

MERIT SYSTEMS PROTECTION BOARD
WESTERN REGIONAL OFFICE

ROBERT J. MacLEAN)
Appellant)
) DOCKET NO: SF-0752-06-0611-I-1
v.)
)
DEPARTMENT OF HOMELAND)
SECURITY,)
Agency)
_____)

**COMBINED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS PROPOUNDED BY APPELLANT TO THE AGENCY**

INSTRUCTIONS AND DEFINITIONS

DEFINITIONS

Agency: As used herein, the term "Agency" shall refer to the Department of Homeland Security, its agents, servants, employees, personnel, management, directors, or officials.

Appellant: As used herein, the term "Appellant" shall mean Robert J. MacLean.

Pursuant to 5 CFR § 1201.71, *et seq.*, and Rule 34, Federal Rule of Civil Procedure, Appellant hereby requests that the Agency produce the documents specified below. All documents are to be produced within twenty (20) calendar days after the date of this request and must be organized and labeled in a manner that clearly indicates the particular request to which the document is responsive.

1. "Document" means a true copy of a true original and each identical copy (whether different from the original because of notes made on the copy or otherwise) of each writing of every kind and description (together with all worksheets, supporting documents, and other relevant material), whether inscribed by hand or mechanical, electronic, microfilm, photographic, or other means), and including, but not limited to, affidavits, statements, correspondence, letters, memoranda, telegram messages, notes, reports, records of meetings, conferences or telephone or other conversations or communications, studies, statistical analyses, tabulations, drawings, or graphs.
2. The term "you" or "your" refers to the Agency and each of its affiliates, attorneys, accountants, divisions, subdivisions, predecessors, directors, officers, employees, agents, representatives and all person acting or purporting to act on the Agency's behalf.
3. The term "persons" refers to natural persons, proprietorships, corporations, partnerships, trusts, joint venture groups, associations and organizations.

4. "Relating to" and "relates to" mean, without limitation, relating to, concerning, constituting, mentioning, referring to, describing, summarizing, evidencing, listing, relevant to, regarding, demonstrating, tending to prove or disprove, or explain.
5. "Correspondence" means any letter, memorandum or other writing.
6. "Communication" or "communications" includes, without limitation, in-person or telephone conversations, telegrams, telexes, tapes, memorandum to file, or other sound recording or means of transmitting information from one source to another.
6. The connectives "and" and "or" mean either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
8. The use of the singular includes the plural, and vice versa.
9. The use of one gender includes all others, appropriate in the context.
10. The term "personnel file" as used herein shall include any and all records maintained either in the normal course of business or for any special purpose with respect to the application, course of employment, and termination of any employee of Defendant, and specifically includes applications, disciplinary notices, performance evaluations, employment histories or summaries, records of residential addresses and telephone numbers, termination notices, job assignment or classification records, compensation and similar records. For the purpose of this request the term "personnel record" need not include records of medical benefits, condition, or claims; designations of, or changes in, beneficiary; garnishments, income tax records; or insurance benefits, except as pertaining to the Appellant's records.

INSTRUCTIONS

1. The relevant time period of these interrogatories and requests is from the initial date of employment of Appellant to the present date and shall include all documents which relate or refer to this period even though prepared before or subsequent to that period.
2. If any document, or answer, is withheld because it constitutes sensitive security information, Appellant and the undersigned counsel agree to use that document or answer solely in connection with this litigation.
3. If any document, or answer, is withheld under a claim of privilege or other protection, please provide all of the following information with respect to any such document, or answer, so as to aid the Board and the parties hereto in determining the validity of the claim of privilege or other protection:
 - a. The identity of the person(s) who prepared the document, or answer, and, in the case of a document, who signed the document, and over whose name it was sent or issued.

- b. The identity of the person(s) to whom the document was directed.
 - c. The nature and substance of the document, with sufficient particularity to enable the Court and the parties thereto to identify the document.
 - d. The date of the document.
 - e. The identity of the person(s) who has (have) custody of, control over, the document and each copy thereof.
 - f. The identity of each person to whom a copy of the document was furnished.
 - g. The number of pages of the document.
 - h. The basis on which any privilege or other protection is claimed.
 - i. Whether any non-privileged or non-protected matter is included in the document.
4. Notwithstanding your objection, you must disclose any objected to evidence containing non-objectionable matter which is relevant and material to the discovery requests, but you may withhold the portion for which you assert the objection, subject to further request or motion, provided that you furnish the above-requested identification.
 5. If you later discover additional responsive documents, you are obligated to supplement your responses pursuant to Rule 26, FRCP.

