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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.

FOP v. D.C. OPC, supra, Slip Op. No. 994 at p. 7-8, PERB Case Nos. 06-U-24, 06-U-25, 06-U-26, and 06-U-28; and *Hina L. Rodriguez v. MPD, supra*, Slip Op. No. 906, at p. 2-3, PERB Case No. 06-U-38. No such exercise is necessary here because the Board's jurisdiction over disputes about information requests is well established. *AFGE v. D.C. DOH, supra*, Slip Op. No. 1003, PERB Case 09-U-65. Furthermore, the arguments MPD offered as a "factual predicate" to its contention that the Board lacks jurisdiction over this matter seem to speak more to MPD's viewpoint of how the facts of this case proceeded than to the question of whether or not the Board has jurisdiction. (Response at 3-5). Therefore, the Board finds that its jurisdiction over this matter is proper.

C. Decision on the Pleadings

PERB Rule 520.8 states: "[t]he Board or its designated representative shall investigate each complaint." Rule 520.10 states that "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument." However, Rule 520.9 states that in the event "the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties."

Here, MPD generally denied FOP's legal conclusions, but did not dispute the Complaint's alleged underlying facts, which are that: 1) FOP sent MPD three (3) Article 10 information requests; and 2) MPD denied those requests. (Complaint at 1-3 and Response and 1-6). Therefore, because these facts are undisputed by the parties, leaving only legal questions to be resolved, the PERB can properly decide this matter based upon the pleadings pursuant to Rule 520.10. See also *American Federation of Government Employees, AFL-CIO Local 2978 v. District of Columbia Department of Health*, ___ D.C. Reg. ___, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23 (2013).

D. Decision

Generally, an agency is obligated to provide documents in response to a request made by the exclusive representative. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 11371, Slip Op. No. 1302 at p. 23, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16 (2012) (citing *University of the District of Columbia v. University of the District of Columbia Faculty Association*, 38 D.C. Reg. 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991)); and *American Federation of Government Employees, Local 631 v. District of Columbia Water and Sewer Authority*, 59 D.C. Reg. 3948, Slip Op. No. 924 at p. 5-6, PERB Case No. 08-U-04 (2007).

(citing *Teamsters, Local 639 and 730 v. District of Columbia Public Schools*, 37 D.C. Reg. 5993, Slip Op. No. 226, PERB Case No. 88-U-10 (1989) and *Psychologists Union, Local 3758 of the District of Columbia Department of Health, 1199 National Union of Hospital and Health Care Employees, American Federation of State County and Municipal Employees, AFL-CIO v. District of Columbia Department of Mental Health*, 54 D.C. Reg. 2644, Slip Op. No. 809, PERB Case No. 05-U-41 (2005). Moreover, the United States Supreme Court has held that an employer's duty to disclose information "unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement." *National Labor Review Board v. Acme Industrial Co.*, 385 U.S. 432, 36 (1967).

Furthermore, the National Labor Relations Board ("NLRB") has articulated that even when a Union's request for information is ambiguous or when it requests information that is not required by the bargaining agreement, such does not excuse an agency's blanket refusal to respond to the request. *Azabu USA (Kona) Co., Ltd. et al*, 298 N.L.R.B. 702 (1990) (citing *A-Plus Roofing*, 295 N.L.R.B. 967, JD fn. 7 (July 11, 1989); *Barnard Engineering Co.*, 282 N.L.R.B. 617, 621 (1987); and *Colgate-Palmolive Co.*, 261 N.L.R.B. 90, 92 fn. 12 (1982). Indeed, "an employer may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information." *Id.*

Moreover, when an agency has failed and refused, without a viable defense, to produce information that the union has requested, the agency resultantly fails to meet its statutory duty to bargain in good faith and has therefore violated D.C. Code § 1-617.04(a)(5). *AFGE v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65 (2009) (citing *Psychologists Union, Local 3758 of the D.C. Dep't of Health, 1199 National Union of Hospital and Health Care Employees, American Federation of State County and Municipal Employees, AFL-CIO v. District of Columbia Department of Mental Health, supra*, Slip Op. No. 809, PERB Case No. 05-U-41). In addition, "a violation of the employer's statutory duty to bargain [under D.C. Code §1-617.04(a)(5)] also constitutes derivatively a violation of the counterpart duty not to interfere with the employees' statutory rights to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives of their own choosing" found in D.C. Code §1-617.04(a)(1). *Id.* (quoting *American Federation of State, County and Municipal Employees, Local 2776 v. District of Columbia Department of Finance and Revenue*, 37 DCR 5658, Slip Op. No. 245 at p. 2, PERB Case No. 89-U-02 (1990)).

