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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,)	
)	
Complainant,)	PERB Case No. 06-U-41
)	
v.)	Opinion No. 1374
)	
District of Columbia)	Motion to Accept Untimely
Metropolitan Police Department,)	Response
)	
Respondent.)	Decision and Order

DECISION AND ORDER

I. Statement of the Case

Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee, (“Complainant” or “FOP” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Metropolitan Police Department (“Respondent” or “MPD” or “Agency”), alleging MPD committed an unfair labor practice when it denied several FOP requests for information. (Complaint at 3).

MPD’s Response was filed in an untimely manner as per PERB Rule 520.6. (Response, at 1-2 and 8). In the Response, MPD argued that: 1) FOP’s Complaint “is improperly before the PERB, as it involves a contractual dispute that the parties have agreed to resolve under the provisions of the Collective Bargaining Agreement [(“CBA”)]; 2) MPD did not commit an unfair labor practice “by not providing the requested information because release of the requested information would breach the protected privacy rights of members involved in the selection process and impugn the confidentiality of the selection process and procedure”; 3) MPD did not commit an unfair labor practice because not being selected for a competitive appointment cannot be grieved if all of the candidates were qualified; and 4) FOP’s Complaint and request for relief

“should be dismissed as Complainant has not shown that Agency has committed an unfair labor practice.” (Response, at 1-2).

At the same time it filed its Response, MPD filed a motion entitled: “Agency’s Request to File Response to Unfair Labor Practice Complaint and Request for Relief” (“Motion to Accept Untimely Response”), in which it contended that the PERB should accept its untimely response on the grounds that MPD and FOP agreed to an extension of time “so that the parties could work out a settlement in this matter”, those efforts ultimately failed, and FOP consented to the late filing of MPD’s response. (Motion to Accept Untimely Response).

II. Background

On November 1, 2005, MPD posted notice of ten (10) vacancies for the position of Bomb Technician/Canine Handler (“Vacancy Announcement 06-09”). (Complaint at 2, and Attachment 1). On May 4, 2006, MPD announced the names of the officers that had been selected to fill, effective May 14, 2006, the positions advertised in the Vacancy Announcement. (Complaint at 2, and Attachment 2). FOP averred in its Complaint that Officers Todd Perkins (“Officer Perkins”) and Christopher Bell (“Officer Bell”) were two (2) officers who competed for the position, but were not selected. *Id.*

In addition, FOP alleged that on May 24, 2006, Officer Perkins sent an email to FOP shop steward, Officer Hiram Rosario (“Representative Rosario”), wherein he stated that on May 23, 2006, he (Officer Perkins) became aware that three (3) other officers were transferred to the position of Bomb Technician/Canine Handler in addition to the ten (10) officers identified in the May 4, 2006, announcement. (Complaint at 2, and Attachment 3). Officer Perkins further contended that one (1) of those three (3) officers did not participate in the position’s selection process. *Id.* at 2-3, and Attachment 3. Officer Perkins concluded that while MPD advertised ten (10) open vacancies for the position, and later announced that ten (10) officers had been selected to fill the vacancies, MPD actually selected thirteen (13) officers to fill the position. *Id.*

FOP alleged in the Complaint that between May 11, 2006, and June 5, 2006, Representative Rosario sent three (3) separate information requests to MPD seeking documents and other information related to the selection process of Vacancy Announcement 06-09. *Id.* at 3, and Attachments 4, 5, and 6.

On or about May 11, 2006, Representative Rosario sent FOP’s first information request to Commander Robert J. Contee (“Commander Contee”) in MPD’s Office of Security Services, Special Operations Division. *Id.* and Attachment 4. The subject line of the request was, “Selection process for the position of Bomb Technician/Canine Handler Sworn – Vacancy Announcement MPD 06-09”. *Id.*, Attachment 4. In the request, Representative Rosario stated that Officer Perkins applied for the position, but was not selected. *Id.* Mr. Rosario then stated

