ESI or other materials related to this litigation.

You must preserve tangible materials and ESI for purposes of the above-referenced litigation as defined here:

- **Tangible materials** includes (1) all documents (drafts circulated to others for official purposes and containing unique information, such as notes, highlighting, *etc.* should also be preserved) or other materials in whatever form, including, but not limited to, personal or desk files, emails and attachments, correspondence, calendars, files, notes, reports, memoranda, spreadsheets, tables, telephone logs, contracts, forms, surveys, books, papers, photographs, drawings, machine-readable materials, data, and other documentary material, regardless of physical form or characteristics, and whether stored in electronic form or as a “hard copy” (*i.e.*, on paper).
- **Electronically Stored Information (“ESI”)** includes all information and documents that are stored or generated on HUD and personal computer systems or tablets including your desktop PC, laptop, iPad, Blackberry (or other similar device), and any other computer, drive, disk, CD-ROM, memory stick, or other storage device; in databases, spreadsheets, or software; and any other location where electronic materials might be stored. This includes, but is not limited to, the types of information listed above that may be found on your local and network drives including C: and G: (home directory) drives, email box (including Inbox, Outbox, Sent folder, Trash folder, Archive folder, any other email folders), SharePoint data; system data and files (e.g., iRems, HEMS, *etc.*), and any other electronically-stored communications, instant messages, text messages, word processing documents, spreadsheets, audio and video recordings and transcripts, and correspondence. ESI must be preserved in its “native” form in order to preserve metadata (*i.e.*, creation and modification history of a document, *etc.*).

Because ESI is easily deleted, modified, or corrupted, **it is essential that you take all necessary steps to suspend immediately, and until the resolution of this matter**, knowingly altering, overwriting, deleting, or destroying any ESI related to this matter. In addition, it is recommended that you avoid using HUD’s instant messaging to discuss the above-referenced case or parties. It is your responsibility to work with professional IT staff to assist in this preservation requirement. Failure to preserve such materials or information may result in monetary or other sanctions against the Department.

The immediate steps to be taken by your office on receipt of this memorandum should include:

- **Discontinuing** your own alteration, overwriting, deleting, or destruction of all ESI related to this matter.
- **Preserving** tangible documents and ESI as described above. You are responsible for coordinating and cooperating with OGC and IT staff to preserve your ESI.
- **Identifying** additional individuals within the Department who may possess tangible materials and ESI related to this matter. The name(s) of any individual who you believe may possess materials or ESI related to this matter should be

forwarded to James W. Radcliffe. He will notify this individual(s) that such materials are to be preserved and ESI is not to be deleted or destroyed.

- **Documenting** your efforts to preserve related materials in writing. It is recommended that you maintain a handwritten log documenting your preservation efforts, including any requests to the OCIO to perform ESI data retrievals or searches, efforts to print hard copies of documents (including emails) for files, and efforts to locate where tangible materials and ESI is stored. This log should be clearly labeled as a “Preservation log” and, along with this memorandum, be maintained, as applicable, in the program office’s official file and counsel’s official litigation file.
- **Completing** the “Certification of Compliance with Litigation Hold” attached to this memorandum. You must return the completed certification to the appropriate Associate General Counsel, Regional Counsel, or his/her designee within two weeks of receiving this memorandum.

The duty to preserve tangible materials and ESI applies to all employees who have had any involvement in the underlying matter. For example, an employee who was involved with the above-referenced matter for only a short time or drafted only a single document or email related to the underlying matter would have a duty to preserve those materials related to the litigation.

Although this Memorandum does not request you produce any documents at this time, this is an inevitable step in the discovery process and you may wish to begin preparing for production now as you ensure your materials are preserved. This may include printing all ESI, including email; storing all relevant emails in a Folder dedicated to this matter; and compiling all information in chronological, or other appropriate order for the case file.

