



regulation (Tab E).

On December 30, 2019, the appellant emailed MSPB, suggesting MSPB model OSC's motion to stay discovery, except as may be required for the Administrative Judge to determine whether the Board has jurisdiction for this appeal. Appellant did this as a good faith effort to resolve discovery issues with MSPB. (Tab F). Not getting any response from MSPB, appellant filed a motion for issuance of a subpoena on January 2, 2020 and served MSPB, resulting in his receiving, on January 3, 2020, MSPB's untimely, inadequate, and so-called "final determination" of January 2, 2020, **that denied all his discovery requests.**

In appellant's opinion, his discovery requests of MSPB are directly material to the following issues in this appeal:

1. Whether the requirements of the Code of Conduct for US Judges at Canon 3(c)(1) and 28 U.S.C. § 455(a), "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..." and MSPB regulations at 5 CFR §§1201.13 and 1201.41 require this appeal to be assigned to an Administrative Law Judge of another agency.
2. Whether the appellant has demonstrated reasonable belief in his whistleblower disclosure against MSPB, that it has failed or refused, for 40 years, to comply with its most important statutory duty to protect American health, safety, security and welfare - to "report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected," per 5 U.S.C. §1204(a)(3).

**MSPB's untimely discovery response, denying all the requested discovery, is inadequate**

Appellant's discovery request of MSPB consisted of 10 requests for the production of documents and 17 Interrogatories. MSPB denied all appellant's discovery requests for various, inadequate, reasons.

**MSPB's untimely objections to discovery based on its claiming "privilege" are inadequate**

MSPB denied all of appellant's requests for production on the basis of various privileges as well as 12 of his interrogatories (nos. 1-9 and 16-17) on the same basis.<sup>1</sup> However MSPB refused or failed to comply with its responsibility to:

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<sup>1</sup> From Mr. Leavitt's letter, "...I find that the production of the information requested in the above-listed items would reveal confidential, sensitive, or privileged information relating to internal agency policy and decision-making processes, or other information that would be inappropriate for release."

1. Demonstrate that the information sought to be introduced is, in fact, privileged, see Danko v. Dept. of Defense, 5 MSPR 426, 429 (1981)
2. Comply with the requirements of Rule 26(5) of the Federal Rules for Civil Procedure (emphasis added):

*Claiming Privilege or Protecting Trial-Preparation Materials.*

*(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:*

*(i) expressly make the claim; and*

*(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.*

MSPB's discovery response made no attempt to comply with the requirements of Rule 26(5)(A)(ii), making it impossible, absent *in camera* review, for the AJ to evaluate it. It is MSPB's responsibility to provide adequate information about the nature and content of each document to establish the existence of the privilege. See *Stull v. Dept. of Justice*, EEOC No. 01941582 (1995). Generally, such privileges are qualified, and the production of the evidence may be ordered if the need for the information outweighs the need for confidentiality. See *Beamon v. Dept. of Labor*, 53 MSPR 15, 19-20 (1987). An *in camera* inspection may be a way to resolve this discovery dispute. See *Kerr v. US District Court*, 426 U.S. 394, 406 (1976).

**MSPB's untimely objections to discovery based on claims it is “overbroad and burdensome” are inadequate.**

In addition to claiming privilege for items 1-8 of Production and 5-6 of Interrogatories, it also claims the discovery request for them is “overbroad and unduly burdensome.” These are mutually incoherent claims, given MSPB's failure to comply with the requirements to claim privilege for these documents. On one hand, MSPB is claiming it did not even try to locate these documents and information for these items because the request is “overbroad and burdensome,” while on the other it is claiming it examined each and determined they are privilege. Regardless, in appellant's opinion, MSPB has few, if any, responsive documents or information for these items and does not want to admit it.

