UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
Washington, D.C. 20424

OALJ 25-8

SOCIAL SECURITY ADMINISTRATION
CHICAGO, ILLINOIS
Respondent

And

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 1395, AFL-CIO
Charging Party

CH-CA-23-0223

Alicia Weber
For the General Counsel

Georges Tchamdjou
For the Respondent

Jill Hornick
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

This should have been a simple request for information by a union representing an employee in a grievance over her annual performance appraisal. She was concerned about the rating she was given in three areas of the appraisal, and her union asked her first-level grievance official for sanitized copies of the appraisals given to the four other Claims Representatives in her office, in order to compare their ratings in those areas and determine whether the grievant was treated comparably. This request was for a very small amount of information that was readily available and narrowly focused on a small group of employees and directly related to one employee's grievance. Instead of recognizing this as the reasonable and routine request that it was, however, the agency treated it as a dragnet intended to examine every document in the agency's entire personnel system; so it denied the request in one-size-fits-all language that bore no resemblance to the union's statement of purpose. Four months later, after the union filed an unfair labor practice charge, the agency ultimately gave the requested documents to the union.

The specific issue in this case is whether the Respondent furnished the information to the Union "in a timely manner," as the law requires. If the Union's original request had been inappropriate or unduly broad, or if the Union's explanation of need was inadequate and required further clarification, then the four-month delay might have been justified. But the Union's request was directly on point and laid out exactly why it needed the information, and the Respondent never genuinely sought to clarify the Union's reasoning. The request could have, and should have, been complied with in a matter of minutes, or days, at most. Instead of holding the first step grievance meeting relatively early in the appraisal year, the grievant did not have that meeting until the year was more than half over. A routine grievance has stretched into a two-year litigation. The answer to the issue before me, then, is that the Respondent did not furnish the information in a timely manner.

STATEMENT OF THE CASE

This is an unfair labor practice (ULP) proceeding under the Federal Service Labor-Management Relations Statute (the Statute), Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101-7135, and the Rules and Regulations of the Federal Labor Relations Authority (the FLRA or the Authority), 5 C.F.R. part 2423.

On February 16, 2023, the American Federation of Government Employees, Local 1395, AFL-CIO (the Union or Charging Party) filed a ULP charge in this case against the Social Security Administration, Chicago, Illinois (the Agency or Respondent). After investigating the charge, the Regional Director of the Chicago Region of the FLRA issued a Complaint and Notice of Hearing, on behalf of the FLRA's General Counsel (GC), against the Respondent on July 20, 2023, alleging that the Respondent violated §§ 7114(b)(4) and 7116(a)(1), (5), and (8) of the Statute by unreasonably delaying its response to a request for information from the Union. On August 9, 2023, Respondent filed its Answer to the Complaint, admitting some of the factual allegations but denying that it had violated the Statute.

On July 15, 2024, the GC filed a Motion for Summary Judgment (MSJ), along with an affidavit and several exhibits (GC Ex. 1-12). After conducting a conference call with the parties on July 30, I issued an Order Indefinitely Postponing Hearing, Prehearing Conference, and Prehearing Disclosure on July 31, and I extended the time to respond to the MSJ until August 2, 2024. On August 2, the Respondent filed its opposition to the MSJ (Resp. Br.), arguing that there were material facts in dispute, that it had not violated the Statute, and that the remedies sought by the GC were inappropriate.

DISCUSSION OF MOTIONS FOR SUMMARY JUDGMENT

The Authority has held that motions for summary judgment filed under § 2423.27 of its Regulations, 5 C.F.R. § 2423.27, serve the same purpose, and are governed by the same principles, as motions filed in the U.S. District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of VA, VA Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Summary judgment is appropriate when there are no genuine disputes as to any material facts and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The Respondent in our case asserts that some facts are in dispute (Resp. Br. at 10), but it does not specify what those disputed facts are, and I do not see any. Instead, all of the disputes appear to me to be legal in nature, involving interpretation of the events described in the pleadings and the application of case precedent to these events. In its brief, the Respondent describes some of the events relevant to its response to the Union's information request; it argues that its actions were not unreasonable and that the Union was not prejudiced by the Agency's delayed response to the request. Respondent does not, however, explicitly deny the facts and events described in the affidavit furnished by the GC or in the GC's exhibits, nor has it submitted any exhibits of its own in support of its case. I accept as true the unsworn assertions made by the Respondent in its brief, and the undisputed assertions of fact set forth in the GC's exhibits. I find that there are no disputes regarding any facts material to the case; that I can therefore decide the case on the existing record; and that a hearing is not necessary. Accordingly, the hearing in this case is hereby cancelled.