that, pursuant to Article 10 of the parties' CBA, FOP was requesting "all documentation and directives regarding the manner in which the selection process [for Vacancy Announcement 06-09] was conducted." *Id.* In addition, Representative Rosario requested "all documentation regarding the evaluation and decision-making process with regards to [Officer Perkins], including the scores of each officer and Officer Perkins' scores at each stage of the testing process." *Id.* Officer Rosario noted that the request was being made "for the purpose [(sic)] of administering the [parties'] Agreement and preparing a grievance." *Id.* In support of the request, Representative Rosario cited section 802.1 of the District of Columbia Municipal Regulations ("DCMR") (now found in the District Personnel Manual ("DPM")), which he stated requires "that all initial Career Service appointments, as well as 'all subsequent assignments and promotions of employees in the Career Service ... shall be by open competition'" and that all such "initial appointments, and subsequent assignments and promotions, shall be made on the basis of merit by selection from the highest qualified available eligibles [sic] based on specific job requirements". *Id.* (emphases removed), and D.C. Code § 1-608.01(a)(1)-(11). Further, Representative Rosario cited what is now DPM § 805.1, which he stated requires that all "subsequent assignments of Career Service Personnel must be the result of open competition, i.e. competitive placements." Finally, Representative Rosario cited what is now DPM § 806 *et. seq.*, which mandates that the "selection procedures for competitive placements [...] be practical, fair, and test the relative fitness and ability of candidates." *Id.*, Attachment 4.

On or about May 25, 2006, Representative Rosario sent a second information request to Commander Contee. *Id.*, Attachment 5. The subject line of this request was exactly the same as the first request. *Id.* In this request, Representative Rosario again noted that Officer Perkins applied for the position, but was not selected. *Id.* Representative Rosario reiterated his prior request that MPD provide FOP with "all documentation and directives regarding the manner in which the selection process [for Vacancy Announcement 06-09] was conducted." *Id.* However, new in this second request was Representative Rosario's broader request that MPD provide FOP with "all documentation regarding the evaluation and decision-making process with regards to the selected officers." *Id.* FOP's first request only asked for "the scores of each officer ... at each stage of the testing process" and "all documentation regarding the evaluation and decision-making process with regards to [Officer Perkins]", not all documentation with regard to all of the "selected officers." *Id.*, Attachments 4 and 5. Also new in this second information request was Representative Rosario's requests for "all documentation revealing [how many Bomb Technician/Canine Handlers] were assigned to the Explosive Ordinance Disposal Unit six [(6)] months ago"; "all documentation revealing how many [Bomb Technician/Canine Handlers] are currently assigned to the Explosive Ordinance Disposal Unit"; and "all documentation showing how many of the current [(sic)] assigned [Bomb Technician/Canine Handlers] have the proper and required training." *Id.*, Attachment 5.

On or about May 31, 2006, Commander Contee sent a written response to Representative Rosario on behalf of MPD. *Id.*, Attachment 7. Commander Contee wrote that while he understood “[Officer Perkins’] disappointment for not having been selected for this position, it is not reasonable to release the information [FOP] requested.” *Id.* Commander Contee stated that “[r]eleasing this information would violate the right to privacy of [FOP’s] fellow union members and would be a violation of personnel law.” *Id.* Further, Commander Contee noted that Article 10 of the CBA only requires the parties to make requested information available “that is relevant to negotiations or necessary for [the] proper administration of the terms of the [CBA]” and that FOP had “not demonstrated how the information [it was seeking was] relevant to the purpose of contract administration or negotiations.” *Id.* Furthermore, Commander Contee stated that FOP’s requests did not assert or claim how the selection process for Vacancy Announcement 06-09 “was not practical or fair, or otherwise flawed” in violation of “DCMR § 805.1”.¹ *Id.* Commander Contee further contended that FOP’s “*carte blanche*” requests were prohibited by DPM, Chapter 31 (now 31A), § 3112.8, which states, “[t]he names of applicants for positions or eligibles [(sic)] on registers, certificates, employment lists, or other lists of eligibles [(sic)], or their ratings or relative standing shall not be information available to the public.” *Id.* Commander Contee argued that this section “protects the privacy rights of the members who participated in the selection process and the confidentiality of records associated with that process.” *Id.* Next, Commander Contee noted that each step of the selection process for Vacancy Announcement 06-09 was “conducted under the scrutiny of the newly elected Labor Committee Secretary, Officer Marcello Muzzatti.” *Id.* Lastly, Commander Contee invited Officer Perkins to “participate in a critique of his individual placing” and gave him the office telephone number of the Lieutenant he should contact to do so. *Id.*

