



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Debby Szeredy
Executive Vice President

February 20, 2015

202-842-4250 (Office)
202-842-4297 (Fax)

National Executive Board

Mark Dimondstein
President

Debby Szeredy
Executive Vice President

Elizabeth "Liz" Powell
Secretary-Treasurer

Tony D. McKinnon Sr.
Director, Industrial Relations

Clint Burelson
Director, Clerk Division

Steven G. Raymer
Director, Maintenance Division

Michael O. Foster
Director, MVS Division

Stephen R. Brooks
Director, Support Services Division

Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

John H. Dirzius
Coordinator, Northeast Region

Kennith L. Beasley
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

To: Tony McKinnon, Director – Industrial Relations Department

From: Debby Szeredy, Executive Vice President

Subject: MOU between Postal Service, Department of Labor & the National Labor Relations Board regarding the Release of FECA Records

Notification #: GCCG20150124

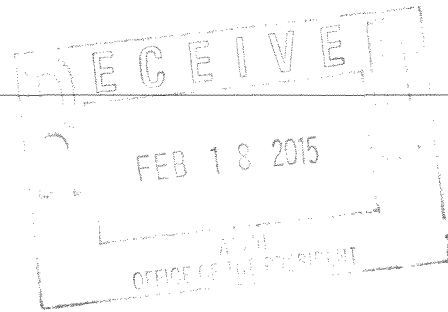
Please find attached a copy of a letter dated, February 11, 2015 from Alan Moore regarding the above reference matter.

You are designated as the APWU contact person in this matter. Please contact Shannon Welty at extension 5842, as soon as possible for discussion, if appropriate. Please provide notification of your review to me by March 6, 2015.

Please note: Your secretary should update the Notification Tracking Module in Step 4 CAS as necessary.

cc: Sue Carney
Michael Foster
Steve Raymer
Clint Burelson

DS:yc
opeiu #2
afl-cio



February 11, 2015

Mr. Mark Dimondstein
President
American Postal Workers Union, AFL-CIO
1300 L Street N.W.
Washington, DC 20005-4128

Certified Mail Tracking Number:
7014 0510 0000 6596 6420

Dear Mark:

The Postal Service, the Department of Labor, and the National Labor Relations Board have entered into a Memorandum of Understanding (MOU) regarding the release of Federal Employees' Compensation Act (FECA) records.

Under this agreement, the Postal Service may disclose certain FECA records to union officials performing their responsibilities as exclusive bargaining representatives. The MOU identifies a "Safe Harbor List", which encompasses the records the Postal Service may release to the union. The disclosure of any other FECA record requires prior approval from the Office of Workers' Compensation Program (OWCP) or a signed Privacy Act Authorization and Waiver Form from the employee.

To facilitate the requirements of the MOU, we have developed guidelines for handling union requests for FECA records and some related material. This information is being provided to our field offices.

We have enclosed the following:

- MOU cover letter dated October 20, 2014, from Jeffrey C. Williamson
- Memorandum of Understanding Regarding the Release of FECA Records
- Guidelines for handling union requests for FECA Records
- Sample letter to the requesting union official with sample employee Privacy Act Authorization and Waiver Form

Please contact Shannon Welty at extension 5842 if you have any questions concerning this matter.

Sincerely,



Alan S. Moore
Manager
Labor Relations Policy and Programs

Enclosures

JEFFREY C. WILLIAMSON
CHIEF HUMAN RESOURCES OFFICER
AND EXECUTIVE VICE PRESIDENT



October 20, 2014

Gary A. Steinberg
Director, Office of Workers' Compensation Programs (Acting)
United States Department Of Labor
200 Constitution Ave NW
Washington, DC 20210-0001

Memoranda of Understanding for Sharing OWCP Data

Dear Mr. Steinberg:

At your insistence, and because of your requirement that we must do so in order to gain access to Federal Employees' Compensation Act (FECA) records that are critical to the conduct of the Postal Service's business, the Postal Service has executed the attached documents. Those documents are entitled Memorandum of Understanding (MOU) and related Interconnection Security Agreement (ISA) regarding the sharing of data between the Department of Labor (DOL) Office of Workers' Compensation Program's (OWCP) Integrated Federal Employees' Compensation System (IFECS) and the Postal Service's Injury Compensation Performance Analysis System (ICPAS). The Postal Service executed each of these documents on October 20, 2014.

As you know, on July 1, 2013, the DOL suspended the electronic transfer to the Postal Service of FECA information and documents, and further, suspended the Postal Service's access to the Agency Query System and to specific case documents through electronic kiosks in OWCP district offices. The DOL suspended the Postal Service's access to these materials because the Postal Service maintains it has authority to use and disclose FECA records independent of the rules that the DOL establishes for the treatment of FECA records. The Postal Service has acquiesced to the conditions specified in the MOU and ISA not because we agree with them, but because the DOL has demanded that we do so as a mandatory prerequisite to the Postal Service's gaining restored access to records that are vital to the Postal Service and our employees.

