BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[redacted]
Grievant

And

The United States Agency for International Development

_____

Record of Proceedings

FSGB Case No. 2011-024

August 8, 2016

ORDER: Grievant's Sixth Motion for Sanctions

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:	Susan R. Winfield
Board Members:	William J. Hudson Jeanne L. Schulz
Special Assistant:	Andrew D. Large
Representative for the Grievant:	Daniel S. Crowley J. Michael Hannon Hannon Law Group, LLP
Representative for the Agency:	Frank Walsh, GC/EA, USAID
Employee Exclusive Representative:	American Foreign Service Association

I. THE ISSUE

This order resolves and denies a sixth motion for sanctions filed by grievant, who remains dissatisfied with responses received from two USAID employees. The Board reviewed the motion, opposition and the entire Record of Proceedings (ROP) in this case and concluded that the responses received from the two employees provided sufficient answers to interrogatories from grievant such that sanctions are not warranted.

II. BACKGROUND

This grievance appeal has been in prolonged discovery litigation for more than five years, since the initial date of filing on June 3, 2011. Grievant, [redacted], claims that the United States Agency for International Development (USAID) offered her a pattern of assignments that deprived her of an opportunity to "demonstrate her potential for advancement." *See* Notice of Appeal of Agency Decision at p. 1. She also asserts that her employer made adverse personnel decisions, beginning in the summer of 2009, in violation of her due process rights, based on false, uninvestigated complaints of her management and supervisory skills. *Id.*

Both parties have filed numerous pleadings, including multiple motions to compel additional discovery, objections to discovery requests, multiple motions for sanctions and motions for reconsideration of orders previously issued. During discovery, grievant has focused much of her attention on attempting to identify every agency employee who provided negative 360-degree feedback about her management and leadership skills and the precise nature of the comments made about her. The Foreign Service Grievance Board (FSGB, the Board) ordered the agency to disclose un-redacted individual feedback by employees about grievant, notwithstanding the fact that none of her assignments were directly influenced by this feedback. Instead, according to the agency and the ROP, the Senior

Management Groups "SMGs" that reviewed grievant's bids for onward assignments were privy to very brief summaries of the individualized 360-degree feedback about her, but not the raw input.

In an order dated August 11, 2015, this Board ordered two agency employees – Peter Hubbard and Susan Riley – among others, to provide more complete responses to grievant's individual interrogatory requests.[1] In the instant motion, grievant claims that neither of these employees properly complied with the Board order and, therefore, sanctions are appropriate.[2] The agency contends that both employees have fully responded to all outstanding interrogatories and that the motion for sanctions should be denied.

III. POSITIONS OF THE PARTIES

A. The Grievant

Grievant argues that employee Hubbard did not respond at all to the order of this Board, dated February 12, 2016, requiring him to describe all conversations between himself and USAID lawyers about her discovery requests and provide copies of all written communications between himself and agency lawyers. Later, in her reply to the motion for sanctions, grievant acknowledged that she had received an email from Mr. Hubbard that included his response to the Board order. Grievant complained that Mr. Hubbard did not sign a declaration and did not describe his communications with agency counsel "in the manner required by the included instructions." Nonetheless, grievant stated that because Mr. Hubbard agreed to provide additional information, she would withdraw her motion as to Mr. Hubbard "once his supplement is received." Grievant has not withdrawn her motion, but she makes no further argument about whether Mr. Hubbard's supplement was inadequate.

[1] It was not until June 5, 2014 that grievant advised this Board that after completing discovery from USAID, she wished to take individual discovery from numerous agency employees. Her discovery responses from the agency were completed shortly after that date.

[2] Pursuant to an order of this Board, dated April 14, 2016, the parties have been enjoined from filing any additional motions or requests for relief without prior permission from the Board. Grievant sought and received permission to file the instant motion.