On or about June 5, 2006, Representative Rosario sent a third information request, this time in the form of a Step 2 Grievance directed to then Chief of Police, Charles Ramsey (“Chief Ramsey”). *Id.*, Attachment 6. This correspondence had two (2) subject lines. *Id.* The first is identical to the subject lines of FOP’s May 11 and May 25 information requests. *Id.* However, the second reads: “Step Two [(2)] Grievance, pursuant to Article 10 on Behalf of Officer Todd Perkins of the Seventh District.” *Id.* In this correspondence, Representative Rosario addressed Commander Contee’s May 31 response and stated that FOP was not requesting *carte blanche*

¹ The PERB assumes, based on the specific terms Commander Contee used, that he erroneously cited § 805.1 and actually intended to cite what is now DPM § 806.3(a)-(d), which states:

Selection procedures for competitive placement shall do the following:

- (a) Be practical in character and fairly test the relative ability and fitness of candidates for jobs to be filled;
- (b) Result in selection from among the best qualified candidates;
- (c) Be developed and used without discrimination, as required by §§ 803.2 and 804.4; and
- (d) Comply with other requirements of applicable equal employment opportunity and affirmative action laws and regulations.

access, but rather just those “documents pertaining to the selection process involving [Officer Perkins].” *Id.* Representative Rosario further stated that the requested documents were “necessary to enable us to prepare our grievance.” *Id.* In addition, Representative Rosario responded to Commander Contee’s citation of what is now DPM Chap. 31A, § 3112.8, and argued that the section did not apply because “[FOP is] not the public”. *Id.* Representative Rosario then reiterated FOP’s previous requests. *Id.* Unique to this June 5 correspondence, is Representative Rosario’s statement that FOP had “received information that there were several extra positions filled that were never properly announced.” *Id.* (emphasis removed).

On or about June 13, 2006, Chief Ramsey replied to FOP’s June 5 information request / Step 2 Grievance. *Id.*, Attachment 8. In this correspondence, Chief Ramsey wrote, “[i]n your letter, you [(FOP)] allege that management violated Article 10 [of the CBA] and [section 3112.8 of what is now Chap. 31A of the DPM] by denying the FOP the rating lists, test scores and internal selection procedures management used in filling the vacancies [of Vacancy Announcement 06-09].” *Id.* Further, Chief Ramsey noted, “[y]ou also requested the names of the [Bomb Technician/Canine Handlers] who had received the proper training as well as the names of all agency members assigned to the Explosive Ordinance Disposal Unit [in that position].” *Id.* Chief Ramsey then contended that FOP’s May 11 and May 25 information requests “did not constitute a grievance.” *Id.* Further, he stated that “[t]here was no oral grievance or Step 1 Grievance as required by Article 19 [of the CBA]”, and that, “[c]onsequently, there can be no Step 2 [Grievance].” *Id.* Chief Ramsey then wrote: “After careful review of your letter, I have decided to *deny* your purported Step 2 Grievance, inasmuch as it is a request rather than a grievance.” *Id.* He then contended that management “has not violated Article 10 of the CBA, Chapter 31A § 3112.8 of the DPM[,] or any other provision of the DPM.” *Id.*

On June 23, 2006, FOP filed its Complaint, alleging that its “several requests for information pursuant to Article 10 of the [parties’ CBA]” were sent “in an effort to confirm whether there were discrepancies in the selection process which might support a grievance” and furthermore to determine “whether the selection process that lead [(sic)] to the non-selection of [union members Officers Bell and Perkins] was properly conducted in accordance with all applicable authority and the [CBA].” *Id.* at 3. FOP contended that MPD’s denials of these requests “[constituted] an unfair labor practice.” *Id.* As a result, FOP asked the Board for an “[o]rder declaring the Respondent’s actions to be an Unfair Labor Practice and requiring the Respondent to post notification acknowledging this violation of law and to provide the information as requested pursuant to Article 10 of the [CBA].” *Id.* at 4.