Below I will summarize the material facts that are not in dispute, and I will then make conclusions of law and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. The American Federation of Government Employees, AFL-CIO (AFGE), is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a nationwide unit of the Respondent's employees. The Union is an agent of the AFGE for the purpose of representing bargaining unit employees of the Respondent. The AFGE and the Respondent are parties to a collective bargaining agreement (CBA) dated October 27, 2019. GC Ex. 3. During the events of this case, AlToni Bias, Labor and Employee Relations Supervisor, was an agent of the Respondent and was acting on its behalf.

On November 16, 2022, Jill Hornick, Administrative Director – Field Office for the Union, filed a grievance on behalf of an employee in the Agency's North Riverside, Illinois, Field Office, challenging portions of the employee's FY 2022 performance evaluation. GC Ex. 1 at 2. The grievant asserted that she should have received a Level 5 rating, rather than Level 3, in three specific areas. *Id.* On that same date, Ms. Hornick submitted an information request to the grievant's supervisor, asking for sanitized copies of the FY 2022 appraisals of the four other Title 2 Claims Representatives working in the North Riverside office. Affidavit at ¶ 7. She explained the Union's need for the information as follows:

> [T]o ensure that Article 3 Section 2(A) (which requires that "all employees shall be treated fairly and equitably in all aspects of personnel management") and Article 21 (which is entitled "Performance" and addresses numerous aspects thereof) of the Collective Bargaining Agreement are being followed. Specifically, the Union will use the appraisals to determine how many employees were rated Level 5 and how many were rated Level 3 in the "Participation, Demonstrates Job Knowledge, and Achieves Business Results" categories. The Union will also use the information to compare how the employees were rated and to analyze and compare the reasons given for such ratings to assist it in determining whether Ms. Jackson's work was comparable to her co-workers who were rated Level 5 in those categories.

GC Ex. 2. Hornick requested the material by November 21, as the Union needed it to prepare for the grievant's first step grievance presentation.[1] *Id.*

Mr. Bias responded to Hornick's request on November 30. After quoting the Union's request, he stated:

> The Federal Labor Relations Authority has held that a general "audit" approach such as one requesting all records to ensure compliance does not constitute particularized need. See Department of the Air Force, Air Force Material [sic] Command, Kirtland Air Force base [sic], 60 FLRA 791 (2005).
>
> Therefore, after careful consideration of the request, as well as applicable case law as it relates to our statutory obligations under 5 USC 7114(b)(4), I have determined that there is no obligation under the Statute to provide the Union the requested information under these circumstances.

GC Ex. 4. Mr. Bias also offered to reevaluate his decision if the Union provided further clarification of its need. *Id.*

Ms. Hornick responded to Mr. Bias on December 2 and asserted that he had misstated both the specific elements of particularized need that she had previously articulated and the case law on this subject. GC Ex. 5. Thus, in the case the Agency cited, the Authority required both sides to articulate their specific interests in either obtaining or withholding the information; Hornick insisted that her information request spelled out clearly the Union's need, but that the Agency's reply failed to explain its reasons for refusing. *Id.* She concluded, "If you have any genuine and reasonable requests for clarification of my request for information, please articulate them." *Id.*

In a memo dated December 15, 2022, Mr. Bias again stated that the Agency had no obligation to furnish the information requested, using virtually the identical language he had used in his November 30 reply. GC Ex. 6 at 2-3.

Hornick attempted one more time to convince the Agency to provide the requested information in a memo to Bias dated January 23, 2023. She attached a copy of an FLRA Administrative Law Judge's 2014 decision involving SSA and AFGE, in which the judge held the Union had established a particularized need for other employees' performance appraisals in order to process an employee's grievance over her appraisal. GC Ex. 7. The next day, Hornick spoke to Bias on the phone about her information request, but Bias still refused. Affidavit at ¶ 12. The Union then filed the instant ULP charge on February 16, 2023.

