FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

OALJ 15-45

PENSION BENEFIT GUARANTY CORPORATION
WASHINGTON, D.C.

RESPONDENT

AND

INDEPENDENT UNION OF PENSION EMPLOYEES FOR DEMOCRACY AND JUSTICE

CHARGING PARTY

Case No. WA-CA-13-0719

Brent S. Hudspeth
For the General Counsel

Paul Chalmers
Kimberlee Gee
Adrienne Boone
Raymond Forster
For the Respondent

Stuart Bernsen
For the Union

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), Part 2423.

On September 6, 2013, the Independent Union of Pension Employees for Democracy and Justice (Union) filed an unfair labor practice (ULP) charge against the Pension Benefit Guaranty Corporation, Washington, D.C. (Respondent) with the Regional Director of the Washington Region of the FLRA. Shortly thereafter, on September 12, 2013, the Washington Regional Director transferred the charge to the Atlanta Region. After investigating the ULP charge, the Atlanta Regional Director issued a Complaint and Notice of Hearing on June 4, 2014, alleging that the Respondent failed to meet with the Union's

representative concerning information requested under § 7114(b)(4) of the Federal Service Labor-Management Relations Statute (Statute) and thereby violated § 7116(a)(1), (5) and (8) of the Statute. Subsequently, on June 20, 2014, the Atlanta Regional Director amended the Complaint to add a charge that the Respondent failed to furnish information requested pursuant to § 7114(b)(4) of the Statute and thereby violated § 7116(a)(1), (5) and (8) of the Statute. The Respondent timely filed an Answer denying the allegations of the amended Complaint.

On September 5, 2014, the Respondent filed a Motion for Summary Judgment (MSJ) and included Exhibits A-F. (R. Exs. A-F). The General Counsel filed an Opposition to Respondent's Motion for Summary Judgment and Cross-Motion for Summary Judgment with three exhibits. (G.C. Exs. 1-3). The General Counsel agreed that Respondent's Exhibits B, C, and D were sufficient to establish the entire record and did not dispute the validity of Respondent's Exhibits A and E. The Union filed an Opposition to Respondent's Motion for Summary Judgment. The Respondent subsequently filed an Opposition to the General Counsel's Motion for Summary Judgment. On September 12, 2014, the scheduled hearing in this matter was indefinitely postponed.

Having carefully reviewed the pleadings, exhibits, and briefs submitted by the parties, I have determined that this decision is issued without a hearing, pursuant to 5 C.F.R. § 2423.27. The Authority has held that motions for summary judgment filed under that section serve the same purpose and are governed by the same principles as motions filed in the United States District Courts under Rule 56 of the Federal Rules of Civil Procedures. *Dep't of VA, VA Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Summary judgment is appropriate when there is no "genuine dispute as to any material fact" and the moving party is entitled to judgment as a matter of law. (*Id.*). Based upon the stipulated record and attached exhibits, I find that the Respondent violated § 7116(a)(1), (5) and (8) of the Statute when it failed to furnish certain information requested and respond to the Union's request for a meeting pursuant to § 7114(b)(4) of the Statute, and make the following findings of fact, conclusions and recommendations in support of that determination.

FINDINGS OF FACT

On or about September 6, 2013, the Union filed an unfair labor practice charge in Case No. WA-CA-13-0719. (G.C. Ex. 1).

The Pension Benefit Guaranty Corporation, Washington, D.C., is an agency within the meaning of 5 U.S.C. § 7103(a)(3). (G.C. Ex. 2).

The Independent Union of Pension Employees for Democracy and Justice (Union) is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent. (*Id.*).

On June 11, 2013, Union president Stuart Bernsen submitted an information request to the Respondent seeking data that the Union asserted was necessary for pending grievances and arbitrations involving Teresa Torres, a bargaining unit employee represented by the

Union. (R. Ex. B). The Union requested over twenty items of data, however only two groups of information are at issue in this case. The first group of information concerned another employee whom the Union contended was similarly situated to Torres, and thus a candidate for comparison. (*Id.*). Eleven of the items of data sought by the Union referred to this other employee.

The Union requested the following information:

1. All data that refer or relate to any career ladder promotion or potential career ladder promotion for Teresa Torres and Jeremy Royal to the GS-11 level.
2. All data that refer, relate to, concern or address Teresa Torres' and Jeremy Royal's readiness or lack of readiness for a GS-11 promotion.
3. All data that refer, relate to or concern Teresa Torres' and Jeremy Royal's work assignments, work accomplished, performance and work activities.
4. All data that refer, relate to, concern, mention or indicate in any way Ms. Torres' and Mr. Royal's ability or lack of ability to perform GS-11 duties or at the GS-11 level.
5. All data that refer, relate to, concern, mention or indicate in any way whether Ms. Torres' and Mr. Royal demonstrated the ability to perform GS-11 duties or at the GS-11 level.
6. All data, including, for example, emails and written communications, between Cheryl Ringel* and Jeremy Royal, concerning Mr. Royal's work assignments, work product, tasks, projects, deadlines and accomplishments.
7. All data, including, for example, emails and written communications, between Nicole Queen and Jeremy Royal, concerning Mr. Royal's work assignments, work product, tasks, projects, deadlines and accomplishments.
8. All data, including, for example, emails and written communications, by any OIT employee(s) concerning Jeremy Royal's work assignments, work product, tasks, projects, deadlines and accomplishments.
9. All data, including emails and written communications, concerning 120 day performance reviews for Ms. Torres and Jeremy Royal.
10. All data, including emails and written communications, concerning the FY 2011 and 2012 performance evaluations and performance appraisals for Ms. Torres and Mr. Royal.

(*Id.* at 3-5).