On or about June 28, 2006, then PERB Executive Director, Julio Castillo (“Director Castillo”), sent a letter to Chief Ramsey, stating that the PERB had “received for filing, [in this] proceeding, a document titled ‘Unfair Labor Practice Complaint’” and that “[i]n accordance with

Board Rule 520.6, [MPD's] answer to the complaint is due in this office no later than close of business (4:45 p.m.) on July 10, 2006." (PERB Letter to MPD) (emphases removed).

On August 15, 2006, MPD filed its untimely Response to FOP's Complaint. (Response at 1 and 8). MPD concurrently filed its Motion to Accept Untimely Response, in which it asked the PERB to accept its untimely response on the bases that MPD and FOP agreed to an extension of time "so that the parties could work out a settlement in this matter", that those efforts ultimately failed, and that FOP consented to the late filing of MPD's Response. (Motion to Accept Untimely Response).

In its Response, MPD denied that FOP's information requests were "proper" and denied that it had an obligation to provide the requested information because the "information sought was of a confidential and protected nature." Response at 2. Further, MPD contended that Officer Perkins "was given the opportunity to discuss his own involvement in the selection process." *Id.* (emphasis removed). MPD denied that the legal authority FOP cited in its Complaint² applies to or governs the facts of this matter. *Id.* at 2-3. Additionally, MPD asserted that the Complaint should be dismissed "as it fails to set forth facts that[,] if proven, constitute an unfair labor practice." *Id.* at 3.

In addition to these denials, MPD raised several defenses. *Id.* at 3-6. First, MPD contended that the Complaint should be dismissed because the parties "have contractually provided for the resolution of such matters via the Grievance Procedure process under Article 19 of the CBA." *Id.* at 3. MPD cited *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Office of Police Complaints*, PERB Case No. 06-U-27 (2006), in which MPD claimed the PERB held it lacks jurisdiction over matters that are strictly contractual in nature. *Id.* MPD concluded that "inasmuch as the [Unfair Labor Practice] Complaint arises from a contractual dispute, PERB lacks jurisdiction over the alleged violations." *Id.*

In response to FOP's labeling its third information request as a Step 2 Grievance, MPD noted that "[p]ursuant to Article 19, B, 2 [of the CBA, which sets forth the procedure for grievances], Complainant had ten (10) business days to file a grievance" after MPD posted the names of the officers who had been selected to fill the positions advertised in Vacancy Announcement 06-09 on May 4, 2006. *Id.* MPD argued that FOP failed to file a grievance by the May 18, 2006, deadline after that posting and that it then attempted to "circumvent the grievance procedure" by "couch[ing]" its third June 5, 2006, Article 10 information request "as a 'Step 2 Grievance.'" *Id.* at 3-4. MPD argued that FOP's filing of a "Step 2 Grievance" presumed that it "had first filed a Step 1 Grievance." *Id.* Nonetheless, MPD averred "there was

² *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 3386, Slip Op. No. 835, PERB Case No. 06-U-10 (2006).

neither an Oral Step nor a Step 1 Grievance filed by Complainant.” *Id.* Furthermore, MPD noted that Commander Contee’s May 31 reply to FOP’s first two (2) requests made it clear that MPD was denying the requests on privacy grounds and reminded FOP “that the very process it was challenging was conducted with [the] full participation of the FOP Labor Secretary.” *Id.* at 4. MPD noted that its reply further “invited Officer Perkins to meet [with the department Lieutenant] and discuss his individual placement in the selection process.” *Id.* FOP contended that “[h]ad Officer Perkins met with the [Lieutenant] and discussed his ‘own’ performance, he would have been apprised of his ranking and [the] reasons why he was so ranked.” *Id.* MPD asserted that FOP did none of these things, and “failed to follow the proper procedures for filing a grievance.” *Id.* at 4-5. Because of these reasons, MPD argued that “Complainant should not now be allowed to back door its way into challenging the process” via an unfair labor practice complaint. *Id.* at 4.