After the ULP charge was filed, an attorney from the FLRA General Counsel's office engaged an Agency representative about the case. *See* Resp. Br. at 5-6. Based on these conversations, the Agency reevaluated its position as to whether the Union had demonstrated a

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[1] Article 24, Section 9 of the parties' CBA calls for first step grievance meetings to be held within ten days of receipt of the grievance. GC Ex. 3 at 149. In this case, that would have put the meeting on or about November 26.

particularized need for the information, and it furnished the Union with the requested performance appraisals on March 7, 2023. GC Ex. 9. Mr. Bias explained:

> We are providing the requested information on the very limited basis that the union and the employee are alleging discriminatory treatment in the appraisal process. However, this instance does not constitute any establishment of a recognized particularized need for the information being provided.

Id. at 2. In its brief, Respondent further explained its change of heart:

> When the FLRA got involved in the investigation . . . the FLRA further helped clarify the union's original request. . . . Until then, there was no evidence that the employee's appraisal was based on anything other than the performance expectations and standards. The Union had not provided any evidence to the contrary, other than a speculation that the Agency may have been unfair. . . . Had the union articulated its need for information this way, the outcome would have been different.

Resp. Br. at 5-6.[2]

The first step grievance presentation on the employee's grievance was held on May 12, 2023; it was denied by the Agency, and the grievant decided not to pursue it further. Affidavit at ¶ 15.

POSITIONS OF THE PARTIES

General Counsel

Although the Union initially based its charge on the Agency's refusal to provide it with the requested appraisals, the General Counsel has continued to pursue this case even though the Agency subsequently furnished the documents. The GC alleges that the Agency's repeated refusals in November and December of 2022 to furnish the documents violated §§ 7114(b)(4) and 7116(a)(1), (5), and (8) of the Statute, and that the Agency's 112-day delay in ultimately furnishing the documents constituted a separate violation of the Statute. MSJ at 1, 6.

The GC first states its basic premise that under § 7114(b)(4) of the Statute, an agency has a duty not only to furnish information meeting the statutory criteria, but also to respond to information requests in a reasonable time. *Id.* at 6 (citing *Dep't of the Treasury, IRS, Office of the Chief Counsel*, 71 FLRA 281, 283 (2019) (*Treasury*); and *Soc. Sec. Admin.*, 64 FLRA 293,

[2] Normally, events occurring after a ULP charge has been filed will not be utilized either to inculpate or exculpate a respondent. Thus, if the Union established a particularized need for its information request back in November or December of 2022, the Agency's furnishing the documents in March, after the ULP charge was filed, would not negate its earlier ULP. But in this case, the Respondent is basing at least a part of its defense to the allegation of unreasonable delay on the claim that the Union didn't establish particularized need until March. I will therefore consider these events in order to address the Respondent's defense.

297 (2009) (*SSA*)). According to the GC, these cases demonstrate that a delayed response independently violates the Statute, even if the requested information doesn't exist or if the union failed to establish a need for the information. *Dep't of HHS, SSA, N.Y. Reg., N.Y., N.Y.*, 52 FLRA 1133, 1149-50 (1997).

The GC then argues that the Agency's sixteen-week delay in furnishing the appraisals was unreasonable. MSJ at 6-7. It notes that the Agency was aware the Union needed the information in order to prepare for the grievant's first step grievance meeting, and that as a result, the meeting could not take place until May 12. While the Authority applies the concept of a "timely" response in the context of the individual circumstances of each case, the GC says there were no extenuating circumstances that would have required the Agency to take nearly four months to furnish four appraisals that were readily available to management, as there were in *U.S. DOJ, Fed. BOP, FCI Fort Dix, N.J.*, 64 FLRA 106, 110 (2009). By contrast, the Authority has found delays of less than one month (*Dep't of Transp., FAA, Fort Worth, Tex.*, 57 FLRA 604, 606 (2001) (*FAA*)) and ten weeks (*Dep't of Def. Dependent Schools, Wash., D.C.*, 19 FLRA 790, 791 (1985) untimely. MSJ at 6.

The GC goes on to argue that the Union established a particularized need for the requested appraisals, and that the Agency was wrong from the start in refusing to provide them.[3] The GC notes that when the Agency denied the Union's requests in November and December of 2022, its only reason for denial was that the Union had not shown that it needed the information; therefore, the GC insists that the objections the Agency raised subsequently in its Answer to the Complaint should not be considered. *Id.* at 7-8 (citing *Pension Benefit Guaranty Corp., Wash., D.C.*, 69 FLRA 323, 330 (2016) and other cases). Regarding particularized need, the GC says the Authority has long held that unions have a substantial interest in obtaining information in order to process a grievance, and the Union's information request here directly pointed to the grievance that had been filed the same day on behalf of the grievant. MSJ at 9. Not only did the Union refer the Agency to the grievance, but it cited specific portions of the CBA (Articles 3 and 21) that may have been violated, and it further specified that it would use the information to compare how the grievant was appraised in three areas with how the other four employees were appraised. *Id.* at 10. Contrary to the Agency's denial letters, the Union insisted its investigation was very narrowly tailored and far from an "audit." *Id.* at 11.