The Union stated that it needed the above-mentioned data concerning Royal because he was a "comparator" and was "similarly situated" to Torres. (*Id.*). The Union explained that Royal was a GS-9 at the same time as Torres and had the same supervisor (Cheryl Ringel), position description and performance plan. (*Id.*). The Union stated it also needed the data to "show how terms and conditions of employment relevant to career ladder promotions and evaluation of performance in the group under Ms. Ringel were interpreted

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* In both the Complaint and Amended Complaint, the General Counsel misspelled Cheryl Ringel's last name as "Ringer". Therefore I am correcting the record to reflect the correct spelling of "Ringel".

and applied to GS-9 and GS-11 employees." (*Id.*). Lastly, the Union contended it needed the data concerning Royal for purposes of showing that there was disparate treatment based upon race, color, sex, age and protected EEO activity. (*Id.*).

The second group of information sought by the Union included:

> All data, including emails, complaints, and telephone call logs, that indicate calls by Cheryl Ringel to Teresa Torres, Jeremy Royal, Nicholas Hampton and other OIT employees outside normal business hours. Include calls from Ms. Ringel's office phone, home phone and Blackberry to Ms. Torres, Mr. Royal and Mr. Hampton to their home telephone numbers or to their PBGC Blackberry's. Include calls made to Ms. Torres PBGC Blackberry: (240) 533-7960.

(*Id.* at 7).

The Union asserted it needed this information to "compare how Ms. Ringel behaved and conducted herself with respect to other OIT bargaining unit employees and how she treated other bargaining unit employees in comparison to Ms. Torres." (*Id.*). The Union also stated it needed the data to show that Ringel "lacks credibility." (*Id.*).

In a section titled, "Particularized Needs, Uses and, Connections Between Needs and Representational Responsibilities," the Union stated that it needed the data for the prosecution and advancement of grievances and arbitrations involving Torres. (*Id.* at 1). The Union stated that the issues in the grievances and arbitrations included the Respondent's failure to promote Torres in March 2012 and thereafter to the GS-11 level career ladder position, Torres' performance evaluation for FY 2012 and ongoing denial of telework, violations of civil rights laws, and hostile and retaliatory work environment. The Union stated it needed the information requested so it could: evaluate and assess the merits of the grievances and arbitrations, proceed with the arbitrations, present its case and prevail, and respond to and defend against the employer's assertions and arguments. The Union asserted that it required the data concerning Jeremy Royal because he was a "comparator and a similarly situated employee for purposes of showing the terms and conditions that applied and for showing disparate treatment." (*Id.*).

The Union requested data from March 27, 2011, to the present. (*Id.*). It stated Torres started at the GS-9 position on that date and therefore "facts and data about her performance and demonstrated abilities since that date are necessary to address the issue of her career ladder promotion, including her performance and ability to perform." (*Id.*). The Union indicated that information from that date was necessary "for issues involving Ms. Torres' performance evaluation since she received Level 4 (Exceeds) ratings for March 27, 2011, to March 27, 2012, but her supervisor changed her assessment of Ms. Torres' performance after March 27, 2012." (*Id.*). The Union stated it needed data from October 1, 2012, because "the denial of the career ladder promotion and denial of telework are ongoing." (*Id.*). Finally, the Union maintained it needed information relating to hostile and retaliatory work environment from March 27, 2011 to present because the hostility and retaliation were ongoing and continual. (*Id.*).

The Union stated in its letter that it was "willing to meet to discuss this data request, and to clarify requests, to simplify them if appropriate, and to resolve any issues." (*Id.*).

The Respondent replied to the Union's letter on July 16, 2013. (R. Ex. C). It first summarized the Union's asserted reasons for requesting the information. (*Id.*). It then set out a series of general objections to the Union's requests, indicating that many of the individual requests "are so vague and general that the Agency cannot determine what specific data is requested, what search is required, and whether final, responsive, non-privileged data exist." (*Id.*).

The Respondent objected to the Union's "generalized assertions of need and insufficient statements of intended use." (*Id.*). According to the Respondent, "the lack of specificity in the [r]equest does not permit the Agency to make a reasoned judgment as to whether the data must be disclosed under the Statute," and cited *IRS, Wash., D.C. & IRS, Kan. City Serv. Ctr., Kan. City, Mo.*, 50 FLRA 661 (1995) (*IRS Kan. City*). The Respondent stated that the "Union's failure to articulate a specific statement of need and intended use for much of the data requested, and its reliance on the same list of boilerplate bases for each of the 26 individual requests does not satisfy the particularity requirements of § 7114(b)(4) and CBA Article 8, Section 2." (*Id.*). The Respondent also stated the Union's request did not support the contention that Royal was an appropriate comparator or satisfied the particularized need standard with regard to Royal. (*Id.*). The Respondent stated it was not providing the data concerning Royal but invited the Union to submit clarification regarding its requests and particularized need. (*Id.*).

The Respondent then replied to the individual requests by the Union. The Respondent provided documents or replied that documents did not exist in response to each of the Union's requests except for those concerning Royal and the request regarding phone calls by Ringel. (*Id.*). With respect to the items of information regarding Royal, the Respondent replied to all eleven requests that the Union did not meet its particularized need, and denied these requests. (*Id.*). The Respondent replied to the Union's request for data showing calls by Ringel to Torres and other employees by stating that the "Union has not demonstrated a particularized need sufficient to overcome the employees' legitimate privacy interests," and denied the request. (*Id.*).

The Respondent ended its letter by stating it was a "partial response" and invited the Union to "submit a more precise description of data sought or explain in greater detail the Union's particularized need regarding this response." (*Id.*).

On July 19, 2013, Bernsen emailed the Respondent in response to the letter. (R. Ex. D). Bernsen wrote that the "Union would like to meet with the Employer to go over defects and deficiencies in the response and to clarify any questions the Employer has," and asked the Respondent when it would be available to meet. (*Id.*). Bernsen then addressed two of the Respondent's objections to the Union's requests. Regarding the information concerning Royal, Bernsen wrote that the Respondent incorrectly contended that Royal was not a comparator to Torres. (*Id.*). Bernsen stated "the Employer acknowledges that the Union explained that Mr. Royal had the same grade, same position, same supervisor, same

performance standards, same career ladder, same time frame." (*Id.*). Bernsen explained that "the Union needs the information because there are claims of discrimination and disparate treatment." (*Id.*). He added that "there are claims concerning how the factors pertaining to career ladder promotions were being interpreted and applied by the supervisor, by OIT and by HRD." (*Id.*).