Finally, appellant, based on “*Broida's Guide to MSPB Law and Practice*,” also understands that an objection to an interrogatory as being “overbroad and burdensome” needs to be accompanied by an affidavit by someone (other than counsel) who can state the degree of burden that would be

involved in preparing the response to the question and that it is the burden of MSPB, the party opposing discovery, to prove it through specifics rather than its generalized allegation of “overlybroad and burdensome.” No such affidavit accompanied MSPB’s objection of “overbroad and burdensome” for items 5-6 of the Interrogatories.

**MSPB's untimely objections to discovery based on claims it seeks “legal opinions” is inadequate.**

Appellant does not seek to compel discovery for items 10-13 and 15 of the Interrogatories, based on MSPB’s objection to them as “legal opinions.” However, he continues to seek item 14 of the Interrogatories as the information sought by it is not a “legal opinion,” but strictly factual.

**MSPB's untimely objections to discovery based on claims it is not “directly material” is inadequate**

In addition to claiming privilege for items 10 of Production and 17 of Interrogatories, MSPB claims they are not directly material to the appeal, because they involve a prior appeal. It is precisely because they involve a prior appeal involving the same underlying whistleblower disclosure in which MSPB did recuse per 5 CFR §1201.13, that they are both directly material to the recusal issue in this appeal and appellant continues to seek them in discovery.

**Appellant made a good-faith effort to prevent this motion**

Appellant sent an email to Mr. Leavitt on January 7, 2020, in which he made a good-faith attempt to discuss his then anticipated motion for issuance of a subpoena to compel discovery and a good-faith attempt to resolve the discovery dispute and narrow the areas of disagreement. As of this filing, no acknowledgment or response has been received. Tab G.

**Conclusion**

For all the above reasons, appellant respectfully request the MSPB AJ issue a subpoena against his top level supervisor in MSPB, Tristan Leavitt, for the still sought, directly material, discovery.

Respectfully,

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph Carson, PE, Pro Se  
10953 Twin Harbour Drive  
Knoxville, TN 37934

**Certificate of Service:** I certify I emailed this motion for issuance of a subpoena to MSPB’s General Counsel, Tristan Leavitt, at [tristan.leavitt@mspb.gov](mailto:tristan.leavitt@mspb.gov). I also copied MSPB’s general

email address at [mspb@mspb.gov](mailto:mspb@mspb.gov).

# Tab A



# U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the General Counsel  
1615 M Street, NW  
Washington, DC 20419-0002

Phone: (202) 653-7171; E-Mail: [officeofgeneralcounsel@mspb.gov](mailto:officeofgeneralcounsel@mspb.gov)

General Counsel

January 2, 2020

Joseph Carson  
10953 Twin Harbour Drive  
Knoxville, TN 37934

Dear Mr. Carson:

This letter responds to your December 5, 2019 request for information and records. I am denying your request pursuant to my authority under 5 C.F.R. § 1216.202.

The MSPB has issued regulations (enclosed) that govern the circumstances and manner in which an MSPB employee may respond to demands for the production of documents in a case in which the MSPB is not a party. The Supreme Court upheld these types of regulations in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

I have considered the factors enumerated in 5 C.F.R. § 1216.202, and have decided to deny your request for information and records, for the following reasons.

With regard to Items 1-10 listed in the document titled Appellant's First Request for Production of MSPB ("Production"), and Items 1-9 and 16-17 listed in the document titled Appellant's First Interrogatories of MSPB ("Interrogatories"), I find that the production of the information requested in the above-listed items would reveal confidential, sensitive, or privileged information relating to internal agency policy and decision-making processes, or other information that would be inappropriate for release. 5 C.F.R. § 1216.202(h). Such information is also privileged under the rules of discovery applicable to the underlying case. 5 C.F.R. § 1216.202(f); *see* 5 C.F.R. § 1201.72(b). I therefore deny these requests based on the factors listed in 5 C.F.R. §§ 1216.202(e), (f), and (h).

In denying the requests at Items 1-8 of Production and 5-6 of Interrogatories, I have also determined that these requests are overbroad and unduly burdensome on the MSPB. These requests seek "every record" or statement produced or created by the agency over a potential 40-year period. I therefore additionally deny these requests as unduly burdensome under 5 C.F.R. § 1216.202(f).