In the instant matter, it is undisputed that FOP's three (3) letters to MPD constituted official information requests. (Complaint, Attachments 4-6). Each one expressly stated that

FOP was seeking documentation and information pursuant to Article 10 of the parties' CBA, and each stated that the information was being sought for the purposes of administering the parties' CBA and for the preparation of a grievance. *Id.* As such, MPD had a duty to engage in the bargaining process to comply with FOP's requests as best as possible. *AFGE, Local 631 v. D.C. Water and Sewer Authority, supra*, Slip Op. No. 924 at p. 5-6, PERB Case No. 08-U-04.

MPD's duty to bargain included a duty to request clarification and/or comply with FOP's requests to the extent that each encompassed "necessary and relevant information" even if it (MPD) believed that the requests were ambiguous or overbroad, and even if it believed that the requested information could not be legally provided. *Azabu USA (Kona) Co., Ltd. et al, supra*, 298 N.L.R.B. 702. FOP's May 11 request asked for "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.*, Attachment 4. FOP's May 25 request broadened the scope of that petition to include "all documentation regarding the evaluation and decision-making process with regard to [all of] the selected officers." *Id.*, Attachment 5. FOP's June 5 request stated that FOP was not asking for "*carte blanche*" access to all of the records pertaining to Vacancy Announcement 06-09, but was only "requesting documents pertaining to the selection process involving [Officer Perkins]." *Id.*, Attachment 6. Then, several paragraphs later in that same June 5 request, FOP stated that it was seeking "all documentation regarding the evaluation and decision-making process with regard to [all of] the selected officers." *Id.* Furthermore, FOP's May 25 and June 5 requests asked for documentation showing how many officers were assigned to the Explosive Ordinance Disposal Unit at the time Vacancy Announcement 06-09 was posted and how many were assigned to the unit after the vacancies were filled. *Id.*, Attachments 5-6. MPD denied FOP's May 11 and May 25 requests stating the information could not be disclosed due to confidentiality and privacy concerns, and because the requests were overly broad. (Complaint, Attachments 6-7; and Response at 2-6). MPD denied FOP's June 5 information request because FOP submitted it in the form of a Step 2 Grievance, despite there never having been a Step 1 Grievance. (Complaint, Attachment 6; and Response at 4-5). Regarding the June 5 request, there can be no question that, despite its subject line, it was still an information request on the bases that it expressly requested information pursuant to Article 10 of the parties' CBA, it reiterated FOP's previous requests, and—perhaps most importantly—MPD itself admitted in its reply that "it is a request rather than a grievance." *Id.*, Attachments 6 and 8. Despite any inconsistencies FOP's requests may have presented, MPD had a duty to seek clarification from FOP as to what was being sought and to still comply with the requests to the extent they "encompassed necessary and relevant information." *Azabu USA (Kona) Co., Ltd. et al, supra*, 298 N.L.R.B. 702.

The question then turns to whether FOP's requests "encompassed necessary and relevant information." *Id.* The specific information FOP requested can perhaps be best categorized as follows: 1) information specific to Officer Perkins' evaluation and performance in relation to Vacancy Announcement 06-09 (i.e. Officer Perkins' qualifications, test scores, etc.); 2) information related to the evaluation and performance of the other officers that were selected to fill the positions announced in Vacancy Announcement 06-09; 3) information detailing how the selection process of Vacancy Announcement 06-09 was conducted; and 4) information showing whether thirteen (13) officers were actually selected to fill the vacancies instead of just the ten (10) that were officially announced. *Id.*, Attachments 4-6.

In regard to FOP's request for information specific to Officer Perkins' evaluation and performance in relation to Vacancy Announcement 06-09, MPD argued that it fulfilled its duty to bargain when, in its May 31 reply to FOP's May 11 and May 25 information requests, Commander Contee invited Officer Perkins to "participate in a critique of his individual placing" with a specific Explosive Ordinance Disposal Unit Lieutenant. *Id.*, Attachment 7. MPD stated in its Response that 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." (Response at 4). Agencies are obligated to provide documents in response to a request made by the exclusive representative. *FOP v. MPD, supra*, Slip Op. No. 1302 at p. 23, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16. Here, Officer Perkins did not make the request, FOP did. (Complaint, Attachments 4-6). MPD's duty, therefore, was to disclose the information to FOP, not to Officer Perkins. *FOP v. MPD, supra*, Slip Op. No. 1302 at p. 23, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16.