In order to remedy the Agency's ULP, the GC requests that a notice be signed by the Respondent's Regional Commissioner and distributed regionwide, and that the Agency provide a one-time training for its LER staff on the subject of information requests. *Id.* at 11-12. While acknowledging that this is a nontraditional remedy, the GC argues that it is appropriate and necessary here, because the same type of nonresponsive, boilerplate denials have been used by the Agency's regional office for other information requests, and because SSA as a whole has been found to have committed similar violations in other cases. *Id.* at 11 (citing *Fed. Bureau of Prisons, Wash., D.C.*, 55 FLRA 1250, 1258 (2000)). In support of this argument, the GC submits responses to other information requests from Agency officials using the same language, arguing that this is a regionwide pattern that warrants broader relief than normal. Affidavit at 5, 6; GC Ex. 10, 11.

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[3] After the GC filed its MSJ, the Respondent filed its response, in which – for the first time – it admitted that the statutory criteria for requiring the production of information had been met. *See* Resp. Br. at 5.

Respondent

The Agency's position regarding the Union's information request has evolved since it first received the request. As already noted, the Agency's November 30 response to the information request simply stated that the Union was trying to conduct a "general 'audit'" and failed to show a particularized need. GC Ex. 4. It repeated this response when it denied the Union's request again on December 15. GC Ex. 6. After the Union filed its ULP charge, the Agency furnished the requested information to the Union on March 7 on "a very limited basis," at the same time insisting that the Union had not demonstrated "a recognized particularized need for the information." GC Ex. 9.

When the GC nonetheless issued its Complaint against the Agency, Respondent's Answer denied that the requested information was normally maintained; reasonably available; necessary; did not constitute management guidance for collective bargaining; and was not prohibited by law from disclosure. Complaint; Answer. Then, after the GC filed its motion for summary judgment, the Respondent admitted that the information is normally maintained and reasonably available, does not constitute management guidance, and is not prohibited by law. Resp. Br. at 5. It now admits that the Union had a particularized need for the information, once the Union's request was "clarified" by an FLRA attorney, but it continues to insist that the Union had not previously demonstrated such need. *Id.* at 5-6. Finally, it insists that it did not unreasonably delay in providing the Union with the requested documents. *Id.* at 6-8.

With regard to particularized need, the Respondent argues that the Union had not demonstrated such a need for the information prior to March 7. Only on that date did the Union and the FLRA specify that the grievant was alleging "discriminatory treatment in the appraisal process." *Id.* at 5. "Until then, there was no evidence that the employee's appraisal was based on anything other than the performance expectations and standards." *Id.* at 6.

As for the Agency's alleged delay in furnishing the appraisals, the Respondent asserts that it provided the documents on March 7 -- as soon as the Union's particularized need was demonstrated. Respondent further asserts that the Union was not prejudiced in any way by the delay from November 16 to March 7: the employee's first step grievance presentation was scheduled and held on May 12, 2024, two months after the Union received the requested documents, and neither the Union nor the GC has shown any particular harm that the grievant or the Union suffered. *Id.* at 7. Respondent argues that the cases cited by the GC regarding delays in furnishing information are distinguishable, as the evidence in those cases demonstrated direct and significant harm to the union or the employees, whereas here the delay did not adversely affect the employee or the union. *Id.* at 6, 8.

Respondent further objects to the relief sought by the GC. If an unfair labor practice is found, Respondent urges that the notice to employees be signed by an official at the North Riverside Field Office, where the actions occurred, or by the District Manager, not by the Regional Commissioner. Other offices in the region have not been adjudicated to have committed similar ULPs, and it would therefore be improper to consider unproven allegations concerning other offices in fashioning a remedy. *Id.* at 9. Respondent further objects to a requirement that its LER staff undergo training on information requests. This is not a traditional

remedy that the Authority normally employs, and it is not necessary here "to effectuate the purposes and policies of the Statute." *Id.* (quoting *Dep't of Veterans Affairs Med. Ctr., Phoenix, Ariz.*, 52 FLRA 182, 186 (1996) (*VA Phoenix*).