Items 10-15 of Interrogatories seek statements of legal opinion, and are therefore inappropriate under the applicable rules of discovery in the case in which the request

arose. I therefore deny these requests under 5 C.F.R. § 1216.202(f). Under the discovery rules governing MSPB appeals, discovery requests that are directed to nonparties and nonparty Federal agencies and employees are limited to information that appears directly material to the issues involved in the appeal. *See* 5 C.F.R. § 1201.72(b). I further deny the requests for information requested in Item 10 of Production and Item 17 of Interrogatories, because these requests seek information relating to a prior appeal and are not relevant to the pending matter for which the information is sought. I therefore deny each of these requests because they are inappropriate under the applicable rules of discovery in the case in which the request arose.

This constitutes the final determination on this request for information and records. 5 C.F.R. § 1216.206. This decision is a final agency action reviewable in a federal district court of competent jurisdiction under the Administrative Procedure Act. *See* 5 U.S.C. §§ 704, 706.

Sincerely,



Tristan L. Leavitt

Enclosures: MSPB regulations at 5 C.F.R. Part 1216

# Tab B

**UNITED STATES OF AMERICA  
UNITED STATES MERIT SYSTEMS PROTECTION BOARD  
ATLANTA REGIONAL OFFICE**

<b>JOSEPH P. CARSON,</b>	)
	)
	)Docket No.
	)
<b>Appellant</b>	)AT-1221-19-0536-W-2
	)
<b>v.</b>	)
	) <b>December 4, 2019</b>
	)
<b>DEPARTMENT OF ENERGY,</b>	)
	)
	)
	)
<b>Agency</b>	)
_____	)

**APPELLANT’S FIRST REQUEST FOR PRODUCTION OF MSPB**

**DEFINITIONS**

1.1 "Agency", or "you" or "your" or "yours" shall refer to and include the Merit Systems Protection Board (MSPB or Board) its employees, associates, investigators, attorneys, representatives, contractors, sub-contractors (to all levels), and all others who may have obtained information for or on behalf of those named above.

1.2

1.3 “DOE” refers to the U.S. Department of Energy its employees, associates, investigators, attorneys, representatives, contractors, sub-contractors (to all levels), and all others who may have obtained information for or on behalf of those named above

2. "Identify" or "state the identity of":

2.1. When used in reference to a natural person means: that person's full name, present or last known business address, present or last known business telephone number, present or last known email address, present or last known occupation, employer, and position and that person's occupation or position during the time relevant to the particular interrogatory.

2.2. When used in reference to an entity means: its full and complete name, its type of entity (i.e., corporation, partnership, unincorporated association, trade name, etc.), the location of its principal place of business, its mailing address, and its telephone number.

2.3. When used in reference to a document means: a description of the type of document, the identity of the person or persons who authored, prepared, signed, and received the document, the date, title, and general description of the subject matter of the document, present location or custodian of the original and each copy of the document, the identity of any persons who can identify the document, and if a privilege is claimed, the specific basis for such claim, in addition to the information set forth above.

3. The word "document" is used herein in its broader sense to mean every book, document or other tangible thing, including without limitation the following items, whether printed, typed, electronically recorded, photographed, filmed or reproduced by any process, namely: agreements, communications, letters, memoranda, magnetic tapes, computer readable material, business records, notes, reports, photographs, and/or summaries of investigations, drawings, corporate records, desk calendars, appointment books, and any other information containing papers, writings or physical things.

4. The word "describe", used in connection with any act, occurrence, or physical facts, shall include but not be limited to the following: the identity of every person known to have been involved in or to have witnessed the act or occurrence, the date or dates of any such act or occurrence, and a description of any documents, records, or things documenting or involved in such act, occurrence, or fact.