Subsequent to the suspension of the Postal Service's access to FECA records, DOL and the Postal Service engaged in extensive discussions of this issue, and ultimately secured the assistance of the National Labor Relations Board (NLRB). As a result of those discussions, the Postal Service, DOL, and the NLRB entered a separate MOU regarding the release of FECA records. The Postal Service has also executed that separate document and it accompanies this letter. It is the Postal Service's position that this separate MOU regarding the release of FECA records supplements, and to the extent of any inconsistencies, supersedes the MOU and ISA regarding the sharing of data between IFECS and ICPAS.

Thank you for your patience with these matters. I look forward to our respective agencies implementing these memoranda and to working with you in the future in a cooperative and mutually beneficial fashion.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Williamson", with a long horizontal flourish extending to the right.

Jeffrey C. Williamson

8-18-14

**MEMORANDUM OF UNDERSTANDING
REGARDING THE RELEASE OF FECA RECORDS**

BETWEEN

**THE DEPARTMENT OF LABOR'S OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
THE UNITED STATES POSTAL SERVICE AND
THE NATIONAL LABOR RELATIONS BOARD**

This Memorandum of Understanding between the Department of Labor's Office of Workers' Compensation Programs ("OWCP"), the United States Postal Service ("Postal Service") and the National Labor Relations Board ("Board") addresses unfair labor practice cases in which the Postal Service is the charged party and the charge arises from a refusal to release records compiled or maintained pursuant to the Federal Employees' Compensation Act ("FECA"). The parties believe that it would be mutually beneficial to seek the assistance of the appropriate Board Regional Office and General Counsel's Office, as outlined herein, where OWCP and the Postal Service are unable to reach agreement on the release of FECA records in response to a union information request. Nothing in the agreement will obligate OWCP to participate as a party in any unfair labor practice cases in which the Postal Service is the charged party.

Background

OWCP is responsible for administering the FECA. OWCP has established a government-wide system of records that contains all records created in the process of filing and resolving FECA claims, including those held by other agencies, and provides

that these records will generally be kept confidential. The Postal Service is the largest federal agency whose employees are covered by the FECA.

OWCP maintains that it has the authority to control and limit the disclosure of FECA records held by the Postal Service and that the Department of Labor's ("DOL") FECA regulations prohibit the Postal Service from disclosing FECA records in a manner inconsistent with DOL's Privacy Act routine uses. There may be situations, however, in which the balance between a union's need for relevant information and the privacy interests of covered employees will favor disclosure of FECA records. Detroit Edison Co. v. NLRB, 440 U.S. 301, 317 (1979).

Pre-Charge Process

OWCP agrees that the Postal Service may disclose certain FECA records during the pre-charge process consistent with DOL's Privacy Act routine uses, without prior consultation with OWCP under the following circumstances (the "Safe Harbor" List):

- It is permissible to disclose relevant FECA records where the employee has explicitly challenged Postal Service actions in connection with filing or administration of a FECA claim involving the employee;
- It is permissible to disclose relevant FECA records relating to the timing of the submission of paperwork to OWCP if the employee is contending that the Postal Service impermissibly delayed or refused to submit paperwork;
- It is permissible to disclose relevant FECA records to establish that an employee filed a false FECA claim;
- It is permissible to disclose relevant FECA records to establish that an employee filed a false claim for compensation for disability for particular periods;

- It is permissible to disclose relevant FECA records to establish that an employee submitted false statements regarding the facts surrounding the FECA claim itself;
- To the extent a claimant is alleging a Rehabilitation Act violation arising from a modified work assignment s/he was granted due to a condition accepted as compensable under the FECA, medical evidence from the FECA record that is relevant to that assignment may be disclosed. Further, to the extent a claimant with a condition accepted as compensable under the FECA is alleging that s/he failed to receive a work assignment as a result of that condition, medical evidence from the FECA record that is relevant to the denial of the assignment may be disclosed; and
- It is permissible to disclose aggregate statistics compiled from FECA records, where the aggregate statistics involve at least 7 employees.

In all of the above circumstances, disclosure of an entire FECA case record is neither authorized nor contemplated. Furthermore, the discretion exercised in this paragraph by OWCP to permit release of FECA records does not allow the Postal Service to disclose FECA file information relating to psychiatric conditions, injuries resulting from sexual assault that are indicated in the FECA records, or HIV status, without prior approval of OWCP pursuant to the pre-charge process described below. Further, if an NLRB unfair labor practice charge is filed and the Postal Service defends its refusal to disclose FECA file information relating to psychiatric conditions, injuries resulting from sexual assault that are indicated in the FECA records, or HIV status based upon this provision, the FECA records issue will be handled in accordance with the post-charge process, described below.