As part of the Department’s eDiscovery obligations, if you have been identified as a recipient of a litigation hold due to possession of ESI, the Office of General Counsel may request that the HUD contractor preserve and store all ESI in a dedicated secure server until litigation is no longer reasonably anticipated. If a case proceeds to discovery, your data may be searched by keyword in an effort to respond to a discovery request and meet the Department’s e-discovery obligations.

NOTE: If you have saved ESI in any location other than on your HUD desktop PC such as a personal laptop, a home computer, a memory stick, or other storage device, you may double click on the My Computer icon, then copy the desired files to a CD-ROM. For additional help in copying files, you may contact the OGC E-Discovery Team at (855) 342-6756 (Toll Free) or the HUD National Help Desk at 1-888-297-8689, option 9.

This preservation order is ongoing and should continue until a final resolution of this case and its closure. You should receive a closure letter from the Associate General Counsel, Regional Counsel, or his/her designee upon the final resolution of a case matter. Tangible materials or ESI received by employees or other individuals subsequent to the date of this letter

must be preserved in the same manner. In addition, if you are leaving the Department, you must have your automated separation clearance in HIRTS signed by James R. Froembling, Regional Counsel, Region X. The automated separation clearance in HIRTS includes a line item related to litigation holds and electronic discovery.

Thank you for your time and cooperation in this very important matter. The failure to preserve ESI could result in costly sanctions against the Department. Should you have any questions, please do not hesitate to contact James W. Radcliffe at james.w.radcliffe@hud.gov.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500
OFFICE OF GENERAL COUNSEL

**ATTORNEY/CLIENT PRIVILEGE AND CONFIDENTIAL
COMMUNICATION**

LITIGATION HOLD MEMORANDUM

MEMORANDUM FOR: Tracy Vargas, Management Analyst, Region VI

JAMES FROEMBLING Digitally signed by: JAMES FROEMBLING
DN: CN = JAMES FROEMBLING C = US O = U.S. Government OU =
Department of Housing and Urban Development, Office of Administration
Date: 2022.12.16 11:39:32 -08'00'

FROM: James Froembling, Regional Counsel, Region X

SUBJECT: Litigation Hold Memorandum - Mandatory Preservation of ESI and Paper Records
of AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS
Case No. 231006-00138

On or around October 6, 2022, the American Federation of Government Employees (“AFGE”) Local 222 advised the agency that it was invoking arbitration on its grievance of the parties. In the grievance, the Union is alleging the U.S. Department of Housing and Urban Development (“HUD”) (1) committed an unfair labor practice by repudiating Supplement 18 of the HUD-AFGE Agreement (“Agreement”) and failing to negotiate in good faith; (2) violated Sections 49.06(k), 49.06(n), 53.05, 53.06, and 53.07 of the Agreement; and (3) violated various sections of Supplement 18.

In light of this potential litigation, you, and any other individual in possession of materials related to AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS Case No. 231006-00138, have a duty to preserve all evidence related to this litigation or to the parties, including federal or agency records, any electronically stored information (ESI), and other tangible evidence (notes, journals, etc.).

Please forward to James W. Radcliffe, Trial Attorney, Region X at james.w.radcliffe@hud.gov the names of any individuals (i.e., supervisors, managers, attorneys, paralegals, legal technicians, employees, former employees, GTR/GTMs, contracting officers, program clients, custodian of documents, system administrators, etc.) who may be in possession of materials, including ESI, related to this litigation. James W. Radcliffe is responsible for forwarding a copy of this memorandum to any other identified individuals who may be in possession of ESI or other materials related to this litigation.