Interrogatory No. 1.

Please provide the name, title, and position of each and every employee who drafted, prepared, reviewed and authorized the release of the text message that the Agency charges Appellant with having disclosed to the media.

Interrogatory No. 2.

Please identify each and every person by name, address and place of employment, who will or may be called by the Agency as a witness in this litigation, and describe specifically the area or areas of expected testimony; the documents to be relied upon, if any; and state whether the persons so designated will or will not be an expert witness, and if so state the substance of the facts and opinions to which each such expert is expected to testify and a summary of the grounds for such opinion of each expert.

Request for production No. 1.

Please provide copies of all relevant statements, notes of conversations, documents prepared by, about, or concerning the individuals referred to in the immediately preceding Interrogatory or the answer thereto.

Request for production No. 2.

Please provide copies of all documents prepared by, or relied upon, by each expert witness or any witness identified in the immediately preceding Interrogatory with regard to their expected testimony.

Request for production No. 3.

Please provide copies of any and all federal laws and Agency rules and regulations currently in effect that govern the disclosure of sensitive security information.

Request for production No. 4.

Please provide copies of any and all federal laws and Agency rules and regulations that governed the disclosure of sensitive security information on July 29, 2003, the date on which Appellant allegedly made an Unauthorized Disclosure of Sensitive Security Information.

Request for production No. 5.

Please provide copies of any all notices, announcements, manuals, memoranda, e-mails, or other documents by which the Agency notified Appellant prior to July 29, 2003 of any Agency policies pertaining to sensitive security information.

Interrogatory No. 3.

Please identify every person of whom the Agency is aware, who may have information or knowledge which is relevant to the subject matter of this appeal or which may lead to the discovery of information relevant to the subject matter of this action or who has knowledge of any of the facts concerning the occurrences that are the subject of this appeal.

Interrogatory No. 4.

If the Agency or any of its agents, attorneys, or employees has obtained any statement from any individual, either orally or in writing, concerning the occurrences that are the subject of this appeal or concerning any allegation against the Appellant, please describe separately each such statement by setting forth the substance of the statement, the name, title, address and telephone number of the person who gave it, the name, address and employment position of the person who received it, the date it was received, whether it was recorded, whether it was reduced to writing, whether it was signed, and the present location of all notes, recordings, transcripts, or writings of any kind pertaining to each such statement.

Request for production No. 6.

Please provide copies of any and all documents, notes, memoranda, or other writing referred to in the immediately preceding Interrogatory.

Request for production No. 7

Please provide a complete copy of Appellant's official personnel folder.

Interrogatory No. 5.

Please state the name, address and title of all individuals who conducted and/or were involved in the investigation into the allegations against the Appellant, including the names of each and every individual who questioned or was questioned, interrogated or was interrogated, requested or provided information regarding the Appellant, in any way.

Request for production No. 8.

Please provide any and all documents contained in all investigations of appellant, including, but not limited to, all documents the Agency intends to use as evidence at the hearing of this matter.

Request for production of documents No. 9.

Please provide any and all documents upon which the Agency relied in charging Appellant with (1) Unauthorized Media Disclosure, (2) Unauthorized Release of Information to the Media, and (3) Unauthorized Disclosure of Sensitive Security Information.

Request for production of documents No. 10.

Please provide complete copies of any and all e-mails, letters, or other written materials sent to any Agency employee that concern or relate to Appellant, from January 2003 through the present.

Request for production of documents No. 11.

Please provide a complete list of employees whom the Agency has charged with and/or investigated for Unauthorized Disclosure of Sensitive Security Information, or any substantially similar charge, from January 2003 through the present. Please include in your answer a description of the information each such employee allegedly disclosed.

Interrogatory No. 6.

For each employee listed in the Agency's answer to the immediately preceding request for production of documents, please identify what discipline, if any, the Agency proposed and what discipline, if any, the Agency sustained.

Request for production No. 12.

Please provide a complete copy of the text-message that the Agency charges Appellant with having disclosed to the media. Please include in your production any notices that may have accompanied the text-message indicating that it was sensitive security information.