Regarding the records of telephone calls by Ringel to Torres and others, Bernsen stated the Union supplemented and modified its request include: "[a]ll data, including emails, complaints, and telephone call logs, that indicate calls by Cheryl Ringel to any of the following outside normal business hours:

> Nicole Queen 202.292.9007 (c) & 301.868.0089 (h)
> Nick Hampton 202-292-0991 (c)
> Jeremy Royal 732 428-7706 (c) & 703 635 7978 (h)
> Elizabeth Magargel 202-299-8511 (c) & 571-216-8387 (h)
> Teresa Torres 240-533-7960 (c)

Bernsen wrote that there was no privacy issue because: "(1) the telephone numbers are listed and known, (2) the Union is only seeking 'metadata,' and (3) the Union needs the information because there are issues concerning comparing how Ms. Ringel behaved and conducted herself with respect to other OIT bargaining unit employees and how she treated other bargaining unit employees in comparison to Ms. Torres." (*Id.*). Bernsen stated the Union also needed the information "for purposes of showing that Ms. Ringel lacks credibility – *especially since Ms. Ringel has responded to grievances by denying that she called Ms. Torres or others.*" (*Id.*).

The Union received no reply to this email from the Respondent.

POSITIONS OF THE PARTIES

General Counsel

The General Counsel (GC) asserts that the information concerning Royal and telephone calls by Ringel requested by the Union on June 11, 2013, met the statutory requirements of § 7114(b)(4) and that the Respondent's failure to furnish this information violated § 7116(a)(1), (5) and (8) of the Statute.

The GC contends that the information requested by the Union was normally maintained by the Respondent in the regular course of business, reasonably available, and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. The GC asserts that *IRS Kan. City*, is applicable to the instant case. In *IRS Kan. City*, the authority held that the union established a particularized need for performance appraisal documents of a non-bargaining unit employee who had the same position description, performed the same work, was subject to the same job elements and performance standards and reported to the same supervisor as the grievant who alleged disparate treatment on the basis of his union activity. 50 FLRA at 662. The Authority reasoned in *IRS Kan. City* that the union needed the non-unit employee's performance

appraisal so that it could effectively evaluate whether the agency applied "performance standards and elements without regard to unit status." (*Id.* at 672). The GC asserts that the Union in the present case needs Royal's performance appraisal documents to show disparate treatment because he was a similarly situated employee to Torres with the same grade, position, supervisor, performance standards, career ladder and timeframe. Thus the Union here has given the same reasons provided by the union in *IRS Kan. City* where the Authority found a particularized need.

The GC asserts that the performance appraisal data concerning Royal is disclosable under the Privacy Act. The GC argues that the public interest in disclosing Royal's performance appraisal data outweighs his privacy interest in the information. The GC cites *EEOC, Phx. Dist., Phx., Ariz.*, 51 FLRA 75 (1995) (*EEOC Phoenix*), to argue that the Authority has found a strong public interest in disclosure of unsanitized performance reviews to show how the agency administers its performance appraisal system. According to the GC, the fact that the Union requested the data for use in a grievance concerning an employee's claims of disparate treatment, violations of civil rights laws, and retaliatory work environment, demonstrates a strong public interest in disclosing the information. The GC argues that not allowing disclosure would hamper the Union's ability to represent a bargaining unit employee and ignore the strong public interest at issue, thus the public interest in disclosure outweighs the employee's privacy interest in the performance appraisal data.

The GC contends the Union established a particularized need for the information regarding telephone calls by Ringel to bargaining unit employees. Like the performance appraisal data, the GC asserts the Union needs the telephone information in connection with Torres' grievance involving claims of disparate treatment. The GC contends the telephone data may show that Ringel contacted Torres a disproportionate number of times, thus showing that the Respondent treated Torres differently from other employees.

The GC maintains the telephone records are reasonably available, normally maintained and can be disclosed under the Privacy Act. The GC points out that the Respondent only made general objections that information was not reasonably available or not normally maintained in its response to the Union, but did not make these objections specifically regarding the telephone data. In addition, the Respondent stated that "some" of the data was not normally maintained, which implies the rest of the data was normally maintained by the Respondent but was not provided to the Union. The GC argues that the Respondent did not raise the issue of having to manually correlate the telephone logs with employees' timesheets in order to figure out whether calls were made outside normal business hours until its MSJ was filed. The Respondent also did not object to the period of time covered by the Union's request at or near the time the request was made.

The GC rejects the Respondent's claim that its telephone logs are covered by a System of Records Notice, PBGC-11 (G.C. Ex. 3) and is thus protected under the Privacy Act. The GC observes that the purpose of this document includes, "monitoring telephone usage by PBGC employees and other covered individuals . . . ." (*Id.*). The GC also points out the document specifies that records from PBGC-11 may be disclosed to "officials of a

labor organization representing PBGC employees to determine individual responsibility for telephone calls." (*Id.*). The GC argues that the terms of PBGC-11 itself allow disclosure of the telephone records to the Union in this case.

The GC argues the Respondent committed a separate violation of the Statute by failing to respond to the Union's July 19, 2013, email, which provided clarification of its requests and asked to meet with the Respondent regarding the requests. The GC points out the Respondent replied to the Union's original information request by stating that its letter was a "partial response and invited the Union to submit a more precise description of data sought or explain in greater detail the Union's particularized need." (R. Ex. C). The GC argues the Union did just that in its July 19, 2013, email. The GC asserts the Respondent's failure to reply to this request violated the Statute.

The GC rejects the Respondent's defense that the complaint did not adequately identify the data the Respondent allegedly failed to provide. The GC argues the amended Complaint refers to the date of the communication from the Union and requested information concerning Jeremy Royal. The GC contends the Respondent could easily figure out what information was at issue by reading the correspondence identified in the amended Complaint. The GC also rejects the Respondent's contention that the allegation of the Respondent's failure to reply to the Union is moot. The GC argues the Respondent did not establish the existence of its mootness claim.