You must preserve tangible materials and ESI for purposes of the above-referenced litigation as defined here:

- **Tangible materials** includes (1) all documents (drafts circulated to others for official purposes and containing unique information, such as notes, highlighting, *etc.* should also be preserved) or other materials in whatever form, including, but not limited to, personal or desk files, emails and attachments, correspondence, calendars, files, notes, reports, memoranda, spreadsheets, tables, telephone logs, contracts, forms, surveys, books, papers, photographs, drawings, machine-readable materials, data, and other documentary material, regardless of physical form or characteristics, and whether stored in electronic form or as a “hard copy” (*i.e.*, on paper).
- **Electronically Stored Information (“ESI”)** includes all information and documents that are stored or generated on HUD and personal computer systems or tablets including your desktop PC, laptop, iPad, Blackberry (or other similar device), and any other computer, drive, disk, CD-ROM, memory stick, or other storage device; in databases, spreadsheets, or software; and any other location where electronic materials might be stored. This includes, but is not limited to, the types of information listed above that may be found on your local and network drives including C: and G: (home directory) drives, email box (including Inbox, Outbox, Sent folder, Trash folder, Archive folder, any other email folders), SharePoint data; system data and files (e.g., iRems, HEMS, *etc.*), and any other electronically-stored communications, instant messages, text messages, word processing documents, spreadsheets, audio and video recordings and transcripts, and correspondence. ESI must be preserved in its “native” form in order to preserve metadata (*i.e.*, creation and modification history of a document, *etc.*).

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forwarded to James W. Radcliffe. He will notify this individual(s) that such materials are to be preserved and ESI is not to be deleted or destroyed.

- **Documenting** your efforts to preserve related materials in writing. It is recommended that you maintain a handwritten log documenting your preservation efforts, including any requests to the OCIO to perform ESI data retrievals or searches, efforts to print hard copies of documents (including emails) for files, and efforts to locate where tangible materials and ESI is stored. This log should be clearly labeled as a “Preservation log” and, along with this memorandum, be maintained, as applicable, in the program office’s official file and counsel’s official litigation file.
- **Completing** the “Certification of Compliance with Litigation Hold” attached to this memorandum. You must return the completed certification to the appropriate Associate General Counsel, Regional Counsel, or his/her designee within two weeks of receiving this memorandum.

The duty to preserve tangible materials and ESI applies to all employees who have had any involvement in the underlying matter. For example, an employee who was involved with the above-referenced matter for only a short time or drafted only a single document or email related to the underlying matter would have a duty to preserve those materials related to the litigation.

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This preservation order is ongoing and should continue until a final resolution of this case and its closure. You should receive a closure letter from the Associate General Counsel, Regional Counsel, or his/her designee upon the final resolution of a case matter. Tangible materials or ESI received by employees or other individuals subsequent to the date of this letter

must be preserved in the same manner. In addition, if you are leaving the Department, you must have your automated separation clearance in HIRTS signed by James R. Froembling, Regional Counsel, Region X. The automated separation clearance in HIRTS includes a line item related to litigation holds and electronic discovery.

Thank you for your time and cooperation in this very important matter. The failure to preserve ESI could result in costly sanctions against the Department. Should you have any questions, please do not hesitate to contact James W. Radcliffe at james.w.radcliffe@hud.gov.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500
OFFICE OF GENERAL COUNSEL

Certification of Compliance with Litigation Hold

RE: AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS Case No. 231006-00138

Due to the Department’s preservation obligations as described in the litigation hold notice sent to you on January 20, 2023, you are required to complete the Certification below and return it to James W. Radcliffe in OGC Region X no later than February 3, 2023.

I (or the following entity/contractor I represent) CYNTHIA F. CARTER (print name) received a litigation hold notice (Notice) on January 20, 2022, in relation to the above-entitled action. I (or the identified entity/contractor I represent) have read the Notice and understand it, have taken all reasonable steps to comply with the Notice, and will continue to comply with all preservation requirements as outlined in the Notice until otherwise notified in writing by James W. Radcliffe in OGC Region X. To the extent I (or the identified entity/contractor I represent) am in possession of any ESI, paper documents, or other materials related to the above-entitled action, I (or the identified entity/contractor I represent) will make all reasonable efforts to preserve these materials and will not knowingly destroy, delete, or alter these materials in any way.

NOTE: If additional data or documents are received and/or created after the initial submission of this Certification, please notify James W. Radcliffe in Region X in writing. The preservation requirements as outlined in the Notice must be compiled with for all data and/or documents.