In regard to FOP's request for information related to the evaluation and performance of the other officers that were selected to fill the positions announced in Vacancy Announcement 06-09, MPD raised two (2) defenses. First, it contended that the information FOP sought was privileged and confidential. (Response at 2-6). Secondly, it averred that FOP's Complaint should be dismissed because DPM § 1631.1(u) bars FOP from filing the very grievance it claimed it was preparing. *Id.* at 6-7.

In support of its confidentiality defense, MPD argued that "the information [FOP] sought contain[ed] privileged and confidential information to which the Complainant [was] 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." (Response at 5-6) (citing F.O.I.A. § 2-534(a)(5); D.C. Code § 1-631.05(a)(2)(E); and DPM §§ 3112.5 and 3112.8, *et seq.*). 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.* (citing *University of the District of Columbia Faculty Association, NEA v. University of 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)). Additionally, MPD contended that FOP failed to assert in its requests “a claim of how the selection process for the [positions advertised in Vacancy Announcement 06-09] was not practical or fair, or otherwise flawed” in violation of DPM § 806.3(a)-(d). (Complaint, Attachment 7).

When confidentiality is invoked as the reason for not producing requested information, the test is to determine “whether the information sought is relevant and necessary to the union’s legitimate collective bargaining functions and whether this need is outweighed by confidentiality concerns.” *FOP v. MPD, supra*, Slip Op. No. 1302 at p. 22, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16 (citing *NLRB v. Acme Industrial Co., supra*, 385 U.S. 432). An agency’s confidentiality concerns are “clearly outweigh[ed]” when, in accordance with D.C. Code § 1-617.11(a), “the information sought [by the exclusive representative] goes to the heart of the alleged violation.” *Id.* (quoting *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 36 D.C. Reg. 3333, Slip Op. no. 215 at p. 3, PERB Case No 86-U-16 (1989)).

In this matter, FOP stated in all three (3) of its information requests that it was seeking the information “for the purpose of administering the Agreement and preparing a grievance.” (Complaint, Attachments 4-6). MPD’s contention that it did not need to produce the information FOP requested because FOP failed to assert “a claim of how the selection process for the [positions advertised in Vacancy Announcement 06-09] was not practical or fair, or otherwise flawed” is disingenuous. (Complaint, Attachment 7) (citing DPM § 806.3(a)-(d)). FOP’s requests cited numerous DPM sections, detailed above, which FOP stated it believed were not adhered to in the evaluation and selection process of Vacancy Announcement 06-09. *Id.*

Furthermore, the legal authority MPD cited in its Response to justify its confidentiality defense is inapplicable and/or unpersuasive. (Response at 5-6). In the first case MPD relied on, *University of the D.C Faculty Association, NEA v. University of the District of Columbia, supra*, Slip Op. No. 272 at p. 9, PERB Case No. 90-U-10, MPD cited page nine (9) of the Hearing Examiners Report, but did not cite the actual Decision and Order in the case, which only has six (6) pages. Despite that, the Hearing Examiner noted that while there may be “countervailing considerations” that outweigh an agency’s duty to disclose information, the University “failed to show [that any such considerations existed] to outweigh its duty to disclose the requested information.” *Id.* Similarly, the second case MPD relied upon, *FOP v. MPD, supra*, Slip Op.

No. 835 at p. 10, PERB Case 06-U-10, merely states that a confidentiality defense is possible, but gives no guidance as to how or when such a defense can be claimed. In addition, MPD cited F.O.I.A. § 2-534(a)(5), D.C. Code § 1-631.05(a)(2)(E), and DPM § 3112.5, which only bar the disclosure of test questions, answers, and materials that will be used on future examinations. Here, it seems FOP only asked for information showing how the officers performed on the examinations (i.e., their scores, etc.), not for copies of the examinations themselves. Lastly, MPD cited DPM § 3112.8, which bars disclosure of “[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.” However, under D.C. Code § 1-617.11(a), FOP, as the exclusive representative, is not “the public.” *FOP v. MPD, supra*, Slip Op. No. 1302 at p. 22, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16.