The GC requests that an order be issued requiring the Respondent to provide the requested information or meet with the Union about the data request if some of the information does not have to be disclosed, issue a cease and desist order and to post a notice to all employees informing them that it violated § 7116(a)(1), (5) and (8) of the Statute.

Respondent

The Respondent contends that the data requested by the Union regarding Royal's performance ratings and other performance appraisals are protected from disclosure by the Privacy Act. The Respondent argues the data concerning Royal is contained in a system of records and that Royal has a strong privacy interest in the data, which is not outweighed by the public interest in disclosure. The Respondent cites the Authority's holding in *TRACON,* where the Authority found that performance appraisals of Federal employees are contained in a system of records. *U.S. Dep't of Transp., FAA, N.Y. TRACON, Westbury, N.Y.*, 50 FLRA 338 (1995) (*TRACON*). The Respondent maintains the information concerning Royal is clearly part of a system of records under the Privacy Act. The Respondent points to System of Record Notices (SORNS) issued by OPM, which specifically state that employee appraisal documents and career ladder recommendations are considered part of government wide systems of records and therefore protected from disclosure by the Privacy Act.

The Respondent argues that Royal has strong privacy interests in his performance appraisal data. The Respondent asserts the Authority held in *TRACON* that employees have significant privacy interests in performance appraisal data because they are likely to contain information that is highly sensitive to employees. 50 FLRA at 346.

The Respondent contends there is no public interest supporting disclosure of Royal's performance appraisal data. The Respondent argues the only relevant public interest to be considered by the Authority under FOIA Exemption 6 is the extent to which disclosure would shed light on the agency's performance of its statutory duties. 50 FLRA at 343 (citing *U.S. DOD v. FLRA*, 114 U.S. 1006, 1013-14 (1994)). The Respondent contends the use of Royal's performance data as evidence in a grievance is relevant only to the Union's interest in representing a bargaining unit employee and is not a pertinent public interest.

The Respondent submits that Royal's performance appraisal documents may not be disclosed under OPM's routine use exception (e). OPM Privacy Act of 1974; Pub. of Notices of Sys. of Records and Proposed New Routine Uses, 57 Fed. Reg. 35710 (Aug. 10, 1992). The Respondent contends that the GC has not shown that the documents are "relevant" or "necessary" as required under OPM/GOVT-1 and OPM/GOVT-2 routine use statements.

With respect to the telephone records requested by the Union, the Respondent contends that information is neither reasonably available nor normally maintained in the regular course of business. The Respondent maintains that it does not keep records of Ringel's or any other employee's home phone calls and thus those are not reasonably available. With respect to the agency's telephone records, the Respondent contends it employs a gliding schedule which means employees work different hours. The Respondent would have to manually correlate employees' timesheets with the telephone logs to determine whether calls were made outside normal business hours. The Respondent also points out that the Union requested telephone data covering more than a two year period. The Respondent contends that it would have to expend an excessive amount of effort to compile the information and thus the information is not reasonably available. The Respondent also argues that as to a portion of the telephone data requested by the Union, the Respondent does not keep a log of calls made from any employee's personal phone number to someone else's personal phone, thus that information is not normally maintained by the Respondent.

The Respondent contends that it sufficiently alerted the Union and GC to these objections regarding the data requests. The Respondent asserts that it made general objections in its reply that the data requested was overly general and vague such that it could not assess what it would need to do to determine if responsive data existed. The Respondent asserts this reply captured that the requested data was not reasonably available and not kept in the regular course of business. The Respondent also argues that it reserved the right in its reply to raise additional objections and that it raised the objections before a hearing took place.

The Respondent asserts the Union did not identify a particularized need for the telephone data. The Respondent contends the Union's stated reason for needing the data, to assess a manager's credibility, is not sufficient to justify the data requests.

The Respondent argues the telephone call data is also protected from disclosure by the Privacy Act. The Respondent contends that the System of Records Notice issued by PBGC (PBGC-11) covers records showing calls placed to or from PBGC telephones or mobile devices. PBGC, Privacy Act of 1974, Sys. of Records, 77 Fed. Reg. 59263 (Sept. 26, 2012). The Respondent asserts the purpose of PBGC-11 is to protect the privacy interest of the person being called and thus these records are covered by the Privacy Act. The Respondent argues the Union could use less obtrusive means of obtaining the data by asking the bargaining unit employees at issue to search their home phone records for calls from the Agency made after hours.

The Respondent submits that the complaint did not adequately identify the data the Respondent allegedly failed to disclose. The Respondent asserts the requests at issue were overly broad and vague and therefore it was not able to determine what data was sought in the first place.

Lastly, the Respondent argues that any claim regarding its alleged failure to meet with the Union is moot because the Respondent offered to meet several times and the Union allegedly refused.

Charging Party

The Union agrees with and adopts the GC's Opposition and MSJ. The Union adds that it did not request data concerning Royal's performance rating, just data concerning his "performance activities." The Union also asserts that the documents concerning Royal can be disclosed because the Union was representing him at the time. The Union objects to the Respondent's use of Vincent Carter's affidavit because Carter is a bargaining unit employee and the Respondent conducted a formal meeting with him, but never notified the Union or gave it an opportunity to be present. The Union contends that it did not waive its interest in meeting the Respondent over its request and that such statements made during settlement discussions are privileged and confidential.

ANALYSIS AND CONCLUSIONS

As a preliminary matter, the Respondent contends that the Complaint fails to state a claim upon which relief can be granted because it allegedly did not specify what data the Respondent failed to furnish. The purpose of a complaint is to put a respondent on notice of the basis of the charges against it, though the Authority does not judge the sufficiency of that notice by rigid pleading requirements. *AFGE, Local 2501, Memphis, Tenn.*, 51 FLRA 1657, 1660 (1996). The Authority has noted that "[w]hat constitutes adequate notice will depend on the circumstances of each case." (*Id.*).