- 1. To the best of my knowledge, I (or the identified entity/contractor I represent) have electronically – stored information (ESI), instant messages, text messages, paper documents, or other tangible materials (notes, journals, photographs, videos, recordings, etc.) related to the above-entitled action.

Yes No

If yes, check the location(s) of ESI related to the above-entitled action:

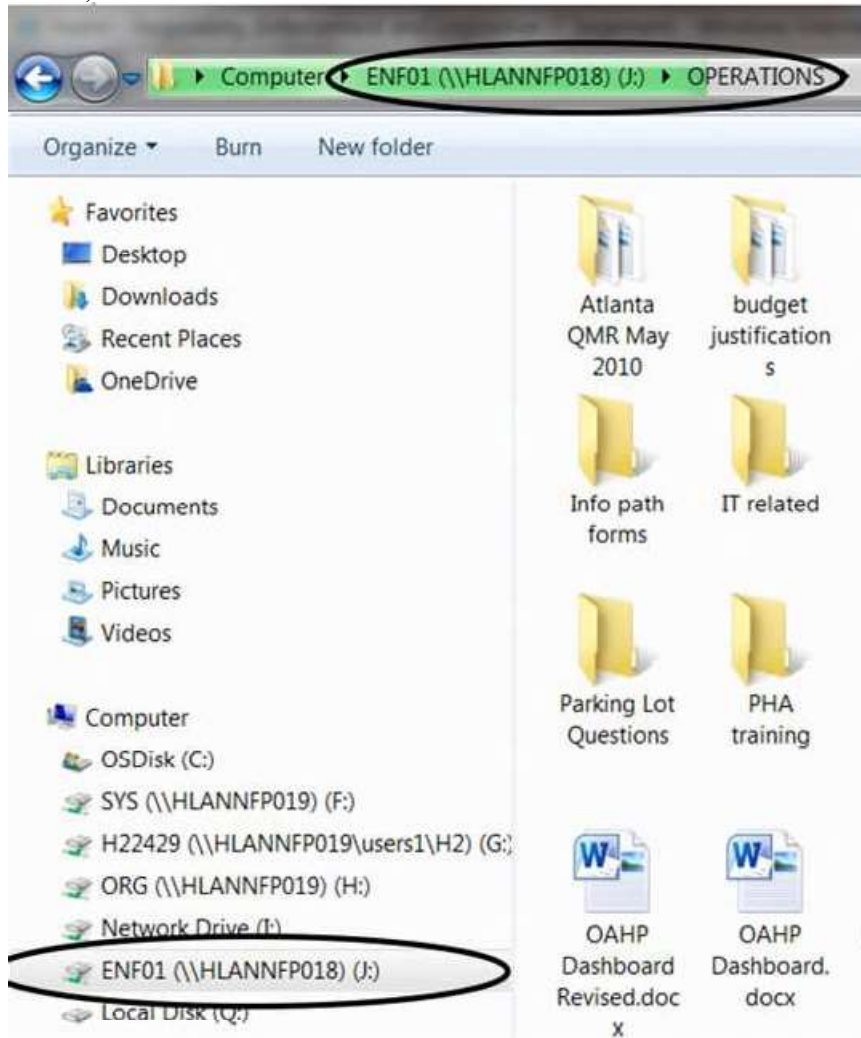
- HUD-issued Desktop Computer (C: drive)
- HUD-issued Laptop Computer (C: drive)

HUD shared network storage drive (J: drive)

Identify the name of the J: drive file path to include:

Server (e.g. \\hlannfp018) **Root Directory** (e.g.:\\enf01) and **Folder** (e.g.:\\Operations)

This information is available in File Explorer in two places (circled in the screen shot below).