ANALYSIS AND CONCLUSIONS

In its Complaint, the General Counsel accuses the Respondent of violating the Statute by "unreasonably delay[ing] furnishing the Union with the information it requested." Complaint at ¶ 16. It does not expressly allege that the Respondent's refusal to furnish the information violated the Statute. Thus, in a strict sense, I do not need to determine (as is normally required in § 7114(b)(4) complaints) whether the Union's information request meets the statutory criteria for information requests; all I need to determine is whether the Agency's production of the documents on March 7 was "timely;" or to put it in the terms of the Complaint, whether the Agency "unreasonably delayed" its response.

Alas, the problem is not so simple. Respondent's defense to the GC's accusation is based on its contention that the Union's November 16 and December 2 requests did not meet the "particularized need" standard; it contends that the Union established particularized need only on or about March 7, with the assistance of the General Counsel, at which time the Agency promptly turned over the requested appraisals. If the Respondent is correct, then it clearly furnished the documents in a timely manner. If the Respondent is incorrect, and the Union's November and December requests demonstrated its need for the information, then I need to evaluate whether a delay from November 16 to March 7 was unreasonable.

My task is simplified somewhat by the Respondent's other admissions in its response to the summary judgment motion. It now admits that the Union's information request met most of the statutory criteria for such requests: the appraisals are normally maintained by the Agency; they are reasonably available; they do not constitute management guidance; and their disclosure is not prohibited by law. Even if the Respondent did not admit these allegations, I still would not consider them, because its failure to assert any of these objections until filing its Answer to the Complaint constituted a waiver. *See, e.g., U.S. Dep't of Justice, INS Western Regional Office, Labor Management Relations, Laguna Niguel, Cal.*, 58 FLRA 652, 659-60 (2003) (*INS Laguna Niguel*). Once these extraneous issues are eliminated, the Respondent's only remaining objection to disclosure is that the Union didn't establish a particularized need for the appraisals until it was "clarified" on or around March 7.

In order for a union to establish its particularized need for information, it must articulate, with specificity, why it needs the information, including how it will use it and how its intended use relates to its representational responsibilities under the Statute. The union's explanation must be more than a conclusory assertion and must permit an agency to make a reasoned judgment as to whether the Statute requires it to furnish the information. *U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst. Ray Brook, Ray Brook, N.Y.*, 68 FLRA 492, 495-96 (2015) (*FCI Ray Brook*). But the union's explanation need not be so specific as to reveal its strategy. *Id.* at 496. A union frequently will not be aware of the contents of a requested document, and the degree of specificity required of the union must take that into account. *Internal Rev. Serv., Wash., D.C.*, 50 FLRA 661, 670 n.13 (1995) (*IRS*). Moreover, whether the requested information would actually accomplish the union's purpose is not determinative of

whether it is necessary under 7114(b)(4). *Soc. Sec. Admin.*, 64 FLRA 293 (2009). After a union has made its request, the burden shifts to the agency to either furnish the information or explain why it is not obligated to do so. Like the union, the agency must explain its reasons with specificity; it cannot satisfy its burden by making conclusory or bare assertions; its burden extends beyond merely saying "no." *IRS* at 670.

Having decided 7114(b)(4) cases for over twenty years, I have seen information requests that span the entire spectrum, from too-short and conclusory to too-verbose and labyrinthine. Quantity does not equal quality, and well-phrased brevity can be the soul of wit. Ms. Hornick's statement of particularized need in this case strikes me as a well-crafted balance, providing the Agency with exactly what Mr. Bias needed to make a reasoned judgment, without putting him to sleep with page after page of legalese copied from dozens of old requests.

First of all, the request was narrowly tailored: it sought only four documents, the appraisals for the most recent year for four other employees; it didn't ask for several years' worth of appraisals for every Claims Representative in North America. It specified that the information was needed for the processing of a grievance that had already been filed; it identified the grievant (not something that is necessary but can be helpful); and it specified the two articles of the CBA that might apply to the grievance. The Authority has repeatedly held that the processing of a grievance is a core representational function of a union which can establish the need for information. *FCI Ray Brook*, 68 FLRA at 496; *Health Care Fin. Admin.*, 56 FLRA 503, 506-07 (2000) (*HCFA*). The request further narrowed the parties' focus to three elements of the employees' position description and explained that the Union wanted to analyze the distinction between a Level 3 and a Level 5 rating in these elements.