The Respondent clearly had adequate notice of the charges against it. The Amended Complaint specifically referenced the items of information in the June 11, 2013, communication that the Respondent allegedly failed to furnish. The Amended Complaint referred to "data concerning Jeremy Royal" and "data . . . that indicate calls by [supervisor] Cheryl Ringe[l] to Teresa Torres." The Respondent only had to refer to that communication to figure out which items of data were at issue in the Complaint. The Respondent obviously had the correspondence referred to in the Complaint since the Respondent produced it as an exhibit attached to its MSJ. (R. Ex. B). The Respondent also produced and referred to the Union's email of July 19, 2013, which provided clarification of the Union's information request. (R. Ex. D). Furthermore, the Respondent's actions show that it understood what data was being requested. The Respondent assembled an index of documents it asserted were responsive to the information requests concerning Royal but that were protected from disclosure by the Privacy Act. (R. Ex. A). With respect to the telephone call data, the Respondent produced an affidavit from one of its IT specialists detailing how that information would have to be collected. (R. Ex. E). Thus it is clear that the Respondent knew what information was requested and therefore what conduct was at issue. The Respondent was also able to present defenses to the charges. The Respondent's defense that the Complaint failed to state a claim is thus rejected.

FAILURE TO FURNISH INFORMATION

Jeremy Royal's Performance Evaluation Data

Section 7114(b)(4) of the Statute provides that an agency has the duty to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data: (1) which is normally maintained by the agency in the regular course of business; (2) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (3) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. 5 U.S.C. § 7114(b)(4).

The GC contends that the requests for information concerning Royal meet the requirements of § 7114(b)(4) and Respondent's refusal to furnish the information to the Union violated § 7116(a)(1), (5) and (8) of the Statute. The Respondent maintains, and the General Counsel does not dispute, that the data requested concerning Royal included his performance evaluations, supporting documentation for those evaluations, and career ladder promotion potential. (R. Ex. A). The Respondent argues that this information is protected from disclosure by the Privacy Act. Neither the GC nor the Union sought or produced a release from Royal consenting to the release of this material, even though it would have negated any Privacy Act limitations.

In *TRACON*, the Authority set forth an analytical framework for balancing an agency's Privacy Act defense against the right of a union to obtain information necessary to the performance of its representational duties. 50 FLRA at 345. According to that framework, an agency seeking to withhold records must meet the same requirements as applied to requests under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA).

Specifically, when an agency contends that the requested information falls under FOIA Exemption 6 as set forth in 5 U.S.C. § 552(b)(6), it has the burden of demonstrating: (1) that the information requested is contained in a "system of records" under the Privacy Act; (2) that disclosure of the information would implicate employee privacy interests; and (3) the nature and significance of those privacy interests. If the agency meets its burden, the General Counsel must then: (1) identify a public interest that is cognizable under FOIA; and (2) demonstrate how disclosure of the requested information will serve that public interest.

The General Counsel does not dispute the Respondent's contention that Royal's performance evaluation and supporting materials fall under either: OPM System of Records Notices OPM/GOVT-1, General Personnel Records, 71 Fed. Reg. 35342 (June 19, 2006); or OPM/GOVT-2, Employee Performance File System of Records, 71 Fed. Reg. 35347 (June 19, 2006), and thus are part of a system of records under the Privacy Act. Therefore, I find that the data concerning Royal's performance evaluations and supporting documentation requested by the Union applies to information that is maintained in a system of records subject to the Privacy Act.

As to Royal's privacy interest in the information, the Authority held in *TRACON* and other cases that employees have significant privacy interests in information, including performance appraisals and supporting documentation, that reveal supervisory assessments of their work performance. 50 FLRA at 346-37; *see also U.S. EEOC*, 51 FLRA 248, 255 (1995) (*EEOC*); *U.S. Dep't of VA Med. Ctr., Veterans Canteen Serv., Newington, Conn.*, 51 FLRA 147 (1995) (*Veterans Canteen*); *EEOC Phoenix*, 51 FLRA at 75. The Authority has recognized in these, and other cases, that employee privacy interests extend to favorable, as well as unfavorable performance appraisals and ratings. *EEOC*, 51 FLRA at 255. In this case there is no dispute that the information requested concerning Royal includes his performance appraisals along with supporting documentation. (R. Ex. A). Therefore, I find that Royal has substantial privacy interests in this information.

The Authority examines the public interest in disclosure of the information in terms of the extent to which disclosure of the information would shed light on the agency's performance of its statutory duties or otherwise inform citizens as to what their Government "is up to." *TRACON,* 50 FLRA at 344 (quoting *U.S. DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989). I agree with the General Counsel that there is a public interest in disclosure of Royal's performance evaluation information. The Authority has held there is a public interest in disclosure of performance evaluation data because it would permit review of the manner in which the agency administers it performance appraisal system and shed light on the ability of employees to perform their duties, which furthers the public interest in knowing how "public servants" are carrying out their Government functions. *EEOC Phoenix*, 51 FLRA at 75; *U.S. Dep't of the Air Force, 56th Support Grp., MacDill AFB, Fla.*, 51 FLRA 1144, 1153 (1996) (*MacDill*); *EEOC*, 51 FLRA at 254-55. However, in this case, the public interest in Royal's performance evaluation data is less significant than in the cases cited by the GC. In those cases, information was requested regarding groups of employees assigned to particular units or sections of the agency. Here,

performance data concerning just a single employee would be disclosed and such a small sample size would not provide the public with a meaningful view of how the Respondent administers its performance appraisal system or of its employees' abilities to perform their duties. Thus, the public interest in disclosure of the information is diminished.

The Authority has found in numerous cases that employees' privacy interests in performance evaluation information outweigh the public interest in such data with employees' names included. *EEOC Phoenix*, 51 FLRA at 75; *MacDill*, 51 FLRA at 1153; *EEOC*, 51 FLRA at 255; *U.S. DOJ, Office of Justice Programs*, 50 FLRA 472 (1995). In this case it is not possible to effectively redact the employee's name to protect his privacy since the information requested concerns a single employee identified by name in the request. *TRACON*, 51 FLRA at 122 (because information was requested for only one name-identified employee, it is not possible to protect the identity of the individual whose privacy is at stake); *see also U.S. Dep't of VA, Reg'l Office, St. Petersburg, Fla.*, 51 FLRA 530, 537 (1995); *U.S. DOJ, Fed. Corr. Facility, El Reno, Okla.*, 51 FLRA 584, 590 (1995).

