

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington Field Office
131 M Street, N.E. Suite 4NW02F
Washington, DC 20507

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██████████	██████████)
██████████)
Complainant,) EEOC CASE NO.
) ██████████
)
vs.)
) AGENCY CASE NO.
) ██████████
)
JEH JOHNSON,)
SECRETARY OF HOMELAND SECURITY,) Date: February 7, 2016
UNITED STATES SECRET SERVICE,)
Agency.)
)
)
_____)

COMPLAINANT’S FIRST SET OF INTERROGATORIES,
REQUEST FOR THE PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS
AND REQUEST FOR ADMISSIONS

Complainant, (hereafter “Complainant,”) propounds the following Interrogatories Request for the Production of Documents and Tangible Things and Request for Admissions to the United States Secret Service (hereafter “Agency”) pursuant to the Administrative Judge's Acknowledgment and Order, dated March 21, 2012, and 29 C.F.R. §1614.109(d).

Please respond to the following Interrogatories, Request for the Production of Documents and Tangible Things and Request for Admissions (“Discovery Requests”) separately and fully in writing under oath. Please take notice that a copy of your response must be served upon the

undersigned representative **within 30 days** of receipt of the same and that you are to produce the documents requested at the offices of:

Representative for Complainant

**Thomas Gagliardo
AFGE General Counsel
c/o AFGE Local 1923 Legal Defense Fund
Room 1720 Operations Building
Mailstop 1-G-15 Operations Building
6401 Security Boulevard
Baltimore, Maryland 21235**

INSTRUCTIONS

1. These Discovery Requests are continuing in character and require supplemental answers if other or different information is obtained.
2. These Discovery Requests seek all information known to Agency and Agency's counsel, employees, representatives, agents, or investigators, and unless otherwise privileged, their counsel, employees, representatives, agents, servants, investigators, or consultants. If privilege is asserted as to any matter, please identify the specific basis for the privilege asserted.
3. When the name or identity of a person is requested, or the name or identity of a person is otherwise necessary to give a full and complete answer to a question, please state:
 - a. Full name; and
 - b. Present or last known home or business address (including street name and, city or town, state and zip code, and business or home telephone number).
4. When the identity or description of a document is requested, please indicate:
 - a. The type or character of the document (e.g. Letter, memorandum, signed statements, notes, etc.);
 - b. The title, if any, of the document;
 - c. The date of the document;
 - d. The name and address of the author of the document;
 - e. The name and address of the addressee of the document;
 - f. The name and address of all recipients of copies of the document; and

please provide the name and address of such person, and the nature of the information this person knows.

10. Any reference to a “person” includes a natural person, a partnership, a corporation, an unincorporated association, a professional association, or any other form of entity.
11. If privilege is asserted as to any matter, please identify the specific basis for the privilege asserted.
12. Unless otherwise indicated, these Interrogatories, Request for the Production of Documents and Tangible Things and Request for Admissions refer to the time, place and circumstances of the occurrences mentioned in the above captioned matter.
13. If you elect to specify and produce business records of yours in answer to any Interrogatory, then your specification shall be in sufficient detail to permit the interrogating party to locate and identify, as readily as you can, the records from which the answer may be ascertained.
14. If in answering these Interrogatories you encounter any ambiguities construing a question, instruction or definition, you should set forth the matter deemed ambiguous and the construction used in answering.
15. Words used herein in the singular number shall include the plural number and words used in the plural number shall refer to the singular number as well. Gender is to be wholly disregarded, the neuter referring to the male and female as well, the male to the female and neuter, and the female to the male and neuter.
16. As used herein, the conjunction “and” is deemed to include the disjunctive “or,” and vice versa.

DEFINITIONS

As used in these Discovery Requests, the following terms are to be interpreted in accordance with these definitions:

- (a) The term “PERSON” includes any natural person or individual, corporation, partnership, joint venture, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, firm, federal, state, or local government, or such governments’ departments and agencies, or any other governmental entities, firm, proprietorship, board, authority, commission, or any other such entity.