5. The word “Incident” shall mean the facts and circumstances set forth in the Complaint giving rise to this action.

## REQUEST FOR PRODUCTION

These requests for production are served upon you pursuant to Merit Systems Protection Board (MSPB) regulations at 5 CFR section 1201.71-85, which are based in the Federal Rules for Civil Procedure. You are required to respond to the following requests for production separately and fully in writing under oath, within the time permitted by the provisions of the MSPB regulations and to serve copies of your responses upon appellant or his representative (if he is represented). These requests for production are continuing and if at any time after you have responded to these requests for production, new or additional information responsive to any of these requests for production comes to your attention, you are required to furnish such new or additional production to this propounding party and serve upon all counsel for all parties supplemental answers to these interrogatories in accordance with the provisions of the Federal Rules of Civil Procedure and MSPB regulations.

These requests for production are to include and are to be based upon, information in the possession of or gathered by you, other agency officials, other contractor officials, your agents, servants, representatives, investigators, attorneys, and all other persons who have investigated or gathered information at your request or on your behalf.

You are advised that the propounding party understands the attorney client privilege and the attorney work product privilege. The propounding party is not seeking information which is truly attorney client or attorney work product privileged. However, your response will be considered insufficient and a motion to compel will be filed if you respond generally that the information sought is attorney client or attorney work product privileged. If in response to a particular request for production there is some information which is privileged and some information which is not privileged a general objection is not acceptable. The propounding party is seeking only non-privileged information and documents.

You are requested to respond to the following requests for production:

- 1 Every record created by the agency regarding its interpretation of 5 U.S.C. §1204(a)(3) by which it claims it can fail or refuse, for 40 years now, to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”
- 2 Every record created by the agency which might indicate it has an inherent conflict of interest in making this report - “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”
- 3 Every record of any differing professional opinion or employee concern about the agency’s failure or refusal to make this report -“report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”
- 4 Every record of any Congressional correspondence about the agency’s failure or refusal to make this report -“report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”
- 5 Every record created by the agency regarding its interpretation of its duty to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected” and how its interpretation meshes with the statutory duties of agency heads to “prevent PPPs” at §2302(c)(2)(A) and the duty of the President to “take any action necessary” to ensure the federal civil service “embodies” the merit principles, at §2301(c).
- 6 Every record created by the agency regarding the source of its requirement, cited at §1201.41 that both its administrative judges and full board adjudications be impartial.
- 7 Every record created by the agency regarding the source and application of its policy, cited in 5 CFR section 1201.13, to “insulate the adjudication of its own employee’s appeals from agency involvement as much as possible.”

- 8 Every record created by the agency regarding the source and application of its policy, cited in footnote 3 of its webpage “how a hearing is conducted” ([https://www.mspb.gov/studies/adverse\\_action\\_report/17\\_howhearing.htm](https://www.mspb.gov/studies/adverse_action_report/17_howhearing.htm)) which states an ALJ is used in a case where MSPB may inherently have a potential interest in the outcome.
- 9 Every record regarding the appellant’s motions and requests for the AJ to recuse in this appeal and the case be reassigned to an ALJ because MSPB has or may have an inherent interest in its outcome, specifically regarding whether the appellant has “reasonable belief” in his whistleblower disclosure against MSPB, that it has unlawfully failed or refused, for 40 years, to comply with its primary statutory duty for American health, safety, security and welfare, “to report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”
- 10 Every record regarding the assignment of appellant’s previous appeal, Carson v. MSPB, docket no. AT-1221-14-0637-W-1, to an ALJ, per Board policy and regulation at § 1201.13, even though the appellant is not a Board employee.

If you claim the attorney work product privilege for any document identify the author, date of creation, possessor of the original, possessor of each copy, describe the nature of the document, and explain the purpose of the creation of the document whether in anticipation of litigation or otherwise.