Even if disclosure of Royal's performance appraisal data would enhance the Union's ability to represent Torres in a grievance, this interest is specific to the Union, not the general public. *MacDill*, 51 FLRA at 1153 ("[F]or purposes of information requests involving the FOIA, the Statute gives unions no special status vis-a-vis other requesters."). The General Counsel and Union have not demonstrated how the release of a single employee's performance appraisal data would provide the public with a meaningful understanding of how the Respondent administers its performance appraisal system or carries out its statutory duties. Therefore, I conclude that the public interest in disclosure of Royal's performance evaluation data is outweighed by Royal's legitimate privacy interest in the information, which cannot be adequately protected with redaction. Accordingly, I find the disclosure of that information would result in a clearly unwarranted invasion of personal privacy, within the meaning of FOIA Exemption 6, and, thus, is prohibited by the Privacy Act. Therefore, the Respondent was not required to provide the Union with the information requested concerning Royal pursuant to § 7114(b)(4) of the Statute and its failure to do so did not violate the Statute.

Telephone Call Data

The second group of information requested by the Union included data reflecting calls by Ringel to Torres and other OIT employees. As stated above, under § 7114(b)(4) of the Statute, an agency has a duty to furnish, upon the request of the exclusive representative, information that is normally maintained by the agency in the regular course of business, reasonably available, and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.

In order for a union to invoke its right to information under § 7114(b)(4) of the Statute, it must establish a particularized need by articulating, with specificity, why it needs the information as well as a statement of the uses to which it will put the information and the connection between those uses and its representational responsibilities under the Statute, *IRS Kan. City*, 50 FLRA at 669. A union's responsibility for articulating its interests requires more than a conclusory or bare assertion. (*Id.* at 670). The request must be sufficient to

permit an agency to make a reasoned judgment as to whether information must be disclosed under the Statute. (*Id.*). Once the union adequately states its particularized need, it falls to the agency either to provide the information or to tell the union why it will not do so.

In this case, the Union provided clarification to its original request for information and asked for the Respondent to provide it with information showing phone calls made by Ringel to Torres and four other OIT employees identified in the Union's email on July 19, 2013. (R. Ex. D). I find that the Union established a particularized need for this information. The Union stated why it needed the information: to use as evidence in a grievance and arbitration on behalf of Torres. The Union went so far as to tell the Respondent exactly how it would use the information: (1) to show how Ringel treated Torres compared to other OIT employees; and (2) to use as evidence in the grievance proceedings to show that Ringel lacked credibility, since Ringel claimed in response to Torres' grievance that she did not call Torres or others after normal business hours. (R. Ex. C, D). The Union's need for the telephone data should have been readily apparent to the Respondent. The Respondent has acknowledged it maintains telephone call data that logs when an employee places an outgoing call on a PBGC telephone or mobile device. (R. Ex. E). The Respondent tracks employees' incoming and outgoing calls by his or her office phone number extension and number of his or her PBGC issued Blackberry. (*Id.*). The Union could use this data to show whether Ringel placed calls to Torres and other OIT employees outside of their normal work schedules, which could be used as evidence in Torres' grievance that she was subject to disparate treatment and a hostile work environment. The Union established a connection between its use of the information (to use as evidence in a grievance) and its representational responsibility (to represent a bargaining unit employee in a grievance) under the Statute. The Authority has held that a union established a particularized need for requested information when the union needed the information in connection with a pending grievance. *U.S. Dep't of the Army, Army Corps of Eng'rs, Portland Dist., Portland, Or.*, 60 FLRA 413, 415 (2004). The Union more than adequately established a particularized need for the telephone data reflecting phone calls made by Ringel from her PBGC office phone and Blackberry to Torres and other OIT employees outside normal business hours.

An agency denying a request for information under § 7114(b)(4) must assert and establish any countervailing anti-disclosure interests. Like a union, an agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." *IRS Kan. City*, 50 FLRA at 670. Here, the Respondent denied the Union's request for the telephone data and stated that "the Union has not demonstrated a particularized need sufficient to overcome the employees' legitimate privacy interests." (R. Ex. C at 7). As stated above, I have found that the Union has demonstrated a particularized need for the information. The question is whether the Union's particularized need is outweighed by the employees' privacy interest in the information. The Respondent argues that the telephone call data is protected from disclosure under the Privacy Act. Specifically, the Respondent argues that the telephone call data is contained in a system of records which is covered by PBGC-11, a system of records notice (SORN) issued by the Respondent. 77 Fed. Reg. 59263. The Respondent contends that PBGC-11 is designed to preserve the privacy interest of the person being called and that the Union has not articulated a public interest supporting disclosure of information from this system.

The Privacy Act authorizes the Respondent to adopt routine uses that are consistent with the purpose for which information is collected. 5 U.S.C. § 552a(a)(7) and (b)(3). OMB, in its initial Privacy Act guidance, also recognized routine uses that are necessary and proper for the efficient conduct of the government and in the best interest of both the individual and the public. 40 Fed. Reg. 28948, 28953 (July 9, 1975). A review of PBGC-11 shows that categories of records in the system includes "records relating to the use of PBGC telephones and PBGC-issued portable electronic devices to place toll calls and receive calls." 77 Fed. Reg. 59263. PBGC-11 also incorporates certain routine uses, which permits disclosure of information contained in the system of records in specified situations. Among the routine uses that apply to information contained in the system of records covered by PBGC-11 is General Routine Use G8, which provides that "[a] record from this system of records may be disclosed to an official of a labor organization recognized under 5 U.S.C. Chapter 71 when necessary for the labor organization to perform properly its duties as the collective bargaining representative of PBGC employees in the bargaining unit." 77 Fed. Reg. 59255, 59263 (Sept. 26, 2012). In this case, the Union, a labor organization recognized under 5 U.S.C. Chapter 71, has shown its need for telephone call data contained in a system of records covered by PBGC-11 so that it can properly represent a PBGC bargaining unit employee in a grievance and arbitration. The Respondent offers no argument or interpretation of the regulation establishing that the General Routine Use G8 does not apply to the Union's request for telephone data in this case. Instead, the plain language of PBGC-11 supports the GC's contention that the telephone call data is not protected from disclosure. Therefore, I find that PBGC-11 does not prevent disclosure of information showing telephone calls made by Ringel via PBGC office phone or Blackberry to Torres and other OIT employees after normal business hours.