Therefore, the Board finds that the information FOP sought in relation to the evaluation and performance of the other officers that were selected to fill the positions announced in Vacancy Announcement 06-09 was relevant and necessary to FOP’s legitimate collective bargaining functions of administering the CBA and preparing a grievance. *FOP v. MPD, supra*, Slip Op. No. 1302 at p. 22, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16. Additionally, the Board finds that the information FOP sought went “to the heart” of its stated purposes and that, in accordance with D.C. Code § 1-617.11(a), FOP’s need for the information outweighed MPD’s confidentiality concerns.⁹ *Id.*

In regard to MPD’s defense that FOP’s Complaint should be dismissed because DPM § 1631.1(u) bars FOP from filing the very grievance it claimed it was preparing, the Board is unpersuaded. (Response at 6-7). MPD averred 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.* However, DPM § 1631.1(u) only states that non-selection for a position cannot be grieved when the position was filled from a group of candidates who were all “properly qualified, ranked, or certified.” It seems reasonable that the only way FOP could have known if all of the candidates who applied for Vacancy Announcement 06-09 were “properly qualified, ranked, or certified,” and likewise whether the overall process that MPD followed in administering the Vacancy Announcement was “not practical or fair, or otherwise flawed,” would be to review the records it requested detailing the performances and evaluations of the

⁹ This is not to say that MPD’s concerns for privacy and confidentiality are invalid or inappropriate. FOP, as the exclusive representative, is entitled access to certain information when requested for certain reasons. Such does not mean that the requested information must be made available to everyone in the Union. An agency, as part of its duty to bargain in good faith, can certainly bargain and/or negotiate the terms under which it will release confidential information to the exclusive representative (such as restricting who can see/review the information, redacting names, etc.). Such negotiations, however, should not be used as a mechanism to delay or postpone the release of the requested information.

officers that were selected for the positions. (DPM §§ 1631.1(u) and 806.3(a)-(d)). Again, even when a Union's request seeks information that is not required by the bargaining agreement, such does not excuse an agency's blanket refusal to respond to the request. *Azabu USA (Kona) Co., Ltd. et al, supra*, 298 N.L.R.B. 702. As such, the Board finds that even if MPD believed FOP could not have filed grievances on behalf of Officers Perkins and Bell, such did not excuse them from failing to provide the information FOP requested in preparation of those grievances. *Id.*

In regard to FOP's request for information detailing how the selection process of Vacancy Announcement 06-09 was conducted, MPD insinuated that FOP's "*carte blanche*" request for access to all of its records related to Vacancy Announcement 06-09 was overly broad. (Complaint, Attachment 7). As previously stated, employers "may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information." *Azabu USA (Kona) Co., Ltd. et al, supra*, 298 N.L.R.B. 702. MPD, under the facts of this case, failed to seek said clarifications and/or comply with FOP's requests. *Id.* Furthermore, MPD's insinuation that it did not need to produce the information FOP requested because "each step of the selection process [for Vacancy Announcement 06-09] was conducted under the scrutiny of [a union representative]" is likewise unavailing on grounds that such did not make the information that FOP requested any less "necessary and relevant" to its stated purposes of administering the agreement and preparing a grievance. *Id.* Nor did such, in itself, guarantee that the selection process of Vacancy Announcement 06-09 was conducted in a correct and proper manner.

In regard to FOP's requests for information showing whether thirteen (13) officers were actually selected to fill the vacancies instead of just the ten (10) that were officially announced, MPD never addressed, responded to, or complied with this request. (Complaint, Attachments 4-8). In so doing, MPD violated its duty to disclose requested information to the exclusive representative. *FOP v. MPD, supra*, Slip Op. No. 1302 at p. 23, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16; and *AFGE, Local 631 v. D.C. Water and Sewer Authority, supra*, Slip Op. No. 924 at p. 5-6, PERB Case No. 08-U-04.

Wherefore, because MPD failed, without a viable defense, to produce the information that FOP requested, it failed to meet its statutory duty to bargain in good faith under D.C. Code § 1-617.04(a)(5). *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65. By so doing, MPD further derivatively violated its counterpart duty to not interfere with its employees' statutory rights "to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives of their own choosing" found in D.C. Code §1-

617.04(a)(1). *Id.* Therefore, the Board finds that MPD's conduct in this matter constituted an unfair labor practice.

IV. Remedy

In accordance with the Board's finding that MPD's conduct constituted an unfair labor practice under D.C. Code § 1-617.04(a)(1) and (5), the Board now turns to the question of what constitutes an appropriate remedy. FOP asked the Board to order MPD to: 1) post notification acknowledging its violation of law; and 2) provide the information as requested pursuant to Article 10 of the CBA. (Complaint at 4).