Grievant also argues that employee Riley's response was inadequate. Ms. Riley was required by the Board's February 12, 2016 order to provide her own account of the 360° feedback process at USAID and explain how the agency's Human Resources (HR) Division reconciled positive and negative individual 360° feedback in drafting the summaries. According to grievant, Ms. Riley stated that the agency did not verify any feedback and did not include negative feedback in the summary if it came from a single individual. She did not explain the process of reconciling positive and negative feedback and she did not explain the process itself. Grievant argues that Ms. Riley did not explain how the information was collected, who, if anyone, reviewed it, who prepared the summaries, whether old feedback is included in later summaries and what policies or guidelines governed the process. As a result, grievant seeks leave to depose Ms. Riley.

B. <u>The Agency</u>

The agency argued that Mr. Hubbard fully complied with the request for information and that grievant agreed not to seek any further relief from him. USAID contends that the issue is moot vis-à-vis Mr. Hubbard. With respect to Ms. Riley, the agency claims that her responses were complete and have provided a full account of the 360° summary process. The agency asserts that the motion for sanctions should be denied.

IV. DISCUSSION AND FINDINGS

Grievant has not informed the Board that she is dissatisfied with the supplemental responses received from Mr. Hubbard. Accordingly, the Board concludes that she is not seeking any further relief regarding this employee. As for Ms. Riley, she has provided several responses to Interrogatory No. 9 that requested her explanation of the 360° summary process. She first responded to the interrogatory stating:

> As is required for all candidates, we asked [grievant] to list individuals whom we could contact for 360 feedback and also asked those individuals for names of

> others who had worked with her and could provide additional 360 feedback. All of the feedback is provided anonymously and indicates only that feedback provided is from a supervisor, peer, or subordinate of the candidate. This information was then summarized in a short document that was provided to the SMG Panel.

See, Grievant's 5th Motion for Sanctions, Exhibit 6, at unnumbered page 7 (Answers to Interrogatories By Susan Riley, sworn and dated, April 29, 2015).

Ms. Riley also answered Interrogatory No. 8, in which she stated:

> As the Chief of Foreign Service Personnel, I was involved in compiling information that was provided to the SMG Panel that was used to help determine appropriate SMG assignments. The information compiled included form[s] submitted by the candidate herself and a summary of the 360 feedback that was provided to my office as required for SMG candidates. I also served as a non-voting member of the SMG panel.

Id.

In addition, Ms. Riley confirmed notes that were written by agency counsel, Frank Walsh, during a conversation in which she explained the 360° process to him. In these notes, Mr. Walsh recorded Ms. Riley's information as follows:

> When we send out lists of SLG [sic] bidders, we ask them to send in six references to be contacted. In addition to those six contacts, we reach out to those six and ask for six more people who could discuss the candidate. This means there might be up to 36 sources per candidate.
>
> Then we would collect the information from those up to 36 sources. Someone in HR would come in and summarize that information on a single page [and] that page would be submitted to the committee for SLG positions.
>
> So: this one page summary would include positive and negatives on each candidate, and it would be a good summary of the feedback for the person. This information on those summaries is anonymous. Someone reading a summary can tell that this came from a superior, peer, or subordinate, but that is it. Someone could not tell who actually said a statement. So it was anonymous.

In response to a question by Mr. Walsh whether this was an accurate reflection of the "SLG 360 feedback process," Ms. Riley responded: "Frank, thank you. Yes, that is, to my best recollection, an

accurate description of the 360 process for SMG/SLG bidders while I was in HR." *See*, Grievant's 5th Motion for Sanctions, Exhibit 6, at page 2 (Email from Susan Riley to Frank Walsh, dated October 8, 2015 at 12:33 PM).

In addition, USAID provided grievant with a copy of an email to Mr. Walsh, dated September 6, 2015 at 10:46 PM in which Ms. Riley stated: "With regard to Interrogatory 9[,] I am unable to provide any additional information [about the 360° summary process]. This took place years ago and the individuals involved change frequently. I do no[t] recall who was involved." *See*, Grievant's 5th Motion for Sanctions, Exhibit 5, page 1.

Lastly, Ms. Riley provided an additional response after receiving the Board's order, dated February 12, 2016. The Board ordered Ms. Riley to

> provide your own complete account and explanation of the 360° feedback process employed by USAID; specifically explain how HR reconciled individual 360° positive and negative feedback and how these responses were reflected in the 360° summaries.