MPD’s second defense was that its denial of FOP’s requests for access to what it called privileged and confidential materials “[did] not constitute an unfair labor practice.” *Id.* at 5. MPD reiterated its contention that “the information sought contains privileged and confidential information to which the Complainant is not entitled” and that producing the requested materials would “violate the rights of all members participating in the selection process, as well as the integrity of the process itself.” *Id.* (citing F.O.I.A. § 2-534(a)(5)³; D.C. Code § 1-631.05(a)(2)(E)⁴; and DPM §§ 3112.5⁵ and 3112.8, *et seq.*⁶). Further, MPD argued that violating the “privacy rights protected by these laws and regulations would establish ‘substantial countervailing concerns which outweigh [MPD’s] duty to disclose the requested information. *Id.* at 5-6 (citing *University of the District of Columbia Faculty Association, NEA v. University of*

³ F.O.I.A. § 2-534(a)(5):

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

⁴ D.C. Code § 1-631.05(a)(2)(E):

(2) The following information which may be in an official personnel record shall not be disclosed to any employee:

(E) Test and examination materials which may continue to be used for selection and promotion purposes: Provided, however, that the description of test and general results thereof shall be disclosed.

⁵ DPM, Chapter 31A, § 3112.5:

3112.5 Each employee entrusted with test material shall protect the confidentiality of that material and ensure that it is released only as required to conduct an examination authorized by the Office of Personnel or an Independent Personnel Authority.

⁶ DPM, Chapter 31A, § 3112.8:

3112.8 The names of applicants for positions or eligibles on registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standing shall not be information available to the public.

the District of Columbia, 38 D.C. Reg. 2463, Slip Op. No. 272 at p. 9, PERB Case No. 90-U-10 (1991); and *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 3386, Slip Op. No. 835 at p. 10, PERB Case 06-U-10 (2006)). MPD noted that FOP cited the latter case in the Complaint to support its contention that MPD committed an unfair labor practice when it denied FOP's requests. *Id.* MPD argued that the facts of that case were different than in the instant matter in that MPD, in the previous case, did not raise a confidentiality defense as it has done here. *Id.* In this matter, MPD argued that "the confidential nature of the information sought, i.e. testing materials, scores, ranking, etc., goes to the very core of the denial of the request" and that "[c]ompelling [MPD] to release this protected information would [violate] D.C. laws and regulations." *Id.*

MPD's third defense was that the Complaint should be dismissed because the potential grievance for which FOP stated it needed the information is "non-cognizable" under DPM § 1631.1(u), which MPD quoted as:

Persons covered under § 1630 may grieve any matter except the following:

(u) Non-selection for any competitive or non-competitive appointment or promotion from a group of candidates who were properly qualified, ranked, or certified.

MPD argued that, "[i]n the absence of factual information that persons selected [for Vacancy Announcement 06-09] were not properly qualified, ranked, or certified, [then Officer Perkins' non-selection for the position was not grievable and] Complainant was not entitled to the information." *Id.* Further, MPD argued that it "cannot be found to have committed an unfair labor practice by not responding to information requests that are related to non-grievable issues." *Id.* at 6-7. Based on these arguments, MPD asked the Board to dismiss the Complaint. *Id.* at 7.

III. Discussion

A. Motion to Accept Untimely Response

The PERB grants MPD's motion to allow its untimely Response. PERB Rules 501.2 and 501.3 state:

501.2: A request for an extension of time shall be in writing and made at least three (3) days prior to the expiration of the filing period. Exceptions to this requirement may be granted for good cause shown as determined by the Executive Director.

501.3: The request for an extension of time shall indicate the purpose and reason for the requested extension of time and the positions of all interested parties regarding the extension. With the exception of the time limit for the filing of the initial pleading that begins a proceeding of the Board, the parties may waive all time limited established by the Board by written agreement in order to expedite a pending matter.

The PERB finds that the parties' efforts to resolve "the issues in the Complaint" on their own outside of litigation satisfies the "good cause" requirement in PERB Rule 501.2. (Motion to Accept Untimely Answer). Furthermore, the PERB finds that MPD's assertion that the parties "now agree that the case should move forward" and that "[t]he Complainant Union consents to [the] filing of [MPD's late Response]" satisfies the requirements of PERB Rule 501.3 as well. *Id.* Therefore, MPD's Motion to Accept Untimely Response is granted.

