



SOCIAL SECURITY

August 7, 2020

Mr. Bill Price
AFGE Council 220, First Vice President
515 W. Patterson Dr.
Bloomington, IN 47403

RE: Information Request 2020-65234

Dear Mr. Price:

This letter is in response to your request for information, dated July 10, 2020, where you requested the following:

Information Requested: A list of all SSA Offices that have Bargaining Unit Employees (BUE's) represented by AFGE, reporting to the office for work related purposes since March 23, 2020 – the date all BUE's were issued evacuation orders.

Particularized need: The Union needs this information to show that the Agency has made changes to their "Maximum Telework" policy, that the changes are substantial, and that the Agency's stated reason(s) for denying the Union's DTB's are without merit. The Union also needs the offices identified in order to complete our litigation over the Agency's violations of Article 9, Section 1A, Article 9, Section 4B, Executive Order 12196 (1-201), OSHA's General Duty Clause, Agency policy, and other applicable Government-wide rules and regulations. The Union intends to use the information to file OSHA complaints for each of the offices, and in litigation efforts intended to correct the violations.

Information Requested: The number of BUE's represented by AFGE that have reported to an SSA office for work related purposes since March 23, 2020. The numbers should identify which offices they have returned to, and the dates they first reported to the office.

Particularized need: The Union needs this information to show that the Agency has made changes to their "Maximum Telework" policy, that the changes are substantial, and that the Agency's stated reason(s) for denying the Union's DTB's are without merit. The Union also needs the number of employees and offices identified in order to complete our litigation over the Agency's violations of Article 9, Section 1A, Article 9, Section 4B, Executive Order 12196 (1-201), OSHA's General Duty Clause, Agency policy, and other applicable Government-wide rules and regulations. The Union intends to use the information to file OSHA complaints for each of the offices, and in litigation efforts intended to correct the violations.

Information Requested: The specific workloads being performed by BUE's represented by AFGE who have reported to an SSA office for work related purposes since March 23, 2020. The

specific workload information should identify which offices and/or employees the workloads apply to.

Particularized need: The Agency's stated policy is that offices are currently restricted to Authorized Personnel who are performing work that cannot be done anywhere but in the office. The Union has received reports that this policy is no longer being upheld. The Union needs this information to show that the Agency has made changes to their "Maximum Telework" policy, that the changes are substantial, and that the Agency's stated reason(s) for denying the Union's DTB's are without merit. The Union also needs the workloads identified in order to complete our litigation over the Agency's violations of Article 9, Section 1A, Article 9, Section 4B, Executive Order 12196 (1-201), OSHA's General Duty Clause, Agency policy, and other applicable Government-wide rules and regulations. The Union intends to use the information to file OSHA complaints for each of the offices, and in litigation efforts intended to correct the violations.

Information Requested: The number of SSA employees and guards working at SSA facilities (known to the Agency), who have contracted, or are suspected of having contracted, COVID-19 within 2 weeks of having reported to an SSA office for work related purposes. The numbers should include all SSA employees, including management officials, and guards working in SSA offices, apply to the time frame of January 1, 2020 to present, be identified by office, and whether their exposure could have occurred post March 17, 2020.

Particularized need: Several weeks after the evacuation orders were issued to the employees, the Agency informed the Union that approximately 200 SSA employees had been diagnosed with having contracted COVID-19. The Agency did not state whether these employees would have contracted COVID-19 before or after the evacuation orders. The Union has received reports of offices where guards and/or SSA employees who were authorized to return to an office to work on workloads that can only be completed in an office, had contracted COVID-19. The Agency has stated that all safety protocols are currently being followed in SSA Offices. The Union needs this information to show that the Agency's safety protocols are not currently meeting the requirements of Article 9, Section 1A, Executive Order 12196 (1-201), and OSHA's General Duty Clause. That the Agency has made changes to their "Maximum Telework" policy, that the changes are substantial, and that the Agency's stated reason(s) for denying the Union's DTB's are without merit. The Union also needs the number of employees identified in order to complete our litigation over the Agency's violations of Article 9, Section 1A, Article 9, Section 4B, Executive Order 12196 (1-201), OSHA's General Duty Clause, Agency policy, and other applicable Government-wide rules and regulations. The Union intends to use the information to file OSHA complaints for each of the offices, and in litigation efforts intended to correct the violations.

Agency Response

The Agency provided an interim response on July 21, 2020.

Under §7114(b)(4) of the Statute, an agency must furnish information to a union; upon request and “to the extent not prohibited by law, “if that information is (1) ”normally maintained by the agency in the regular course of business;” (2) “reasonable available;” (3) “necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining;” and (4) not “guidance, advice, counsel or training.”

The Federal Labor Relations Authority has adopted the “particularized need” standard for determining whether information is “necessary” under section 7114(b)(4) of the Statute. A union requesting information under this section of the Statute must establish a particularized need for the requested information “by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union’s representational responsibilities under the Statute. *Internal Revenue Service, Washington, D.C., and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri*, 50 FLRA No. 86, 50 FLRA 661, 669 (1995) (*IRS, KC*). Additionally, the union must establish that the requested information is required in order for the union to adequately represent its members. *Id.* at 669-670.

The Union provided a particularized need statement for each of its requests. Each particularized need states the Union is seeking information “in order to complete our litigation over the Agency’s violations of Article 9, Section 1A, Article 9, Section 4B, Executive Order 12196 (1-201), OSHA’s General Duty Clause, Agency policy, and other applicable Government-wide rules and regulations. The Union intends to use the information to file OSHA complaints for each of the offices, and in litigation efforts intended to correct the violations.”

The Union’s request for information is not clear enough to gauge whether it has relevance to any litigation or an OSHA complaint. The Agency is not aware of any existing “litigation” regarding the alleged violations in your request for information. Therefore, the Agency is unclear on what litigation efforts the Union is seeking to complete. Furthermore, the Union has failed to specify what policies and “other applicable Government-wide rules and regulations” the Agency has allegedly violated. Likewise, the Union failed to specify what exactly the Agency violated in Executive Order 12196 or OSHA’s General Duty Clause. Lastly, the Union stated it “intends to use the information to file OSHA complaints for *each* of the offices” (emphasis added). The Union failed to explain where or how the Agency has committed an OSHA violation. The Union’s lack of specificity and presupposed notion that OSHA complaints are required for “each of the offices” are just mere conclusions that the Agency violated OSHA regulations. Therefore, the Agency is not obligated to provide the information.

Moreover, in the last request, the Union broadly requested information for “all SSA employees, including management officials, and guards,” which extends beyond the scope of employees represented by the American Federation of Government Employees (AFGE). Unions are not entitled to information regarding employees outside their bargaining unit. Additionally, the

Union failed to state with any specificity why it needs the requested information dated back to January 1, 2020.

As such, your request fails to meet particularized need. The Union did not articulate with any specificity how the information is necessary or how it will help you in fulfilling your representational responsibilities under the Statute. According to the Federal Labor Relations Authority (FLRA), the union must come forward with an explanation offering more than mere conclusions. The union cannot use an information request as a general audit approach. *United States Department of the Air Force Air Force Material Command Kirtland Air Force Base Albuquerque, New Mexico*, 60 FLRA 791 (2005).

If you wish to clarify your request including the particularized need supporting the request, we will again evaluate our obligation under the Statute to provide the requested information. If you have any questions, please contact Christina Doyle, Office of Labor Management and Employee Relations, at 410-965-4527.

Sincerely,

/s/

Jim Julian

Associate Commissioner

Office of Labor-Management and

Employee Relations