Interrogatory No. 7.

Please state the Agency's complete basis for sustaining the charge of Unauthorized Disclosure of Sensitive Security Information. Please include in your response any and all reasons, regulations, interpretations and policies that support the Agency's determinations that Appellant's July 29, 2003 disclosure was "unauthorized" and a disclosure "of sensitive security information."

Interrogatory No. 8.

Please state any and all reasons why the Agency failed to sustain the charges of (1) Unauthorized Media Appearance and (2) Unauthorized Release of Information to the Media.

Interrogatory No. 9.

Please state whether, when, and why the Agency decided to cancel its Remain Overnight missions up to August 9, 2003, including in your answer a complete explanation of the considerations that entered the decision-making process and the persons involved in it. Please include in your answer a description of the impact the Agency expected this decision to have on the safety of the flying public.

Interrogatory No. 10.

Please state whether, when, and why the Agency decided to reverse itself and reinstate the Remain Overnight missions referred to in the immediately preceding Interrogatory. Please include in your answer a discussion of the role, if any, that Appellant's July 29, 2003 disclosure to the media played in

the Agency's decision to reinstate the Remain Overnight missions. Please also include in your answer a description of the impact the Agency expected this decision to have on the safety of the flying public.

Request for Production No. 13.

Please provide copies of any and all files, records, notes, emails, memoranda and other written documents of any kind upon which the Agency relied in drafting the letter proposing Appellant's removal.

Interrogatory No. 11.

Please explain any and all reasons why the Agency chose text-message as the medium for informing its Air Marshals of the impending cancellation of Remain Overnight missions up to August 9, 2003.

Interrogatory No. 12.

Please state each and every fact, allegation, reason and belief relied upon by the Agency to support its removal of the Appellant.

Request for production No. 14.

Please provide all documents upon which Agency relied and/or considered in making its decision to remove the Appellant. Please also provide all draft copies of the Agency's letter of proposed removal and the Agency's final decision letter.

Request for production No. 15.

Please provide copies of all of the Agency's written procedures, rules, guidelines, regulations or policies relevant to the removal of its employees.

Interrogatory No. 13.

With respect to the Agency's removal of the Appellant, please state the name, title and address of each and every individual who decided, was consulted, or had any part in the decision.

Interrogatory No. 14.

Please state each and every fact upon which the Agency bases its conclusion that the removal of the Appellant promotes the efficiency of the service. Please include in your answer how and in what manner Appellant's removal promotes the efficiency of the service.

Interrogatory No. 15.

Please state each and every fact, allegation, and belief relied upon by Agency to support the removal of Appellant.

Request for production No. 16.

Please provide copies of any and all federal laws or Agency regulations, practices, policies or procedures concerning how sensitive security information is to be disbursed, distributed, or disclosed.

Interrogatory No. 16.

Please explain any and all reasons why the Agency claims in its Notice of Removal that the information Appellant disclosed on July 29, 2003 "had the potential to reveal vulnerabilities in the aviation security system."

Request for production No. 17.

Please provide any and all documents upon which the Agency relied, or which the Agency produced, in the course of deciding to cancel all Remain Overnight missions up to August 9, 2003. Please also provide any and all documents upon which the Agency relied, or which the Agency produced, in the course of deciding to reinstate those Remain Overnight missions.

Interrogatory No. 17.

Please state any and all reasons why the Agency's Notice of Removal finds that Appellant's July 29, 2003 disclosure was "not protected by the First Amendment to the U.S. Constitution."

Interrogatory No. 18.

Please state any and all reasons why the Agency proposed Appellant's removal instead of a less severe penalty.

Request for production No. 18.

Please provide a complete copy of the Agency's Table of Penalties, as well as any other written documents relevant to penalty selection.

Interrogatory No. 19.

Please identify and explain each and every Douglas factor the Agency considered in selecting the penalty of removal.

Request for production of documents No. 19.

Please provide copies of any and all documents, notes, emails, memoranda, or other writing pertaining to the immediately preceding Interrogatory.

Interrogatory No. 20.

Please provide a complete description of how the Agency discovered the facts underlying its charge that Appellant made an Unauthorized Disclosure of Sensitive Security Information. Please also provide a complete description of how the Agency subsequently investigated the facts underlying this charge and the results of that investigation.

Request for production No. 20.