The Respondent also contends that the data showing calls made by Ringel to Torres and other OIT employees is not reasonably available or normally maintained. As an initial matter I agree with the Respondent that a portion of the data, specifically information reflecting calls from Ringel's home phone number to OIT employees, is not normally maintained by the Respondent and thus it has no duty to furnish that information to the Union. *See U.S. Dep't of the Treasury, IRS*, 63 FLRA 664 (2009) (information is not "normally maintained" by agency where information is within its custody or control).

With respect to data reflecting calls by Ringel from her work phone and Blackberry to OIT employees, the Respondent contends this information is not reasonably available. However, the Respondent did not communicate this objection until its prehearing disclosure. An agency must raise its anti-disclosure interests when the union requests the information. *See U.S. DOJ, Fed. BOP, Fed. Det. Ctr., Hous., Tex.*, 60 FLRA 91, 93 (2004). The only objection the Respondent made with respect to the telephone data request was that "the Union has not demonstrated a particularized need sufficient to overcome the employees' legitimate privacy interests." (R. Ex. C). The Respondent contends one of its general objections, that the requests were so vague and broad "that the Agency cannot determine what specific data is requested, what search is required, and whether final, responsive, non-privileged data exists," was sufficient to notify the Union that the phone records were not reasonably available. (*Id.* at 1). As discussed above, it is clear what information the Union was seeking in its information request and subsequent clarification; data reflecting phone calls from Ringel to Torres and other OIT employees outside normal business hours. I find

the Respondent's objection itself to be ambiguous and conclusory. *See IRS Kan. City*, 50 FLRA at 671-72 (An agency is responsible for establishing anti-disclosure interests to the Union and must do so in more than a conclusory or general way). The Union made twenty-six individual requests for data. The Respondent's general objections did not provide the Union a way to determine which objection applied to each data request. Regardless, the Union provided clarification of its request for telephone call data and listed the specific OIT employees along with their phone numbers for which it required telephone call data. The Respondent never replied to this communication. Thus I find the Respondent failed to state that the telephone information was not reasonably available at or near the time of the information request.

Moreover, the Respondent has not shown that the information is not reasonably available. Data is "reasonably available" if it is available through means that are not "extreme or excessive . . . ." *Dep't of HHS, SSA*, 36 FLRA 943, 950 (1990) (*SSA*). The Respondent has not shown that it would have to utilize extreme or excessive means to obtain the requested telephone data. The Respondent provided an affidavit from one its IT Specialists demonstrating the means through which the data showing phone calls made from PBGC telephones and mobile devices could be located and retrieved. (R. Ex. E). The affidavit indicates that the Respondent maintains data tracking when incoming calls are received and outgoing calls are made. (*Id.*). The Respondent tracks employees' incoming and outgoing calls by his or her office phone number and PBGC issued Blackberry. (*Id.*). In order to gather data showing calls made by Ringel outside normal business hours to the five OIT employees specified by the Union, the Respondent has to go through Ringel's phone records for the relevant time period, identify calls made to those employees, and correlate when the calls were made with the employees' time and attendance records. The Respondent has not contended that it does not have access to the phone records or time and attendance records it would need to complete this process. The Respondent has also not presented evidence or attempted to quantify the amount of time required or costs associated with retrieving this information. The Authority has held that information may be reasonably available even where the agency has to spend a significant amount of time and/or money to produce the information. *See e.g.*, *SSA*, 36 FLRA at 950-51 (information reasonably available where it would take agency three weeks to retrieve); *Dep't of the Air Force, Headquarters, Air Force Logistics Command, Wright–Patterson AFB, Ohio*, 28 FLRA 306 (1987), *rev'd as to other matters sub nom. FLRA v. Dep't of the Air Force, Headquarters, Air Force Logistics Command, Wright–Patterson AFB, Ohio*, No. 87–1387 (D.C. Cir. Aug. 9, 1990) (information also was found to be reasonably available where it would take an agency three to four weeks to write a new computer program that would be needed to retrieve the data); *U.S. DOJ, INS, Border Patrol, El Paso, Tex.*, 37 FLRA 1310, 1323–24 (1990) (data consisting of approximately 5,000 documents maintained in different sections and offices of the agency was reasonably available).

In the case cited by the Respondent where the Authority held that information was not reasonably available, the agency had shown that the request encompassed 5,000-6,000 documents that were stored in various locations across the country and internationally. *DOJ, U.S. INS, U.S. Border Patrol, El Paso, Tex. v. FLRA*, 991 F.2d 285 (5th Cir. 1993) (*DOJ*). The Respondent has not shown that the amount of information requested here approaches the volume of information sought in *DOJ*. The Respondent has not adequately

explained why it would be difficult to retrieve the telephone call data from the archives or the OIT employees' time and attendance records for the relevant period. Here, the Union sought records reflecting calls made outside normal business hours by one supervisor to five specific employees over a two year period. Although the Respondent contends it would take an enormous amount of time and effort to produce the information, the Respondent did not produce evidence demonstrating how much time and/or resources would be required to attain the requested call data. Given its superior knowledge of the costs and burdens required to retrieve the data in question, the Respondent should have produced evidence of the costs and burdens required to retrieve this data. *See Fed. BOP, Wash., D.C.*, 55 FLRA 1250, 1255 (2000) (citing *Lindahl v. OPM*, 776 F.2d 276, 280 (Fed. Cir. 1985). Since the Respondent has not shown that it would be excessively burdensome for it to compile the information, I find the data showing calls from Ringel to the OIT employees outside normal business hours is reasonably available.