- (b) The terms “YOU” and “YOUR” include the person(s) to whom these Interrogatories are addressed, and all of that person’s agents, representatives or attorneys.
- (c) As used herein, the words “DOCUMENT” or “DOCUMENTS” are used in the customary broad sense, and include, but are not limited to, the following items, whether original or any copy (including any copy that differs from the original or contains handwritten notations or comments), printed or recorded, or reproduced by any other mechanical process, or written or produced by hand, regardless of origin or location, namely: agreements; communications; correspondence; summaries or records; any form of computer messaging in any recoverable format (including but not limited to email; instant message; text message; web based messaging; electronic messaging); deleted or otherwise removed computer messaging; telegrams; memoranda; records; books; notebooks; notes; desk calendars; calendars; summaries of telephone conversations; telephone messages; summaries or records of personal conversations or interviews; diaries; law(s); forecasts; statistical statements; accountants’ work papers; graphs; charts; memoranda; policies; procedures; regulations; invoices; checks; receipts; accounts; ledgers; analytical records; minutes or records of meetings or conferences; reports and/or summaries of interviews; reports and/or summaries of investigation; opinions or reports of consultants; studies; appraisals; records, reports, or summaries of negotiations; position papers; drafts; outlines; schedules; studies; brochures; pamphlets; circulars; trade letters; press releases; contracts; projections; drawings; maps; blueprints; sketches; data sheets; computer disks; tapes; sound records; microfilms; microfiches; dictations; video images; tapes; compact disks (CDs); digital video disks (DVDs); and every manner of written, printed or recorded graphic or photographic matter, sound reproduction, magnetic impulse or computer entry, however any of the above may be produced, reproduced, reduced, recorded, punched, stored, taped, transcribed or received and that are now or were formerly in your possession or custody or subject to your control, translated, if necessary, by you through detection devices into reasonably usable form.
- (d) The terms “IDENTIFY” and “IDENTITY” or “IDENTIFICATION,” when used in reference to a natural person, require you to state the person’s full name, last known address, home and business telephone numbers, and present business affiliation. When used in reference to a person other than a natural person, the terms “IDENTIFY,” “IDENTITY” or “IDENTIFICATION,” require you to describe the nature of such person (that is, whether it is a corporation, partnership, etc. under the definition of “person” above), and to state that person’s last known address, telephone number, and principal place of business. Once any person has been identified properly, it shall be sufficient thereafter when identifying that same person to state name only.

- (e) The terms “IDENTIFY,” “IDENTITY” or “IDENTIFICATION,” when used in reference to a document, require you to state the present custodian, date, author (or, if different, the signor or signors), addressee, and type of document (e.g., letter, memorandum, telegram, chart, etc.). If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it and the reason for such disposition. In lieu of so identifying a document, at your option you may attach an accurate copy of it to your answers to these Interrogatories, appropriately labeled to correspond to the Interrogatory in response to which it is being produced.
- (f) The term “DESCRIBE” means to provide with respect to any act, occurrence, transaction, event, statement, communication or conduct (hereinafter collectively “act”) all facts concerning any such act, including, but not limited to, a description of each act, the date, the location, and the names and addresses of all persons involved.
- (g) The term “RELATE” or “REFER” means consisting of, embodying, summarizing, describing, mentioning or in any way pertaining to.
- (h) When a discovery request asks for the “COMPLETE FACTUAL BASIS” for any contention, statement, defense, claim, allegation, belief or conclusion, the response shall include, but not be limited to, the description, identification and enumeration of:
- a. All facts relating in any way to the contention, statement, defense, claim, allegation, belief or conclusion;
 - b. Each and every document that records, reflects or relates in any way to such facts;
 - c. Each and every statement or item of testimonial or other evidence that relates in any way to such facts; and
 - d. The name of each and every person consulted, relied on, or with knowledge for the substantiation of such contention, statement, defense, claim, allegation, belief or conclusion.
- (i) The term “STATEMENT” means anything communicated to any person to any other person, whether in writing, electronically, telephonically, orally or by any other means.
- (j) The terms “EMPLOYED” or “EMPLOYMENT” refer to either self-employment or employment by any other person as an employee, consultant, independent contractor, business owner or otherwise.

(k) The terms “DEPARTMENT” or “AGENCY” refers to the United States Secret Service (USSS).

(l) The term “ROI” refers to the Report of Investigation.

(m) The term “COMPLAINT OF DISCRIMINATION” or “COMPLAINT” refers to this formal complaint, which is attached to the ROI conducted for the Agency.