Please provide a complete copy of any documents, notes, memoranda, e-mails, and other written materials relevant to the immediately preceding Interrogatory. Please include in your production a complete copy of the Agency's report of investigation into the charges against Appellant. Please also include any and all relevant documents from Senators Barbara Boxer and Charles Schumer.

Request for production No. 21.

Please provide a complete copy of any written material of which the Agency is aware, published or unpublished, internal or external, that criticizes any Agency rule, regulation, or policy to which Federal Air Marshals must adhere.

Interrogatory No. 21.

Please explain any and all reasons why the Agency contends in its Notice of Removal that the media person to whom Appellant made his July 29, 2003 disclosure “is not a covered person within the meaning of the SSI regulations.” Please include an explanation of which persons were “covered persons” under the SSI regulations as they existed on July 29, 2003.

Request for production No. 22.

Please provide complete copies of any and all written materials memorializing Agency policy, practices, or procedures, whether formal or informal, official or unofficial, concerning disclosures to the media.

Interrogatory No. 22.

Please explain any and all reasons why the Agency contends in its Notice of Proposed Removal that Appellant’s July 29, 2003 disclosure “concerned RON deployments.”

Interrogatory No. 23.

Please identify any training sessions the Agency has provided to Appellant regarding media disclosures or sensitive security information.

Request for production of documents No. 23.

Please provide complete copies of any investigative files or records the Agency compiled in the course of investigating any of the charges set forth in the Agency’s Notice of Proposed Removal.

Request for production of documents No. 24.

Please provide a job description for the position Appellant held prior to his removal. Please also provide a copy of the vacancy announcement for the Federal Air Marshal position to which the Agency appointed Appellant.

Request for production No. 25.

Please provide a complete copy of the investigative report, as well as any and all supporting documents, related to any investigation of an Agency employee, other than Appellant, charged with disclosing sensitive security information. Please include in your production any and all Notices of Proposed Discipline and Notices of Discipline issued to any Agency employee, other than Appellant, charged with disclosing sensitive security information. Please also include complete copies of any investigative file for an employee other than Appellant who is alleged to have disclosed the contents of the text message regarding Remain Overnight missions.

Interrogatory No. 24.

Please provide a full and complete description of the Appellant's past work record, including length of service, performance on the job, awards received, ability to get along with other workers, and dependability and, in addition, state whether Appellant failed to perform at a satisfactory level citing each and every specific instance in which the Appellant failed to perform at a satisfactory level.

Interrogatory No. 25

Please state any Agency policies, written or unwritten, instructing any Agency personnel on whether and how to respond to media disclosures stemming from anonymous Agency employee(s).

Request for production No. 26

Please provide a copy of any policy that responds to the immediately preceding Interrogatory.

Interrogatory No. 26

Please state whether any Agency employee, current or former, communicated with representatives of NBC regarding the NBC Nightly News broadcast of September 9, 2004, entitled "Terror in the Skies." For every such employee who had such communication, please state his or her name, title, and the date and content of the communications.

Request for Production No. 27

Please provide any and all documents relevant to the immediately preceding Interrogatory.

Interrogatory No. 27

Please identify and describe all instances in which the Agency has officially responded to non-criminal allegations by an anonymous employee, other than Appellant.

Interrogatory No. 28

Please identify any and all Agency employees, other than Appellant, who complained, formally or informally, verbally or in writing, about the Agency's decision to discontinue Remain Overnight missions up to August 9, 2003.

Request for production No. 28

Please provide any and all documents relevant to the immediately preceding Interrogatory.

Interrogatory No. 29

Please identify all Agency employees who were involved in drafting, developing, amending, or implementing the sensitive security information regulations with which the Agency charges Appellant with violating.

Request for production No. 29

Please provide complete copies of any print-media articles, or television broadcasts, relying upon or quoting Federal Air Marshals for the purpose of criticizing any Agency policy.

The Appellant, Robert J. MacLean
By his Attorney,

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CERTIFICATE OF SERVICE

I, Peter H. Noone, Esquire, certify that I have this 5th day of June, 2006, served the within document upon the following, by Overnight Delivery, to:

Eileen Dizon Calaguas, Esq.
Transportation Security Administration
1001 Bayhill Drive, Second Floor
San Bruno, CA 94066-3061
Fax No. (650) 616-4201

Peter H. Noone