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Final Step Grievance

Date: July 26, 2010

To: Dorothy Flaak, Director – Director, Office of Field Operations

The Union is filing this Final Step Grievance in accordance with Article 20 of the bargaining agreement. It concerns disparate treatment in agency discipline for breaches of passport applicant PII. The agency's actions represent violations of the law, including the Privacy Act, Agency policy, and the Master Agreement, including Articles 6 and 24

Background

Passport Services tightened restrictions on the dissemination of application information in a series of directives issued between 2008 and 2010. These tougher measures were prompted by media reports that employees had viewed the online passport files of the 2008 presidential candidates without any work-related need. The agency's internal controls guide and Passport Data Security Awareness course that all Passport employees maintain the confidentiality of information contained in passport applications.

From March to June, 2010, the General Accounting Office conducted a second test of Passport Services fraud capability. GAO employees submitted a series of passport applications in false identities and using counterfeit citizenship documents.

Passport Services figured out the sting operation in mid-June. Beginning on or about June 22, the Agency began distributing a power-point presentation that collected the known GAO test cases. The power-point presentation was also presented to groups of Passport Specialists in great detail (in sessions twice as long as typical fraud training sessions). One of the applications contained in the presentation was that of [REDACTED], who works for GAO. Passport Services has determined that the counterfeit birth certificate format used on all the 2010 GAO test applications derived from the birth

certificate of Ms. [REDACTED] child; that birth certificate was altered to create the counterfeits submitted with the test applications.

The Union has no objection to the dissemination of cases that teach a lesson about passport fraud. The Union, in fact, encourages the long-standing use of applications as training examples, when doing so sheds some light on fraud characteristics.

The Union further agrees that false identities have no privacy to protect. In this case, however, none of these defenses apply. Ms. [REDACTED]'s application contained no lessons pertaining to fraud, since she applied in her true identity and had every right to a passport. Her application contains no tricks to watch out for; it was correctly adjudicated and corrected issued. This application can't even be touted as a lesson in the traits of fraud "middle men" (those who arrange/facilitate fraud for others), since she was part of no criminal ring.

The agency has severely restrictive guidelines on the handling of passport application data. The department is free to do this – it determines its own security requirements. However, these rules (as written) apply equally to Management as the bargaining unit. And the privacy laws hold members of Management to the same standard as employees. The agency cannot cavalierly apply privacy rules to its own conduct during a time when it is terminating employees for lesser violations of the same type.

Passport Services has dismissed a handful of employees for performing "curiosity searches" in the PIERS system, citing violations of the Privacy Act. The Privacy Act concerns dissemination of private information to a third party. None of the dismissed Passport employees passed the information they looked up on to third parties. The agency, in giving this woman's information to employees who have no work-related use for it is in violation of the Privacy Act. The extent of the distribution borders excessive, even were Ms. [REDACTED] a legitimate Passport fraud case. Her application is part of a power-point training that has been emailed to employees in Miami. It is stored on the Western Passport Center's shared intranet site, available for employees to look at day after day. At least three other regional agencies have either mailed this presentation to the adjudication section or posted it on local intranet sites that employees have unlimited access to.

Considering that there was no reason for employees to view the woman's private data once, there is no reason for it to become a permanent exemplar for study. A single review of the application teaches a specialist nothing; viewing it 15 times teaches nothing 15 times. The Union agrees that the majority of exemplars in the GAO power-point presentation are valuable training tools. The placement of the woman's application with the fraudulent applications ensures that her address and phone number will be viewed on a regular basis, but for what purpose?

One of the criteria for establishing a violation of agency internal control policy is work-related need for the use of the privacy information. The lack of work-related need for any adjudication section employees to have or view this woman's application has already been documented. The woman's application is not only available to Passport adjudication sections, though. Non-government contract employees, whose job duties have nothing to do with fraud detection, have continual access to Ms. [REDACTED] application. As of this date, wide access to Ms. [REDACTED] personal data continues within the agency.

Relevant Contract Provisions

Article 6, Section 7

DIGNITY AND RESPECT: All bargaining unit employees and Management officials deserve and shall be entitled to be treated with mutual respect, dignity, common courtesy and consideration, and will be treated fairly and equitably. All email correspondence sent by Employer or Union officials will be professional, factually correct (to the best of the sender's knowledge), and will comply with applicable law and regulation.

Article 24, Section 1:

PURPOSE: The Employer agrees that action taken against bargaining unit employees will be consistent with applicable laws, be taken for just cause, and be fair and equitable. The Parties agree that the concept of progressive discipline, designed primarily to correct and improve employee behavior rather than to punish, will be followed.

Requested Relief

We respectfully request that bargaining unit employees dismissed due to performing curiosity searches of agency records (viewing, but not disseminating the PII information) be returned to their DOS positions.

We further request that all Passport Services employees receive training on the Computer Fraud and Abuse Act, the law the aforementioned employees were prosecuted under.

Thank you for considering this request.

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