INTERROGATORIES

1. Identify each and every person who participated in the decision to withdraw the conditional offer of employment sent in an email dated July 17, 2014. As to each person, describe in detail his/her role in the decision and/or process.
2. Please set forth any and all facts that constitute a legitimate, nondiscriminatory reason for the withdrawal of the conditional offer of employment that support any defense asserted by the Agency.
3. Identify each person, other than a person intended to be called as an expert witness at trial, having discoverable information that tends to support a position that the Agency has taken or intends to take in this action, and state the subject matter of the information possessed by that person.
4. Identify each person whom the Agency expects to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and, with respect to an expert whose findings and opinions were acquired in anticipation of litigation or for trial, summarize the qualifications of the expert, state the terms of the expert's compensation, and attach to your answers any available list of publications written by the expert and any written report made by the expert concerning the expert's findings and opinions.
5. Identify each and every person from whom the Agency or anyone acting on its behalf has obtained a statement in any form (including, but not limited to, written, oral or digital) regarding facts relating to the allegations in the Complaint and describe the substance of each such statement.
6. If the Agency contends that Complainant has made any statement that supports or substantiates any of the Agency's claims or defenses in this case, describe fully that statement and identify all documents that reflect that statement.
7. If the Agency contends that Complainant has made any statement that constitutes a party admission or statement against interest, describe fully that statement and identify all documents that reflect that statement.
8. If the Agency intends to rely upon any documents, electronically stored information (including, but not limited to email and video or audio recordings), or tangible things to

support a position that the Agency has taken or intends to take in the action, provide a brief description, by category and location, of all such documents, electronically stored information, and tangible things, and identify all persons having possession, custody, or control of them.

9. If the Agency contends that the Complainant does not meet the statutory definition of disabled, please set forth all facts which support such a contention.
10. On a yearly basis for the last five years, please provide the total number of employees the USSS employs, the number of disabled employees the USSS employs, the number of disabled applicants for USSS positions, and the number of disabled applicants hired by the USSS.
11. If the Agency contends that Complainant could not perform any essential functions of the offered position, please set forth those essential functions which he could not perform; and set forth all observations, studies, reports or any other facts that support your conclusion that he could not do so.
12. Please provide a list of all USSS polygraph exams in which Special Agent Ellen Ripperger's determinations either resulted in reexaminations or had Quality Control Issues, and the outcomes of any reexaminations.
13. Please provide for calendar years 2012 – 2015 a list of the total number of applicants Special Agent Ripperger has polygraphed, the number of those who failed her polygraph exam, the number of those who failed her polygraph exam and who had any type of psychiatric condition, and the number of those who failed her polygraph exam and who had any type of disability other than a psychiatric condition.
14. Identify each individual who assisted in answering these Interrogatories, stating with respect to each person the Interrogatory or Interrogatories they assisted with and how they assisted.
15. For each individual identified in Answer 14, set forth his/her authority to answer these Interrogatories on behalf of the Agency and to bind the Agency to the answers given.

REQUEST FOR PRODUCTION OF DOCUMENTS AND TANGIBLE THINGS

The instructions and definitions set forth above apply to this request for production of documents. You need not produce documents contained in the Report of Investigation, but please identify by page number any such documents that are responsive to these requests.

If any or all documents identified herein are no longer in your possession, custody, or control because of destruction, loss, or any other reason, then do the following with respect to each and every such document:

- a. describe the nature of the document (e.g., letter or memorandum)
- b. state the date of the documents

- c. identify the persons who sent and received the original and a copy of the document
- d. state in as much detail as possible the contents of the document, and
- e. state the manner and date of disposition of the document.
- f. state the frequency as a percentage of time with respect to how often such things are lost or destroyed within the agency.

If any privilege is claimed as to any document herein requested:

- a. State the nature of the privilege claimed (e.g., attorney-client, work product, etc.)
- b. State the basis for claiming the privilege
- c. With respect to each affected document, state the date of such document; identify each person who prepared it and each person (if any) who signed it; identify each person to whom it was directed, circulated, or distributed; and identify each person now in possession, control, or custody of the document or of any copy of it. ("Identify" with respect to a person means to state the full name and present address of the person and, if a natural person, their current or last known employment position, their present or last known business address, and their present or last known business and home telephone numbers.)

All of the following requests shall be continuing in nature. You must supplement your responses as additional documentation becomes known or available to you.

PLEASE PROVIDE THE FOLLOWING DOCUMENTS AND/OR TANGIBLE OBJECTS:

1. Any and all documents referred to or relied upon in answering Complainant's Interrogatories.
2. Any and all documents between the Agency and Complainant regarding withdrawal of the conditional offer of employment set forth in the ROI.
3. Any written documents between the Complainant and the Agency with regard to an offer or conditional of employment, including, but not limited to, the Agency's offer letter dated 7/17/2014 and Complainant's acceptance of same dated 7/17/2014.
4. Any and all documents, between and/or among any person acting for or on behalf of the Agency regarding the polygraph examination of Complainant and any other matter leading to the decision to withdraw the conditional offer of employment that had been made to Complainant.
5. The audio and/or video recording made of the Complainant's polygraph exam.
6. Please produce all documents related to the Complainant's polygraph examination including, but not limited to polygraph charts, polygraph scoring charts, quality control (QC) documents, and quality control notes.
7. Any and all documents that pertain to or contain information concerning Complainant's polygraph exam.