The Board finds it reasonable to order MPD to post a notice acknowledging its violation of the CMPA, as detailed herein. When a violation of the CMPA has been found, the Board's order is intended to have a "therapeutic as well as a remedial effect" and is further to provide for the "protection of rights and obligations." *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 5, PERB Case 09-U-65 (quoting *National Association of Government Employees, Local R3-06 v. District of Columbia Water and Sewer Authority* 47 D.C. Reg. 7551, Slip Op. No. 635 at pgs. 15-16, PERB Case No. 99-U-04 (2000)). It is this end, the protection of employees' rights, that "underlies [the Board's] remedy requiring the posting of a notice to all employees" that details the violations that were committed and the remedies afforded as a result of those violations. *Id.* (quoting *Charles Bagenstose v. District of Columbia Public Schools*, 41 D.C. Reg. 1493, Slip Op. No. 283 at p. 3, PERB Case No. 88-U-33 (1991)). Posting a notice will enable bargaining unit employees to know that their rights under the CMPA are fully protected. *Id.* It will likewise discourage the Agency from committing any future violations. *Id.*

Furthermore, the Board finds it reasonable to order MPD to immediately deliver to FOP the information it requested, including: 1) information specific to Officer Perkins' evaluation and performance in relation to Vacancy Announcement 06-09 (i.e. Officer Perkins' qualifications, test scores, etc.); 2) information specific to Officer Bell's evaluation and performance in relation to Vacancy Announcement 06-09 (i.e. Officer Bell's qualifications, test scores, etc.); 3) information related to the evaluation and performance of the other officers that were selected to fill the positions announced in Vacancy Announcement 06-09; 4) information detailing how the selection process of Vacancy Announcement 06-09 was conducted; 5) all documentation revealing how many Bomb Technician/Canine Handlers were assigned to the Explosive Ordinance Disposal Unit on November 1, 2005; 6) all documentation revealing how many Bomb Technician/Canine Handlers were assigned to the Explosive Ordinance Disposal Unit on June 23, 2006; and 7) all documentation revealing how many of the officers who were assigned to the Explosive Ordinance Disposal Unit on June 23, 2006, had the proper and required training.

(Complaint, Attachments 4-6); and *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 5, PERB Case 09-U-65.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Metropolitan Police Department (“Respondent” or “MPD” or “Agency”) shall conspicuously post, within ten (10) days of the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. Said Notice shall remain posted for thirty (30) consecutive days.
2. MPD shall deliver to the Fraternal Order of Police/Metropolitan Police Department Labor Committee, (“Complainant” or “FOP” or “Union”), within fourteen (14) days of the date of this Order, the information FOP requested, including: 1) information specific to Officer Todd Perkins’ (“Officer Perkins”) evaluation and performance in relation to Vacancy Announcement 06-09 (i.e. Officer Perkins’ qualifications, test scores, etc.); 2) information specific to Officer Christopher Bell’s (“Officer Bell”) evaluation and performance in relation to Vacancy Announcement 06-09 (i.e. Officer Bell’s qualifications, test scores, etc.); 3) information related to the evaluation and performance of the other officers that were selected to fill the positions announced in Vacancy Announcement 06-09; 4) information detailing how the selection process of Vacancy Announcement 06-09 was conducted; 5) all documentation revealing how many Bomb Technician/Canine Handlers were assigned to the Explosive Ordinance Disposal Unit on November 1, 2005; 6) all documentation revealing how many Bomb Technician/Canine Handlers were assigned to the Explosive Ordinance Disposal Unit on June 23, 2006; and 7) all documentation revealing how many of the officers who were assigned to the Explosive Ordinance Disposal Unit on June 23, 2006, had the proper and required training.
3. Within fourteen (14) days of the service of this Decision and Order, MPD shall notify the Board, in writing, that the Notice has been posted as ordered.
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

March 14, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 06-U-41, Slip Op. No. 1374, was transmitted via U.S. Mail and e-mail to the following parties on this the 19th day of March, 2013.

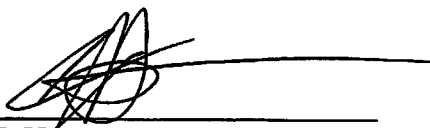
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT ("MPD"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1374, PERB CASE NO. 06-U-41 (March 14, 2013).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered MPD to post this notice.

THE MPD violated D.C. Code § 1-617.04(a)(1) and (5) by failing, without a viable defense, to produce requested information that was necessary and relevant to the Fraternal Order of Police/Metropolitan Police Department Labor Committee's ("FOP") ability to timely investigate a grievance or competently consult and negotiate with MPD on behalf of bargaining unit employees.

District of Columbia Metropolitan Police Department

Date: _____ By: _____

This Notice must remain posted for thirty (30) 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 Public Employee Relations Board, located at: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, Telephone: (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

March 14, 2013