And most importantly, in light of Respondent's current objection, the request explained: "The Union will also use the information to compare how the employees were rated and to analyze and compare the reasons given for such ratings to assist it in determining whether [the grievant's] work was comparable to her co-workers who were rated Level 5 in those categories." GC Ex. 2. Notwithstanding this explanation, Respondent contends in its brief that Mr. Bias was unaware, prior to March 7, that the Union was "alleging discriminatory treatment in the appraisal process." Resp. Br. at 5. This contention is disingenuous, at best; Ms. Hornick was very clear in her request that the Union wanted to "compare how the employees were rated" on three specific elements, to "compare the reasons for such ratings," and to determine whether the reasons given to the grievant differed materially from the reasons given to employees rated at Level 5. This is exactly what a union should look at if it is to properly analyze whether a grievant has been unfairly evaluated. It is almost precisely the rationale given by the Authority in its *IRS* decision for finding the union there had a particularized need to obtain the appraisal of the one other employee performing the same work as the grievant. 50 FLRA at 662, 672; *see also HCFA*, 56 FLRA at 506-07. One must ignore the clear text and meaning of the information request here to argue that the Agency needed "clarification" to understand that the Union was trying to evaluate whether the grievant had been rated discriminatorily in comparison to other Claims Representatives.

It appears to me that Mr. Bias did indeed ignore the plain language of the Union's November16 and December 2 information requests, as his characterization of the request as a "general audit" bears no resemblance whatever to the specificity of the request. Labeling an information request as an "audit" does seem to be a common theme of the Agency's responses, regardless of the details of the actual request. See GC Ex. 10, 11. Audits are, by their nature, very broad in scope, whereas the information sought by the Union here was quite narrow and specific, confined to one grievant and four employees performing the same job. The Agency's response was a thoughtless exercise that seems to have involved no effort on Mr. Bias's part beyond cutting and pasting from an old document – spelling and grammar mistakes included.

Accordingly, I cannot accept the Respondent's belated argument that the Union had not articulated its need for the information satisfactorily until a helpful FLRA attorney "clarified" it in March. The request was quite clear and should have prompted the Agency to turn over the four appraisals as quickly as it took Mr. Bias to draft his denial letter.

Similarly, there was no justifiable explanation for taking nearly four months to furnish the information. The Authority has long held that an agency's obligation to furnish necessary information includes the obligation to do so "in a timely manner under the circumstances." *Bureau of Prisons, Lewisburg Penitentiary, Lewisburg, Pa.*, 11 FLRA 639, 641-42 (1983). Compliance with the Union's request here involved producing only four short documents, which were readily available to the Agency, as the employees had only recently received their appraisals and the Agency is required to maintain them.

There really is no need here to engage in a case-by-case comparison of FLRA decisions regarding timely and untimely responses. Although the determination of what constitutes a "timely" response necessarily requires examining the specific facts of each case, the facts here speak for themselves: the Union made a very narrowly tailored request, which required the Agency to perform nearly no effort to satisfy. Exigent circumstances can justify unusual delays in compliance, but there were no exigent circumstances here.

Furthermore, I do not believe it is necessary for the Union or the GC to demonstrate that the Union or the grievant was materially prejudiced by the Agency's delay. In its *FAA* decision, 57 FLRA at 606-07, the Authority found that a five-day delay was unreasonable because the information was furnished only after the grievant's arbitration hearing had begun; under most circumstances, such a short delay would be perfectly acceptable. But while such circumstances can convert a reasonable time period into an unreasonable one, the converse is not necessarily true. The Agency's sixteen-week delay in furnishing the Union with these four appraisals was unreasonable, even in the absence of special prejudice. However, the record shows that the grievance in this case was filed on November 16. Article 24, Section 9 of the CBA requires that a first step grievance meeting be held within ten days of receipt of the grievance. GC Ex. 3 at 149. Thus under normal circumstances, this grievance meeting should have been held before the end of November; it was not held until May 12. Employees are appraised on a yearly basis, so the grievant was not able to present her case until halfway through the next year's appraisal period, and was therefore unable to hear her supervisor's explanation for her Level 3 ratings until the year was halfway over. The fact that she was able to review the four other employees' appraisals two months before her May 12 meeting does not rectify the four months she had to wait for the information.