8. Any and all documents that pertain to or contain information questioning, criticizing, or disagreeing with any polygraph examination administered by Special Agent Ellen Ripperger or redirecting her to re-administer polygraph examinations, including, but not limited to any document to or from the Agency's Quality Control Department or the Forensic Services Division.
9. Any and all documents that pertain to or contain information concerning polygraph examinations administered by Special Agent Ellen Ripperger of examinees who had a disability at the time the examination was administered and about whom she concluded there were indications of deception.
10. Any and all documents pertaining to or containing information concerning problems, irregularities, inquiries, or complaints about polygraph examinations administered by Special Agent Ellen Ripperger.
11. Please provide any and all documents and explain every instance either formally or informally where issues have arisen regarding Special Agent Ellen Ripperger work products and for what reasons?
12. Please provide any and all documents for every instance either formally or informally where Special Agent Ellen Ripperger had job performance problems brought to her attention.
13. Please provide any and all documents and explain every instance either formally or informally where either the Quality Control Department or the Forensic Services Division disagreed with Special Agent Ellen Ripperger's determinations made with regard to (a) her polygraph examinations or (b) any element of a polygraph examination she administered?
14. Please provide any and all documents and explain every instance of formal or informal Quality Control (QC) issues or concerns regarding the Complainant's (██████████) polygraph exam either verbally or in writing from the USSS Polygraph Quality Control Office or Forensic Services Division.
15. The polygraph exam questions from the Complainant's (██████████) polygraph exam.
16. Please provide any and all performance evaluations for Special Agent Ellen Ripperger.
17. Please provide a copy of the statement Special Agent George Stakias had the Complainant write explaining why he had seen a psychiatrist for several years during a review of the Complainant's security clearance paperwork (Form OF-306), in relation to disclosures made in Question 21 (mental health).

REQUEST FOR ADMISSIONS

The instructions and definitions set forth above apply to this request for admissions. All of the following admission requests shall be continuing in nature, and you must supplement your answers as additional information becomes known or available to you. Pursuant to the March 21,

2012 Acknowledgement and Order, if you do not respond to this request, the Administrative Judge may deem to you have admitted Complainant's request for admissions.

Please admit or deny the following. Wherever the statement is denied, please fully explain the basis of such denial:

1. Special Agent Ellen Ripperger told the Complainant he failed his polygraph examination with respect to questions on drug use and past serious undetected crimes.
2. Special Agent Ripperger has had the Quality Control department at USSS overturn her polygraph examination results.
3. Special Agent Ripperger's polygraph results have been overturned (have not been concurred) by the USSS Quality Control (QC) department more frequently than the average USSS polygraph examiner's polygraph results.
4. Individuals who have failed a USSS polygraph exam and subsequently have been retested and passed another USSS polygraph examination have been hired by the USSS.
5. USSS CIO Scott Cragg contacted the Complainant by email late on or about the evening of Friday October 24, 2014 and asked if he had been retested (polygraphed).
6. Complainant's application for a Top Secret Security Clearance was halted by the USSS based solely on the results of his polygraph examination.
7. Individuals who have failed a polygraph exam have obtained Top Secret Security Clearances when the totality of evidence is weighed and is favorable regarding the applicant's character.
8. The USSS sometimes asks applicants to write statements explaining psychiatric treatment when an applicant makes a mental health disclosure on Question 21 (mental health) of Form OF-306.
9. USSS polygraph examiners will on average have one or possibly two non-concurred polygraph examinations in a calendar year.
10. Special Agent Ripperger has exceeded the average number of non-concurred polygraph examinations in most years.
11. If a polygraph examiner does not administer an ethical polygraph examination, the results of the polygraph examination may not be correct.
12. Special Agent Ellen Ripperger reviewed the Complainant's paperwork, including his Top Secret Clearance paperwork, prior to the administration of his polygraph examination.
13. Special Agent Ripperger shared her interpretation of the Complainant's polygraph examination results with Robin Despero.
14. Robin Despero reviewed the results of the Complainant's polygraph exam.

Respectfully Submitted,

Thomas Gagliardo
AFGE General Counsel
AFGE Local 1923
6401 Security Blvd
Operations Bldg, Rm 1720
Mail Stop 1-G-15
Baltimore, MD 212350
Phone: 410-965-2855
Fax: 410-597-0767

CERTIFICATE OF SERVICE

This is to certify that the above Complainant's Discovery Requests were sent on this 7th day of February 2016 by email, to the following:

Agency Representative:

Steven Giballa

steven.giballa@usss.dhs.gov

Complainant's Representative:

Tom Gagliardo

tomgagliardo@gmail.com