HUD personal network storage drive (G: drive)

HUD OneDrive (provide URL): _____

HUD E-mail (including Inbox, Outbox, Sent, Trash, Archive, “Conversation History” (instant messages) and other folders)

HUD Skype data

HUD Teams data (including Team’s Teams, Chats, Files, Audio/Video recordings, Transcripts, Whiteboards)

Enter Team’s Team SharePoint URL/Web Address here:

- HUD Zoom data
- HUD System(s) (e.g., iRems, HEMS, etc.) – Identify specific name of system(s)

- SharePoint – Identify specific SharePoint site(s) and file(s)/folder(s) (provide SharePoint hyperlink)

- Personal desktop, laptop computer, tablet, smartphone, camera (Not issued by HUD)
- External Hard Drive
- USB Flash Drive
- HUD Issued Mobile Device or Tablet (e.g. Blackberry, iPad, etc.)
(Specify) _____
- CD/DVD
- Other location or device (Specify) _____

If applicable, check the location(s) of paper documents/other tangible materials (related to the above-entitled action):

- Case File (specify location) _____
(e.g., ONAP, Field Office/Headquarters, Suite 200)
- Other (specify) _____

2. For any location(s) of ESI, paper documents, or other tangible materials identified above in Section 1, I (or the identified entity/contractor I represent) searched for the following search terms (list terms):

I did a search on my HUD issued laptop for "Supplement 18" and "Anti-Harassment" and only found a copy of the actual signed Supplement as well as a few emails in my archived emails folder.

To the best of my knowledge, I do not have any other documents or handwritten notes. However, should I come across any of the above, I will ensure they are maintained in accordance with this request.

3. For the ESI you have in your custody that is identified above, please identify the date range of that data by the month, the day, and the year (e.g., May 5, 2010 – September 30, 2010). To assess the age of the ESI record, the transmittal date, or the last modified date, may be utilized.

4. I (or the identified entity/contractor I represent) know of additional individuals at HUD (regional office, field office, or headquarters) who were not identified on the litigation hold memorandum that may have ESI, paper documents or other tangible materials that may be relevant to the above-entitled action.

Yes _____

No _____

If yes, list the full name of each additional person and any known contact information (email, telephone number, etc.). I have provided these names to the appropriate Associate General Counsel, Regional Counsel or his/her designee.

Sal Viola
Michael Clyburn
Chris McLennon
Tracey Vargas

All are reachable via their @hud.gov email addresses.

5. I (or the identified entity/contractor I represent) know outside consultants or subcontractors who may have ESI, paper documents or other tangible materials that may be relevant to the above-entitled action.

Yes _____

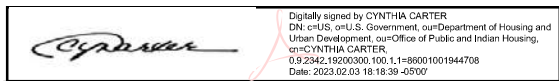
No _____

If yes, list the full name of each person and any known contact information (email, telephone number, etc.). I have provided these names to the appropriate Associate General Counsel, Regional Counsel or his/her designee.

N/A

I (or the identified entity/contractor I represent) certify that I understand that the obligation to preserve ESI and related materials in the above-entitled action is continuing. I (or the identified entity/contractor I represent) agree to preserve any ESI, paper documents, or other tangible materials that come into my possession after the signature date of this Certification that may be related to the above-entitled action in accordance with the Notice. Furthermore, I (or the identified entity/contractor I represent) will not knowingly destroy, delete, or alter in any way ESI, paper documents, or other tangible materials that may be related to the above-entitled action. If I (or the identified entity/contractor I represent) have any questions regarding my duties under the Notice or the Certification, I (or the identified entity/contractor I represent) will promptly contact the appropriate Associate General Counsel, Regional Counsel, or his/her designee, to receive guidance.

I (or the identified entity/contractor I represent) understand that a completed Certification must be returned to James W. Radcliffe in OGC Region X no later than February 3, 2023.



Signature of Recipient of Litigation Hold

_____ Date

Principal Point of Contact with Authority to Bind Contractor (if applicable)

Print Name

Office Title

Phone Number

E-mail Address



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500
OFFICE OF GENERAL COUNSEL

Certification of Compliance with Litigation Hold

RE: AFGE Local 222 v. U.S. Department of Housing and Urban Development, FMCS Case No. 231006-00138

Due to the Department’s preservation obligations as described in the litigation hold notice sent to you on January 20, 2023, you are required to complete the Certification below and return it to James W. Radcliffe in OGC Region X no later than February 3, 2023.