For all of these reasons, I conclude that the Union demonstrated in its November 16, 2022 information request that it had a particularized need for the information it requested, and that the Respondent should have furnished the information within a reasonable time thereafter. I further conclude that it was unreasonable for the Agency to take until March 7, 2023 to do so. Thus the Respondent violated §§ 7114(b)(4) and 7116(a)(1), (5), and (8) of the Statute.

In order to remedy the Respondent's unfair labor practice, I agree with the General Counsel that a notice to employees should be signed by the Regional Commissioner and distributed to bargaining unit employees regionwide. As noted by the GC, "[t]he Authority typically directs the posting of a notice signed by the highest official of the activity responsible for the violation." *U.S. Dep't of HUD, Ky. State Office, Louisville, Ky.*, 58 FLRA 73, 73 (2002). The ULP in this case was committed by Mr. Bias, a labor relations official in the Respondent's Chicago regional office. *See* Affidavit at ¶ 8. Mr. Bias has responded to other information requests filed by the Union on behalf of employees in other Agency offices besides the North Riverside office. GC Ex. 10, 11. It is appropriate, therefore, that the Regional Commissioner take responsibility for remedying this conduct.

However, I do not believe that requiring a one-time training session for Agency officials engaged in responding to Union information requests will "effectuate the policies of the Statute, including the deterrence of future violative conduct." *VA Phoenix*, 52 FLRA at 185-86; *see also INS Laguna Niguel*, 58 FLRA at 661. This is a nontraditional remedy, which the Authority does not routinely impose for ULPs of this sort, and I don't believe the GC has met its burden of demonstrating the need for such specialized training. Mr. Bias is responsible for responding to information requests, and the Respondent asserts that it already provides training to its labor relations officials. Resp. Br. at 9. I have no reason to believe that providing additional training to Mr. Bias and his colleagues will succeed where prior training has failed. Moreover, I do not believe the evidence demonstrates that the Agency has engaged in a pattern or history of similar ULPs. While the record shows that the Agency has used similar language to deny multiple information requests, I cannot assume that those other denials were improper.

Rather, I believe that Mr. Bias simply needs to read this decision and the comments I have made regarding the mutual obligations of unions and agencies regarding requests for information, and that he re-read the *IRS* opinion that he frequently cites. He needs to review union information requests, and to draft his responses, with individualized attention to the facts of each case – just as the Union is required to do. As noted by the Authority in its *IRS* decision, 50 FLRA at 670-71, Agency officials should seek to accommodate the Union's interests in obtaining information with their own interests, and "attempt to reach agreement on the extent to which requested information is disclosed." It is not within my authority to assign work to Agency officials, but I would respectfully suggest that when the Regional Commissioner signs the notice to employees in this case, he or she should give a copy of this decision to Mr. Bias and his colleagues in the LERS office. If similar unfair labor practices persist in that office, specialized training might indeed be necessary, as the GC recommends.

Therefore, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and issue the following Order:

ORDER

Pursuant to § 2423.41(c)of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the Social Security Administration, Chicago, Illinois, shall:

1. Cease and desist from:

   (a) Failing or refusing to respond in a timely manner to requests for information filed by the American Federation of Government Employees, Local 1395, AFL-CIO (the Union).

   (b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured under the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

   (a) Post the attached Notice on forms to be provided by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Regional Commissioner and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all bulletin boards and other places in the Chicago region where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

   (b) In addition to the physical posting of paper notices, disseminate a copy of the Notice electronically to bargaining unit employees in the Chicago region, on the same day as the physical posting, through the Respondent's email, intranet, or other electronic media customarily used to communicate with bargaining unit employees. The message of the email transmitted with the Notice shall state, "We are distributing the attached Notice to you pursuant to an order of an Administrative Law Judge of the Federal Labor Relations Authority in Case Number CH-CA-23-0223."

(c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Chicago Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., February 13, 2025

RICHARD A. PEARSON
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Social Security Administration Chicago, Illinois, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT unreasonably delay in responding to requests for information from the American Federation of Government Employees, Local 1395, AFL-CIO (the Union).

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured under the Statute.

WE WILL respond in a timely manner to requests for information filed by the Union.

_____

(Agency/Activity)

Date: _____ By: _____

(Signature) (Regional Commissioner)

This Notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Chicago Region, Federal Labor Relations Authority, whose address is: 224 S. Michigan Ave., Suite 445, Chicago, IL 60604, and whose telephone number is: (872) 627-0020.