The Postal Service may also release FECA records without OWCP authorization where it has obtained a signed Privacy Act release from the employee or a court order from a Federal court of competent jurisdiction authorizing such disclosure. In all other circumstances, the Postal Service agrees to establish a process whereby it will first

seek authorization from OWCP before releasing any FECA records in response to a union request for information. Such requests shall include: (1) the employee's name; (2) the case number; (3) the specific reason for the disclosure request; and (4) the specific documents requested. OWCP, in turn, agrees to provide a dedicated FAX number or email address for the receipt of such requests and will provide a response within seven work days, unless a longer period is necessary based upon the complexity of the request or the number of requests received. In that circumstance OWCP will provide the Postal Service with an explanation of why a longer period is necessary and an estimated response date. The Postal Service will also provide a dedicated FAX number or email address at which to receive OWCP's responses. The Postal Service agrees that it will not disclose FECA documents in such circumstances without prior OWCP approval. If OWCP or USPS experiences problems with the process above, the parties will discuss the problems as they arise to design workable solutions for both parties.

Post-Charge Process

If an unfair labor practice charge is filed, despite the best efforts of OWCP and the Postal Service to resolve the matter, the Postal Service will raise the FECA records issue to the Board Regional Director handling the charge within five (5) calendar days of receipt of the charge. The Regional Director will investigate the charge. If the charge is found to be meritorious, within five (5) calendar days of such finding the Regional Director will inform the Board's General Counsel of the issue relating to the disclosure of FECA records. Thereafter, for thirty (30) calendar days after the General Counsel has been so advised, representatives of the Board's General Counsel, the General Counsel

of the Postal Service and the Solicitor of Labor will attempt to resolve the issue. Upon the expiration of the thirty (30) calendar day period, unless the parties agree to an extension, the Regional Director will issue a complaint unless instructed to hold the case in abeyance by the Board's General Counsel.

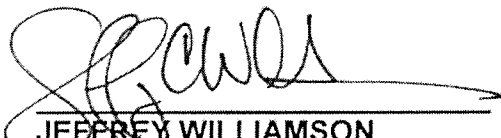
This MOU will be effective for a period not to exceed three (3) years from the date of execution; however, it may be reviewed annually to ensure that the business process and details remain current. One year from the date of the execution of this MOU, any party may opt out of this MOU by advising the other parties in writing of the intention to withdraw. The effective date of the withdrawal shall be thirty (30) calendar days from the date of the notice to the other parties.

Resolution Mechanism

Should disagreements arise concerning the interpretation of any provision of this agreement, each party shall provide the other parties to the agreement with its interpretation of the provision at issue. In the absence of a resolution of the dispute, each party is free to refer the matter to higher officials within their respective organizations for appropriate resolution.

AGREED

UNITED STATES POSTAL SERVICE



JEFFREY WILLIAMSON
Chief Human Resources Officer

United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4000

DATE:

10/20/2014

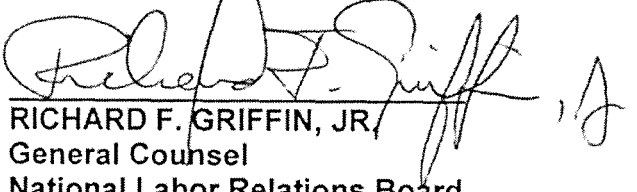
OFFICE OF WORKERS' COMPENSATION PROGRAMS


GARY STEINBERG
Acting Director, Office of
Workers' Compensation Programs
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

DATE:

10/10/2014

NATIONAL LABOR RELATIONS BOARD



RICHARD F. GRIFFIN, JR.
General Counsel
National Labor Relations Board
1099 14th Street, N.W., Suite 10100
Washington, D.C. 20570

DATE: October 27, 2014

Guidelines for Handling Union Requests for FECA Records

When a supervisor or manager receives a union request for information regarding Federal Employee Compensation Act (FECA) records, the supervisor or manager must send the request and any additional information provided by the union to the District Manager, Health and Resource Management (HRM)¹ on the same day it is received.

The District Manager HRM will send the supervisor or manager a union response letter template to be completed and provided to the union official. The letter will state that the request was received and is being processed and will also include the option for the union to provide a Privacy Act Authorization and Waiver Form signed by the employee. If the union returns the signed waiver, the supervisor or manager must promptly send the form to the District Manager HRM.

The District Managers, HRM and Labor Relations (LR) will review the information request and make a decision on relevancy (i.e. relevance to the union's role as the exclusive representative for employees in the designated bargaining unit). LR will make the final decision on relevancy.