I (or the following entity/contractor I represent) Christopher McLennon (print name) received a litigation hold notice (Notice) on January 20, 2022, in relation to the above-entitled action. I (or the identified entity/contractor I represent) have read the Notice and understand it, have taken all reasonable steps to comply with the Notice, and will continue to comply with all preservation requirements as outlined in the Notice until otherwise notified in writing by James W. Radcliffe in OGC Region X. To the extent I (or the identified entity/contractor I represent) am in possession of any ESI, paper documents, or other materials related to the above-entitled action, I (or the identified entity/contractor I represent) will make all reasonable efforts to preserve these materials and will not knowingly destroy, delete, or alter these materials in any way.

NOTE: If additional data or documents are received and/or created after the initial submission of this Certification, please notify James W. Radcliffe in Region X in writing. The preservation requirements as outlined in the Notice must be compiled with for all data and/or documents.

- 1. To the best of my knowledge, I (or the identified entity/contractor I represent) have electronically – stored information (ESI), instant messages, text messages, paper documents, or other tangible materials (notes, journals, photographs, videos, recordings, etc.) related to the above-entitled action.

Yes No

If yes, check the location(s) of ESI related to the above-entitled action:

HUD-issued Desktop Computer (C: drive)

HUD-issued Laptop Computer (C: drive)

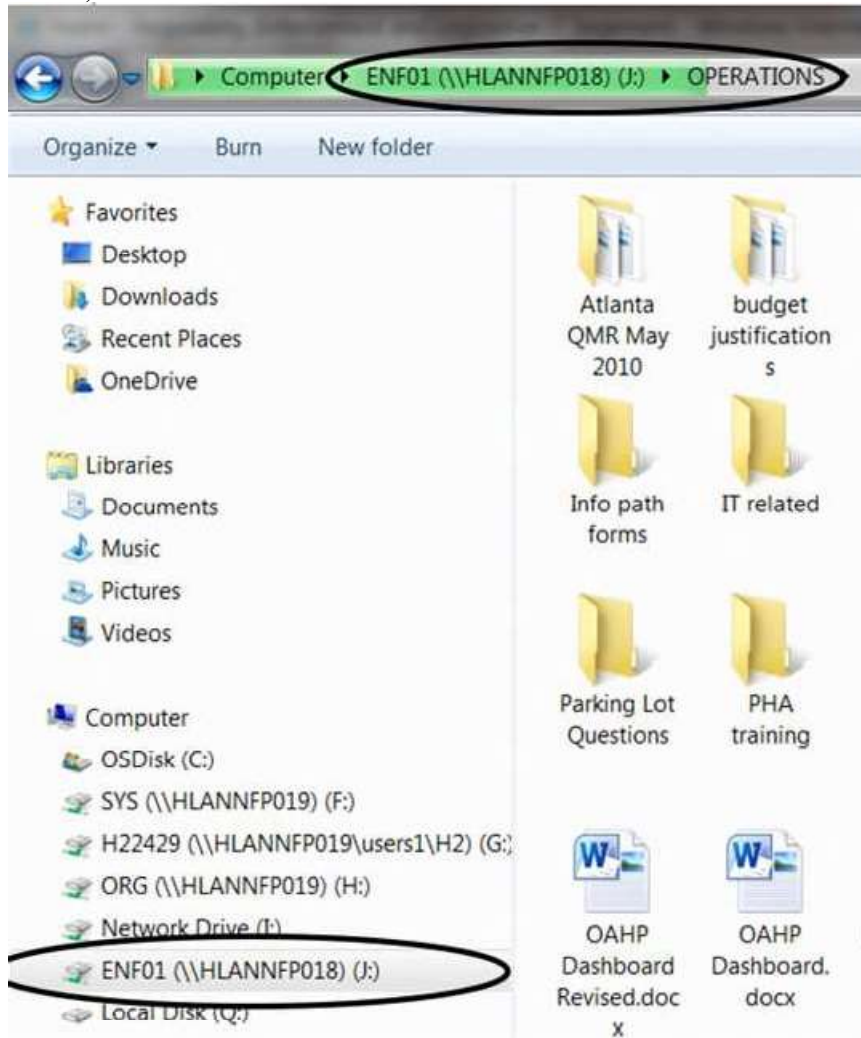
Outlook Archives date from 10/31/2017 to 12/5/2017