B. Jurisdiction

In its Response, MPD raised the defenses that FOP's Complaint "is improperly before the PERB, as it involves a contractual dispute that the parties have bargained to resolve under the [Grievance Procedure] provisions of the [CBA]", and that FOP failed to set forth facts that, if proven, constitute an unfair labor practice. (Response at 1-5). In support of these contentions, MPD cited *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Office of Police Complaints*, PERB Case No. 06-U-27 (2006), in which the then PERB Executive Director administratively dismissed FOP's complaint on the basis that the PERB lacked jurisdiction to interpret the parties' contract to determine if there was a violation of the Comprehensive Merit Personnel Act ("CMPA"). *Id.* at 3; See also *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Office of Police Complaints*, ___ D.C. Reg. ___, Slip Op. No. 994 at p. 7-8, PERB Case Nos. 06-U-24, 06-U-25, 06-U-26, and 06-U-28 (2009); and *Hina L. Rodriguez v. District of Columbia Metropolitan Police Department*, ___ D.C. Reg. ___, Slip Op. No. 906, at p. 2-3, PERB Case No. 06-U-38 (2008). Furthermore, MPD argued that: 1) FOP's failure to file a grievance within ten (10) days after MPD's May 4 announcement named the officers who had been selected to fill Vacancy Announcement 06-09; 2) its (MPD's) May 31 and June 13 correspondences in response to FOP's information requests; and 3) FOP's mislabeling of its June 5 information request as a Step 2 Grievance, all provided a "factual predicate" for its contention that the PERB lacks jurisdiction over this matter. (Response at 3-5). The Board disagrees.

Generally, a complainant must assert in the pleadings allegations that, if proven, would demonstrate a statutory violation of the CMPA. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department and Cathy Lanier*, 59

D.C. Reg. 5427, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09 (2009) (citing *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *District of Columbia Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994)).

Furthermore, the Board “distinguishes between those obligations that are statutorily imposed under the CMPA and those that are contractually agreed upon between the parties.” *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 50 D.C. Reg. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002) (citing *American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO v. District of Columbia Public Schools*, 42 D.C. Reg. 5685, Slip Op. No. 339, PERB Case No. 92-U-08 (1992)). In addition, the Board’s “authority only extends to resolving statutorily based obligations under the CMPA.” *Id.* Therefore, the Board examines the particular record of a matter to determine if the facts concern a violation of the CMPA, notwithstanding the characterization of the dispute in the complaint or the parties’ disagreement over the application of the collective bargaining agreement.⁷ Moreover, if the allegations made in an unfair labor practice complaint *do*, in fact, concern statutory violations, then “th[e] Board is empowered to decide whether [MPD] committed an unfair labor practice concerning the Union’s document request, even though the document request was made . . . [pursuant to a contract’s resolution provisions].” *Id.* at 6.

In the instant matter, FOP provided sufficient allegations in its Complaint to establish that MPD’s denial of FOP’s information request, if proven, would constitute an unfair labor practice under the CMPA. *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, __D.C. Reg.__, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65 (2009); and *FOP v. MPD, et al., supra*, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09. The authority MPD cited⁸ in its Response is not applicable to the present matter because that case was administratively dismissed on the basis that the Board lacked jurisdiction to interpret the parties’ contract to determine if the alleged statutory violation occurred. See *American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO v. D.C. Public Schools, supra*, Slip Op. No. 339 at p. 9, PERB Case No. 92-U-08 (1992); see also

⁷ The Board looks to whether the record supports a finding that the alleged violation is: (1) restricted to facts involving a dispute over whether a party complied with a contractual obligation; (2) resolution of the dispute requires an interpretation of those contractual obligations; and (3) no dispute can be resolved under the CMPA. See *American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department*, 39 D.C. Reg. 8599, Slip Op. No. 287 at n. 5, PERB Case No. 90-U-11 (1991).

⁸ *FOP v. OPC, supra*, PERB Case No. 06-U-27.