- If the request is determined as not relevant, the District Manager LR will provide a written explanation to the District Manager HRM. The District Manager HRM will forward this explanation to the supervisor or manager who submitted the request, who will provide the written explanation to the union official who made the request.
- If the request is determined relevant and a signed Privacy Act Authorization and Waiver Form is received, the information may be disclosed to the union.
- If the request is determined relevant and a signed Privacy Act Authorization and Waiver Form is not received, the District Manager HRM will determine if the requested records are covered by the Safe Harbor List. If so, the requested information may be disclosed to the union. An exception to this process is information requests made for psychiatric conditions, sexual assault or HIV status. In those circumstances, the escalation process outlined below must be followed.
- If the request is determined relevant, but is not covered by the Safe Harbor List, follow the escalation process outlined below.

If guidance is needed, District HRM/LR should contact their counterparts at the Area Office. If further guidance is needed, Area HRM/LR should contact their counterparts at Headquarters.

It is expected that the above process should typically take no longer than three business days to complete.

ESCALATION PROCESS:

- The District Manager HRM will forward the information request and, if available, the requested information to the Headquarters' Injury Compensation designee by email (QHNRC0@usps.gov) and copy the District Managers, Human Resources (HR) and LR. Forwarded requests must include:
 - (1) name of the employee whose records are requested
 - (2) Office of Workers' Compensation (OWCP) case number
 - (3) the specific reason for the disclosure request
 - (4) the specific documents requested, to the extent they are available
- Headquarters' Injury Compensation will screen the request within two business days of receipt and provide the District Manager HRM a response on whether the request will be forwarded to the OWCP.
 - If Headquarters Injury Compensation determines the request will not be forwarded to OWCP, the Headquarters Injury Compensation designee will provide an explanation of that decision to the District Manager HRM.

¹ In instances where the receiving supervisor or manager is at Area or Headquarters, the information request should follow the appropriate reporting structure.

- If Headquarters' Injury Compensation determines the request will be forwarded to OWCP (a dedicated fax or email address will be provided by OWCP), Headquarters will inform the District Manager HRM by email of the date the request was forwarded.
- OWCP will provide Headquarters Injury Compensation with a response within seven work days, unless a longer period is necessary based upon the complexity of the request. In that circumstance, OWCP will provide an explanation of why a longer period is necessary and an estimated response date. This explanation will be forwarded by Headquarters Injury Compensation to the District Manager HRM.
- Headquarters Injury Compensation will forward the OWCP authorization or denial to the District Manager HRM and copy the District Managers, HR and LR. This should be completed within one business day of receipt of the OWCP decision.
- Throughout the process all parties must adhere to Privacy Act provisions in transmitting FECA records and requests.

Date

(Union Official Name)
(Union Official Title)
(Local Union Name)

This is in response to your Request for Information dated (insert date) regarding the Federal Employees' Compensation Act (FECA) record(s) of (insert requested information here). Your request will be processed as follows:

The request will be evaluated by District Labor Relations to determine whether the information is relevant to contract administration. If deemed not relevant, you will be advised of this determination. If the information is determined relevant and is not covered by the Safe Harbor List (as outlined in the Memorandum of Understanding Regarding the Release of FECA Records), your request will be submitted to the Office of Workers' Compensation (OWCP), which will provide a response on whether the record(s) may be released.

We anticipate that this process will be completed within three weeks of receipt of your request. However, if additional time is needed by OWCP, you will be informed of the estimated response date.

We have enclosed a Privacy Act Authorization and Waiver Form. The release of any requested information deemed relevant will be expedited if you provide a fully completed copy of this form.

Thank You,

(Name)
Title

Enclosure

cc: District HRM
District Labor Relations

PRIVACY ACT AUTHORIZATION AND WAIVER

I authorize the U.S. Postal Service and/or the U.S. Department of Labor/Office of Workers' Compensation Programs to disclose any and all requested information in the custody of the U.S. Postal Service regarding workers compensation claims that I have filed under the Federal Employees' Compensation Act to the following union official requested as part of the investigation of a grievance or to determine if a grievance exists.

_____ (Union Official name)

This authorization is effective on the date it is signed, and is effective until specifically revoked by me in writing.

A copy of this authorization shall have the same force and effect as the signed original.

Signature of Claimant

Name of Claimant

Date

Privacy Act Statement: By signing this form you authorize the disclosure of your information regarding workers compensation claims to the third party identified herein as part of the investigation of a grievance or to determine if a grievance exists. Collection of this information is authorized by 39 U.S.C. 401, 410, 1001, and 1005. Providing the information is voluntary, but if not provided, the disclosure of your workers compensation information to the identified third parties may be delayed or denied. This form will be maintained by the Postal Service and may only be disclosed as follows: in relevant legal proceedings; to law enforcement when the US Postal Service (USPS) or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel. For more information regarding our privacy policy, visit us at usps.com.