

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

JIM ERLANDSON,)	
)	
Employee/Grievant,)	
)	DOCKET No. 15-03-623
v.)	
)	
DEPARTMENT OF FINANCE/ DIVISION OF REVENUE)	Order of Document Production
)	
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on August 20, 2015 at the Delaware Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Boulevard, Suite 100, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, Jacqueline Jenkins, Ed.D, Paul R. Houck, and Victoria D. Cairns, a quorum of the Board pursuant to 29 *Del. C.* §5908(a).

APPEARANCES

Rae Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator
MERB

Kevin Slattery
Deputy Attorney General
on behalf of Department of Finance/
Division of Revenue

PROCEDURAL BACKGROUND

On or about July 6, 2015, the employee/grievant, Jim Erlandson (Erlandson) filed a request for Production of Documents on his former employer, Department of Finance/Division of Revenue ("DOR") to provide the following documents:

- A. All emails sent and received by Jim Erlandson from June 26, 2010 to present from State of Delaware e-mail account;
- B. All emails sent and received by James Stewart from June 26, 2010 to present from State of Delaware e-mail account.
- C. All emails sent and received by Mary Ann Joy from June 26, 2010 to present from State of Delaware email account;
- D. All emails sent and received by Mary Jane Donnelly from June 26, 2010 to present from State of Delaware email account;
- E. All emails sent and received by Patrick Carter from June 26, 2010 to present from State of Delaware e-mail account;
- F. Any requests for proposals published by the Department of Finance/Division of Revenue related to the construction/renovation of any space on the 9th floor in the Carvel Office building located at 820 N. French St., Wilmington, DE 19801 from June 26, 2010 to present;
- G. Copy of any contract awarded for previously mentioned construction from June 26, 2010 to present and specifically for the contract awarded to Commonwealth Construction for work that was performed on the 9th floor, of the Carvel Office building, between the time frame of approximately January 2013 and August of 2014. This request would include original contract awarded and actual contract for work that was completed;
- H. Any correspondence between Commonwealth Construction and the Department of Finance/Division of Revenue related to previously mentioned construction;
- I. Any correspondence between the Department of Finance/Division of Revenue and the building maintenance department for the Carvel Office Building from June 26, 2010 to present;
- J. Any requests for proposals published by the Department of Finance/Division of Revenue related to the acquisition of any machinery/equipment intended for placement on the 9th floor in the Carvel Office building located at 820 N. French St., Wilmington, DE 19801 from June 26, 2010 to present;
- K. Copy of any contracts awarded for the acquisition of any machinery/equipment intended for placement on the 9th floor of the Carvel Office building from June 26, 2010 to present and specifically the contracts awarded to the Agissar Corporation and IBML Corporation for equipment that was actually placed on the 9th floor of the Carvel Office Building in the approximate time frame of August 2012 to June 2013. This request would include original

contract awarded and actual contract for machinery/equipment that was purchased;

- L. Any correspondence between the Department of Finance/Division of Revenue and the Agissar Corporation;
- M. Any correspondence between the Department of Finance/Division of Revenue and the IBML Corporation;
- N. Any requests for proposals published by the Department of Finance/Division of Revenue related to the acquisition of any software/programming services and support intended for use by the Department of Finance/Division of Revenue from June 26, 2010 to present;
- O. Copy of any contracts awarded for the acquisition of any software/programming services used by the Department of Finance/Division of Revenue from June 26, 2010 to present and specifically the contract awarded to Fairfax Imaging in the approximate time frame of August 2012 to June 2013. This request would include original contract awarded and actual contract for services that were rendered; and
- P. Any correspondence between the Department of Finance/Division of Revenue and Fairfax Imaging.

On July 6, 2015, the Board issued a Subpoena Duces Tecum to Thomas Cook, Secretary, Delaware Department of Finance commanding the above-mentioned documents be produced for the Grievant's review and inspection. On July 24, counsel for DOR filed a Motion to Quash the subpoena in its entirety. The Board received Erlandson's response to the Motion to Quash on August 4, 2015. Counsel for DOR filed a reply to Erlandson's response to its Motion to Quash. The Board held a hearing to consider the Motion on August 20, 2015.

BRIEF SUMMARY OF THE MOTION

The Board did not hear any witness testimony but heard legal argument by the Department of Finance/Division of Revenue on its motion to quash the subpoena. The Grievant failed to appear at the hearing.