HUD shared network storage drive (J: drive)

Identify the name of the J: drive file path to include:

Server (e.g. \\hlannfp018) **Root Directory** (e.g.: \enf01) and **Folder** (e.g.: \Operations)

This information is available in File Explorer in two places (circled in the screen shot below).



HUD personal network storage drive (G: drive)

HUD OneDrive (provide URL): _____

HUD E-mail (including Inbox, Outbox, Sent, Trash, Archive, “Conversation History” (instant messages) and other folders)

HUD Skype data

HUD Teams data (including Team’s Teams, Chats, Files, Audio/Video recordings, Transcripts, Whiteboards)

Enter Team’s Team SharePoint URL/Web Address here:

- HUD Zoom data
- HUD System(s) (e.g., iRems, HEMS, etc.) – Identify specific name of system(s)

- SharePoint – Identify specific SharePoint site(s) and file(s)/folder(s) (provide SharePoint hyperlink)

- Personal desktop, laptop computer, tablet, smartphone, camera (Not issued by HUD)
- External Hard Drive
- USB Flash Drive
- HUD Issued Mobile Device or Tablet (e.g. Blackberry, iPad, etc.)
(Specify) _____
- CD/DVD
- Other location or device (Specify) _____

If applicable, check the location(s) of paper documents/other tangible materials (related to the above-entitled action):

- Case File (specify location) _____
(e.g., ONAP, Field Office/Headquarters, Suite 200)
- Other (specify) _____

2. For any location(s) of ESI, paper documents, or other tangible materials identified above in Section 1, I (or the identified entity/contractor I represent) searched for the following search terms (list terms):

see email attachment

3. For the ESI you have in your custody that is identified above, please identify the date range of that data by the month, the day, and the year (e.g., May 5, 2010 – September 30, 2010). To assess the age of the ESI record, the transmittal date, or the last modified date, may be utilized.

10/31/2017 to 12/5/2017

4. I (or the identified entity/contractor I represent) know of additional individuals at HUD (regional office, field office, or headquarters) who were not identified on the litigation hold memorandum that may have ESI, paper documents or other tangible materials that may be relevant to the above-entitled action.

Yes

No

If yes, list the full name of each additional person and any known contact information (email, telephone number, etc.). I have provided these names to the appropriate Associate General Counsel, Regional Counsel or his/her designee.

5. I (or the identified entity/contractor I represent) know outside consultants or subcontractors who may have ESI, paper documents or other tangible materials that may be relevant to the above-entitled action.

Yes

No

If yes, list the full name of each person and any known contact information (email, telephone number, etc.). I have provided these names to the appropriate Associate General Counsel, Regional Counsel or his/her designee.

I (or the identified entity/contractor I represent) certify that I understand that the obligation to preserve ESI and related materials in the above-entitled action is continuing. I (or the identified entity/contractor I represent) agree to preserve any ESI, paper documents, or other tangible materials that come into my possession after the signature date of this Certification that may be related to the above-entitled action in accordance with the Notice. Furthermore, I (or the identified entity/contractor I represent) will not knowingly destroy, delete, or alter in any way ESI, paper documents, or other tangible materials that may be related to the above-entitled action. If I (or the identified entity/contractor I represent) have any questions regarding my duties under the Notice or the Certification, I (or the identified entity/contractor I represent) will promptly contact the appropriate Associate General Counsel, Regional Counsel, or his/her designee, to receive guidance.

