

**ORDER: MOTION TO COMPEL DISCOVERY**

In the Matter Between

Grievant

Record of Proceeding  
FSGB No. 2009-037

And

Date: March 29, 2010

Department of State

**ORDER: MOTION TO COMPEL  
DISCOVERY  
EXCISION**

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For the Foreign Service Grievance Board:

Presiding Member:

Elliot H. Shaller

Board Members:

Alfred O. Haynes  
Richard J. Shinnick

Special Assistant:

Joseph Pastic

Representative for the Grievant:

*Pro se*

Representative for the Department:

Joanne M. Lishman  
Director  
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

## **ORDER: MOTION TO COMPEL DISCOVERY**

### **I. THE ISSUE**

The grievant, an FS-04 Political Officer with the Department of State (Department or Agency), filed a grievance with the Department on April 1, 2009. He claimed that an Employee Evaluation Report (EER) covering the period from April 16, 2007 to December 18, 2007 was procedurally defective, falsely prejudicial, and contained statements that “insinuate rather than describing allegedly improper behavior.” The Department denied his grievance and on October 22, 2009, grievant appealed the Department’s decision to the Foreign Service Grievance Board (FSGB).

On November 10, the grievant filed his first discovery request. Upon receipt of the Department’s response, grievant filed a Motion to Compel Discovery. The Department filed an opposition to that motion on December 11 in which, without waiving its objections, it provided certain additional information responsive to the grievant’s discovery requests. The grievant did not further pursue his motion to compel, however, on December 18, he filed a Second Discovery Request. In that request, grievant asked the Department to provide answers to twelve (12) interrogatories from DCM (name), seven (7) interrogatories from Political Counselor (name) and a document request for ten (10) classified cables “for the Board’s reviewing.”<sup>1</sup> The Department responded to this second discovery request on January 22, 2009 and, on February 1, the grievant filed another Motion to Compel. This Order addresses grievant’s Second Motion to Compel.

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<sup>1</sup> This was the first time grievant had requested these classified cables. He had not made that request in his First Discovery Request, claiming that he was counseled by his AFSA representative not to ask for classified cables in his initial Discovery Request.

## **II. BACKGROUND**

Grievant joined the Foreign Service in 2003. His first overseas assignment was Vice Consul in (city, country). Following that assignment, in October 2005, grievant was assigned to (city, country) as a Political Officer. At that time, grievant's supervisor and rating officer was (name),<sup>2</sup> Chief of the Political Section and his reviewer was (name), the Deputy Chief of Mission (DCM).

From October 2005 to May 11, 2007, grievant was the recipient of two EERs;<sup>3</sup> each appeared to present his performance in highly favorable terms. In May 2008, grievant's rater and reviewer completed an EER on his performance for the period from April 16, 2007 to December 18, 2007.<sup>4</sup>

The 2008 Selection Boards that met during the summer of 2008 ranked grievant in the lowest five percent of his competing group. On April 1, 2009, grievant filed this grievance with the Department, which was denied, and he then appealed to this Board.

## **III. DISCUSSION**

Board guidelines provide that, generally a grievant is entitled to obtain information from the agency which is not privileged and is relevant and material to the issues in the grievance appeal. Relevant and material information is that which tends to prove or disprove a fact which may affect the disposition of the grievance.<sup>5</sup> The following is the Board's Order with respect to each of the items being sought by the grievant through the discovery process.

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<sup>2</sup> (Name) left the post in August, 2006 and was replaced by (name), who became grievant's rating officer. (name) remained as the DCM and grievant's reviewer.

<sup>3</sup> (Name) prepared interim EERs on grievant for the periods from October 15, 2005 to April 15, 2006 and from April 16, 2006 to August 2006. (Name) was the reviewer for the entire period of grievant's assignment in (city).

<sup>4</sup> It is this EER which forms the basis of this grievance.

<sup>5</sup> FSGB Case No. 1998-087, Order of June 13, 2000.

**A. Document Request No. 1** Request for classified cables: **Denied.**

The Department's Response to grievant's Motion to Compel is sufficient. Grievant has not shown that these cables have any relationship to the grievance concerning the contents in his EER.

**B. Interrogatory No. 2 (Regarding Interrogatories 1, 2 and 7): Denied.**

The Department's response to this interrogatory is sufficient. The contents of DCM (name) and Political Counselor (name) statements in the Department's decision letter provides sufficient and specific examples for grievant to address, should he elect to do so.

**C. Interrogatory No. 3 (Regarding Interrogatory No. 3): Denied.**

The Department's response to this interrogatory sufficiently addresses grievant's request. Mr. (name) has responded to requests for comments regarding this matter and has done so on several occasions.

**D. Interrogatory No. 5 (Regarding Interrogatory No. 12): Denied.**

The Department's response to this interrogatory is sufficient. In addition to the comments made by Mr. (name) in the Department's decision letter, he offered two additional comments in response to grievant's Second Motion to Compel.

**IV. DECISION**

The Motion to Compel is denied, in full.