DOR contends Erlandson's e-mail requests from 2010 to the present are overbroad and outside of the relevant time period (March – December 2014) on which his termination was based. According to the letter of termination dated February 2, 2015, the Grievant was terminated for

violating agency procedures for safeguarding taxpayer records and payments and mishandling documents. DOR also asserts access to emails is limited because the Department of Technology and Information (“DTI”) only retains State emails for a rolling period of 13 months.

In addition, to the extent the subpoena requests information which may include confidential tax payer information, DOR is required to redact such protected information. Finally, the remainder of Erlandson’s request involves various requests for proposals, contracts and correspondence between DOR and outside contractors without any proffer as to relevance to the matter before the Board.

In his response to the motion, Erlandson failed to address these issues. Rather, his response included allegations outside of the relevant timeframe and allegations against individuals who were not involved in the incidents and matters which resulted in his termination. Specifically, he asserts his supervisor questioned him in 2010 about an alleged personal relationship with a member of DOR management; he asserts an incident occurred in 2010 where he learned taxpayer checks and returns were missing and related to a “ring of thieves”; he asserts management failed to appropriately discipline one of his subordinates; that the disappearance of a knob on scanning equipment in 2012 was part of “several incidents of sabotage”; that women in his office conspired to bring allegations of bias against him; and that a renovation conducted by Commonwealth Construction in June through December 2013 caused the mailroom to be unsecure.

CONCLUSIONS OF LAW

Superior Court Civil Rule 45 states, “On a timely motion, the Court shall quash or modify the subpoena if it: (i) fails to allow reasonable time for compliance; (ii) requires disclosure of privileged or confidential or other protected matter and no exception or waiver applies; or (iii)

subjects a person to undue burden.” Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. *Humes v. Charles H. West Farms, Inc.*, 2006 WL 2242715 at *1 (Del. Super. Ct., July 14, 2006). Even if the initial request is inadmissible at trial, it may still be provided so long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Id.*

According to the Delaware Rules of Evidence, relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Therefore, the Board must first determine whether the requested documents are relevant to the matter before the Board or reasonably calculated to lead to relevant evidence. If not, the Board may quash the request. If the request is relevant to the matter before the Board, it must look to the three bases for a motion to quash. The Board may quash or modify to request to relieve burden on the entity requested.

The Board determines that the information requested in subparagraph A of the subpoena relates to information which may be relevant to Mr. Erlandson’s case, however it is overbroad and covers a period of time which is not relevant to this grievance. DOR is directed to provide copies of emails to and from Erlandson for the period of March 2014 through December 2014, to the extent that they are available in the State email system. This information will include emails between Erlandson and Stewart, Joy, Donnelly and Carter during the relevant time period. Consequently, the requests labeled B, D and E are quashed.

Request C is quashed because it relates to the grievant’s relationship with a subordinate who was removed from his supervision in 2012; consequently, it is irrelevant to this grievance. The Board also quashed the information requested in subparagraphs F and H through P because it

is irrelevant to this proceeding. The Board modifies the scope of subparagraph G and directs DOR provide mailroom security during the period that the 9th Floor, DOR mailroom was being renovated.

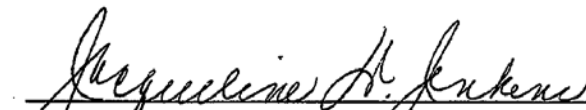
DECISION AND ORDER

It is this 27th day of August 2015, by a unanimous vote of 4-0, the Decision and Order of the Board to dismiss/modify the motion in part and grant the motion in part. The Agency must provide all e-mails to and from Grievant on State e-mail from March 2014 through December 2014, to the extent they are available from the Department of Technology and Information. Any information which is included in those emails which is protected under 30 Del.C. §368 shall be redacted. In addition, the Board directs DOR to provide information concerning mailroom security during the renovation. All remaining requests for information are quashed.

The Agency will advise the Board within thirty (30) days of the date of order as to any and all steps it has taken to comply with this order.


MARTHA K. AUSTIN, MERB Chairwoman


PAUL R. HOUCK, MERB Member


JACQUELINE D. JENKINS, EDD, MERB Member


VICTORIA D. CAIRNS, MERB Member