I (or the identified entity/contractor I represent) understand that a completed Certification must be returned to James W. Radcliffe in OGC Region X no later than February 3, 2023.



Signature of Recipient of Litigation Hold

3/8/2023

Date

Principal Point of Contact with Authority to Bind Contractor (if applicable)

Print Name

Office Title

Phone Number

E-mail Address

RE: <External Message> Fwd: Case Number: 231006-00138 Issue: Anti harassment policy implementation

Radcliffe, James W <James.W.Radcliffe@hud.gov>

Wed 12/7/2022 1:53 PM

To:Stephan Caldwell <Stephan.Caldwell@afge.org>

Cc:Poloni, Jeana K <Jeana.K.Poloni@hud.gov>;Evans, Maryl H <Maryl.H.Evans@hud.gov>

Greetings Mr. Caldwell,

I hope this email finds you well. My name is James Radcliffe and I am the HUD attorney assigned to represent the Agency in the subject arbitration. Also copied on this email is Jeana Poloni, my co-counsel, and Maryl Evans, who is a new attorney on our litigation team and is shadowing me on the case.

I am wondering if you heard back from Arbitrator Spilker yet? I recently had a case where FMCS never notified the selected arbitrator, and thus the Union's representative and I had to reach out to the arbitrator directly to notify him of his selection and begin discussing potential hearing dates. So if you have not heard from Arbitrator Spilker yet, perhaps FMCS never notified her and we can jointly email her.

Thank you.

James Radcliffe (He/Him/His)

Trial Attorney

US Dept of Housing and Urban Development

Office of Regional Counsel, Region X

909 1st Ave. Room 260

Seattle, WA 98104

Direct 206-220-5299

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From: Burnett, Ginger S <Ginger.S.Burnett@hud.gov>

Sent: Tuesday, November 15, 2022 4:26 PM

To: Stephan Caldwell <Stephan.Caldwell@afge.org>

Cc: Radcliffe, James W <James.W.Radcliffe@hud.gov>

Subject: Re: <External Message> Fwd: Case Number: 231006-00138 Issue: Anti harassment policy implementation

Thanks so much! Please be advised that Mr. James Radcliffe will be taking over as Agency representative for the arbitration. I am copying Mr. Radcliffe on this email. Please notify Mr. Radcliffe when you hear back from the arbitrator. It's been a pleasure working with you.

Thanks!

Ginger Burnett

From: Stephan Caldwell <Stephan.Caldwell@afge.org>

Sent: Tuesday, November 15, 2022 4:15 PM

To: Burnett, Ginger S <Ginger.S.Burnett@hud.gov>

Subject: <External Message> Fwd: Case Number: 231006-00138 Issue: Anti harassment policy implementation

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Ms. Burnett,

Good afternoon,

I did send off the choice for Arbitrator to FMCS on October 31st see email below. The FMCS program administrator confirmed its receipt. I have not heard back from Ms. Spilker on this Arbitration. I will follow up tomorrow on this matter.

Thank you,
Stephan Caldwell
Get [Outlook for iOS](#)

From: Stephan Caldwell <Stephan.Caldwell@afge.org>

Sent: Monday, October 31, 2022 3:27 PM

To: arbitration@fmcs.gov <arbitration@fmcs.gov>

Cc: Wright Shakima <swright@fmcs.gov>

Subject: Case Number: 231006-00138 Issue: Anti harassment policy implementation

Good Morning,

The Union and the Agency have selected Kathleen J. Spilker as arbitrator on the matter of **Case Number: 231006-00138 "Anti-Harassment"**. Please see attached form as I was authorized by the Agency to submit.

Thank you,

Stephan B. Caldwell, Esq.
Legal Rights Attorney
American Federation of Government Employees
District #5
6724 Church Street
Suite 2
Riverdale, Georgia 30274
Phone: 678-216-6687
Fax 770-907-2051

Justice is never given; it is exacted -A. Philip Randolph

www.afgedist5.org