As discussed above, the Respondent has and maintains information reflecting phone calls from PBGC office telephones and Blackberries. The Respondent also has access to OIT employees' time and attendance records. Therefore I find that that the Respondent normally maintains information showing phone calls made by Ringel on her PBGC-issued office phone and Blackberry to the five OIT employees listed by the Union. *See Dep't of HHS, SSA, Balt., Md.*, 37 FLRA 1277, 1285 (1990) (information is "normally maintained" if an agency has and maintains the information).

I conclude that the information showing calls from Ringel from her PBGC office phone and Blackberry to Torres and other OIT employees after normal business hours is normally maintained, reasonably available and necessary § 7114(b)(4) of the Statute. Thus, the Respondent violated the Statute by failing to furnish this information to the Union.

FAILURE TO RESPOND

The Respondent committed a separate violation of the Statute when it failed to meet with the Union or respond to its request for a meeting concerning the information requests. An agency's failure to respond to an information request violates § 7116(a)(1), (5) and (8). *U.S. Naval Supply Ctr., San Diego, Cal.*, 26 FLRA 324, 326 (1987); *Veterans Admin., Wash., D.C.*, 28 FLRA 260 (1987). A timely reply to a union's information request is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining. *SSA, Balt., Md.*, 60 FLRA 674, 679 (2005). The Authority interprets § 7114(b)(4) to require parties to interact for the purpose of communicating and accommodating each other's interests in disclosure of information. *IRS Kan. City*, 50 FLRA at 670.

Here the Union submitted a detailed request for information to the Respondent. The Respondent replied a month later, furnishing some of the information but denying the Union's requests for the items of information at issue here. In its initial reply, the Respondent "invite[d] the Union to submit clarification regarding its requests and particularized need." (R. Ex. C at 2). The Respondent stated its reply was a "partial response to the Union's data request," and invited the Union "to submit a more precise description of data sought or explain in greater detail the Union's particularized need

regarding this response." (*Id.* at 7). The Union accepted this offer and sent an email to the Respondent providing clarification of its information requests. (R. Ex. D). The Union asked to meet with the Respondent to go over any issues and clarify any questions regarding the information requests. (*Id.*). The Respondent did not reply to this email, did not meet with the Union and did not provide the information to the Union. The Respondent's silence toward the Union stifled the communication and exchange of interests in disclosure of information between the parties that is required by the Statute. *IRS Kan. City*, 50 FLRA at 670. Under the circumstances here, the Respondent was required to furnish a reply or meet with the Union in response to the Union's July 19, 2013, email.

The Respondent contends the charge regarding its failure to respond is moot because the Union allegedly turned down several offers to meet regarding the information request. A dispute becomes moot when the parties no longer have a legally cognizable interest in the outcome. *DOJ*, 991 F.2d at 289 (citing *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). The Supreme Court has held that the burden of demonstrating mootness "is a heavy one." *See United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953). The party urging mootness meets its burden of demonstrating that neither party has a legally cognizable interest in the final determination of the underlying questions of fact and law, upon satisfaction of two conditions: (1) that "there is no reasonable expectation . . . that the alleged violation will recur,"; and (2) "interim relief or events have completely [or] irrevocably eradicated the effects of the alleged violation." *U.S. Small Bus. Admin.*, 55 FLRA 179, 183 (1999). The Respondent has not met the burden of demonstrating this issue is moot. The Respondent has not shown that the Union unequivocally relinquished its right to meet with the Respondent regarding the information request. The Union's information request concerns a grievance, which alleges ongoing violations by the Respondent. The Respondent has not produced any evidence demonstrating that the Union no longer needs this information to pursue the grievance. The Respondent's failure to meet with the Union regarding the information request is therefore not moot.

Based on the record evidence, I find that the Respondent violated § 7116(a)(1), (5) and (8) of the Statute by failing to reply to or meet with the Union in response to the Union's email of July 19, 2013, and by failing to furnish the telephone data requested by the Union.

Accordingly, I recommend that the Authority grant the Respondent's Motion for Summary Judgment in part, regarding the Respondent's failure to furnish Royal's performance evaluation information and grant the General Counsel's Motion for Summary Judgment in part, regarding the Respondent's failure to furnish telephone call data requested by the Union and the Respondent's failure to respond to the Union's request for a meeting.

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), it is ordered that the Pension Benefit Guaranty Corporation, Washington, D.C., shall:

1. Cease and desist from:

(a) Failing or refusing to furnish the Independent Union of Pension Employees for Democracy and Justice (Union) with data reflecting telephone calls from Cheryl Ringel on her PBGC-issued office phone and Blackberry to the phone numbers of the OIT employees listed in the Union's email of July 19, 2013.

(b) Refusing to respond to the Union's July 19, 2013, request to meet and discuss the June 11, 2013, information request.

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

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

(a) Furnish the Independent Union of Pension Employees for Democracy and Justice with data reflecting telephone calls from Cheryl Ringel on her PBGC-issued office phone and Blackberry to the phone numbers of the OIT employees listed in the Union's email of July 19, 2013.

(b) Post at all facilities where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Pension Benefit Guaranty Corporation Director, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all bulletin boards and other places 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.

(c) In addition to physical posting of paper notices, Notices shall be distributed electronically, such as by email, posting on an intranet or internet site, or other electronic means, if such are customarily used to communicate with employees

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Atlanta 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., September 3, 2015

CHARLES R. CENTER
Chief 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 Pension Benefit Guaranty Corporation, Washington, D.C., violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to furnish the Independent Union of Pension Employees for Democracy and Justice (Union) with data reflecting telephone calls from Cheryl Ringel on her PBGC-issued office phone and Blackberry to the phone numbers of the OIT employees listed in the Union's email of July 19, 2013.

WE WILL NOT refuse to respond to the Union's July 19, 2013, request to meet and discuss the June 11, 2013, information request.

WE WILL furnish the Union with data reflecting telephone calls from Cheryl Ringel on her PBGC-issued office phone and Blackberry to the phone numbers of the OIT employees listed in the Union's email of July 19, 2013.

_____
(Agency/Activity)

Dated: _____ By: _____
(Signature) (Title)

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 any of its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA, 30303, and whose telephone number is: 404-331-5300.