Ms. Riley responded directly to grievant's counsel:

> While preparing 360° summaries, the Agency does not independently investigate either the positive or negative 360° feedback it receives as part of the SMG process. This would be nearly impossible considering the number of 360° summaries prepared and the amount of feedback received. *The 360° summary is simply a summary of the feedback received*. Accordingly, the staff who prepared [grievant's] 360 summaries did not attempt to independently confirm either the positive feedback (e.g., [grievant] is analytical) or the negative feedback (i.e, [grievant] has weak management skills and highly inconsistent interpersonal skills).
>
> The Agency attempts to balance the perspectives of feedback sources by seeking feedback from multiple sources at multiple levels (i.e., multiple superiors, supervisors, peers and subordinates). To the extent that only one 360° feedback source makes negative comments about a bidder, those negative comments are typically either not reflected in the 360° summary or are identified as coming from only one source. In [grievant's] case, at least 3 to 5 sources made similar negative comments about [grievant's] management style and interpersonal skills. Accordingly, the comments were reflected in the summary.

> In addition, the Agency tries to present negative feedback in a neutral way in the summaries. Accordingly, the 360° feedback summary – the only feedback-related document seen by the people making SMG assignment decisions – summarized the negative comments in a relatively neutral way. For example, some comments used harsh language such as "workplace bully and mentally abusive to others," but the 360° feedback summary used less-charged language, such as, "weak management skills and highly inconsistent interpersonal skills."

This Board reviewed all of the responses provided by Ms. Riley, both directly and indirectly, and concludes that no more is required from her. She has explained the 360° summary process in reasonable detail: The bidder provides HR with the names of six persons who are willing to give feedback about the bidder's skills. Those six employees are each asked for six additional names, creating a population of as many as 36 feedback sources. The sources provide their feedback anonymously, however, the source's position is identified as a "superior, a peer, or a subordinate." The feedback is reviewed by various staff members of HR whose specific identities Ms. Riley no longer recalls. If there is a single negative 360° comment, it is either not included or is identified as a single source comment. If a negative comment is particularly harsh, the staff member softens the language used in the summary. There is no confirmation of either positive or negative feedback. Both the positives and negatives are included in the summary, with the exception of a single negative comment. There is no "reconciliation" of the positives and the negatives. In other words, no one made a determination whether the positive comments outweighed the negative comments. Both were mentioned in the summary (with the exception of the single negative).

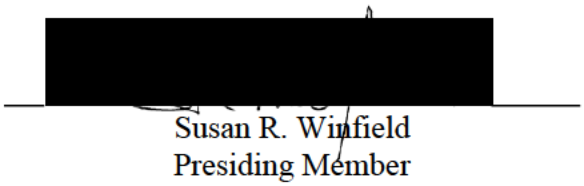
Grievant claimed that Ms. Riley did not answer how the information is collected, who reviews it, who prepares the summaries, whether old feedback is included in subsequent summaries and what policy or guidelines govern the process. We disagree. She explained how the information is collected and how the sources are identified. She explained that the reviewers and summary preparers were staff members of HR. Each 360° summary was based only on input received from the sources identified by

the bidder and those identified by those sources. Based on her responses, old feedback did not inform new 360° summaries. Ms. Riley identified no policy or guidelines that were applied, other than that particularly harsh comments were softened and a single negative might either be excluded or identified as such. There is simply no more to learn from her about this process.

V. CONCLUSION

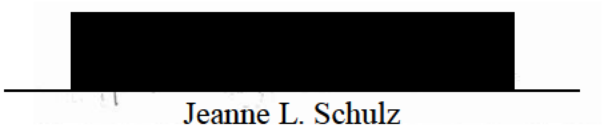
Grievant's sixth motion for sanctions is denied. There is no additional information that must be disclosed by any USAID employees. Grievant's discovery is hereby closed. Grievant shall file a Supplemental Submission to this grievance appeal, if any, within 30 days of receipt of this order, failing which, the agency shall file a Response to the grievance appeal within 30 days thereafter.

For the Foreign Service Grievance Board:



Susan R. Winfield
Presiding Member

William J. Hudson
Member



Jeanne L. Schulz
Member