If you claim the attorney client privilege for any documents, other than correspondence to you from your lawyer, correspondence from you to your lawyer, and memoranda of conversations between you and your lawyer in which the only people present were you and your lawyer, for each such document identify the author, date of creation possessor of the original, possessor of each copy, describe the nature of the document, and explain the purpose of the creation of the document.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 4, 2019, I served the agency's Clerk with a copy of the within and foregoing pleading by email at clerk@mspb.gov

A copy of same will be placed in the United States Mail on December 5, 2019 in a properly addressed envelope with sufficient postage affixed thereto to ensure delivery and addressed to:

US Merit Systems Protection Board  
Attn: Clerk of the Board  
1615 M Street, NW  
Washington, DC 20419

/s/

Joseph Carson, PE  
Appellant  
10953 Twin Harbour Drive  
Knoxville, TN 37934  
865-300-5831

# Tab C

**UNITED STATES OF AMERICA  
UNITED STATES MERIT SYSTEMS PROTECTION BOARD  
ATLANTA REGIONAL OFFICE**

<b>JOSEPH P. CARSON,</b>	)
	)
	)Docket No.
	)
<b>Appellant</b>	)AT-1221-19-0536-W-2
	)
<b>v.</b>	)
	) December 4, 2019
	)
<b>DEPARTMENT OF ENERGY,</b>	)
	)
	)
	)
<b>Agency</b>	)
<hr/>	)

**APPELLANT’S FIRST INTERROGATORIES**  
**OF MSPB**

**DEFINITIONS**

- 1.1 "Agency", or "you" or "your" or "yours" shall refer to and include the Department of Energy, wherever located, including NNSA and FERC, its employees, associates, investigators, attorneys, representatives, contractors, sub-contractors (to all levels), and all others who may have obtained information for or on behalf of those named above.
  
- 2. "Identify" or "state the identity of":
  - 2.1. When used in reference to a natural person means: that person's full name, present or last known business address, present or last known business telephone number, present or last know email address, present or last known

occupation, employer, and position and that person's occupation or position during the time relevant to the particular interrogatory.

- 2.2. When used in reference to an entity means: its full and complete name, its type of entity (i.e., corporation, partnership, unincorporated association, trade name, etc.), the location of its principal place of business, its mailing address, and its telephone number.
- 2.3. When used in reference to a document means: a description of the type of document, the identity of the person or persons who authored, prepared, signed, and received the document, the date, title, and general description of the subject matter of the document, present location or custodian of the original and each copy of the document, the identity of any persons who can identify the document, and if a privilege is claimed, the specific basis for such claim, in addition to the information set forth above.
3. The word "document" is used herein in its broader sense to mean every book, document or other tangible thing, including without limitation the following items, whether printed, typed, electronically recorded, photographed, filmed or reproduced by any process, namely: agreements, communications, letters, memoranda, magnetic tapes, computer readable material, business records, notes, reports, photographs, and/or summaries of investigations, drawings, corporate records, desk calendars, appointment books, and any other information containing papers, writings or physical things.
4. The word "describe", used in connection with any act, occurrence, or physical facts, shall include but not be limited to the following: the identity of every person known to have been involved in or to have witnessed the act or occurrence, the date or dates of any such act or occurrence, and a description of any documents, records, or things documenting or involved in such act, occurrence, or fact.
5. The word "Incident" shall mean the facts and circumstances set forth in the Complaint giving rise to this action.

## **INTERROGATORIES**

These interrogatories are served upon you pursuant to Merit Systems Protection Board (MSPB) regulations at 5 CFR section 1201.71-85, which are based in the Federal Rules for Civil Procedure. You are required to answer the following interrogatories separately and fully in writing under oath, within the time permitted by the provisions of the MSPB regulations and to serve copies of your responses upon appellant or his representative (if he is represented). These interrogatories are continuing and if at any time after you have answered these interrogatories, new or additional information responsive to any of these interrogatories comes to your attention, you are required to furnish such new or additional information to this propounding party and serve upon all counsel for all parties supplemental answers to these interrogatories in accordance with the provisions of the Federal Rules of Civil Procedure and MSPB regulations.

These interrogatories, and answers hereto, are to include and are to be based upon, information in the possession of or gathered by you, your agents, servants, representatives, investigators, attorneys, and all other persons who have investigated or gathered information at your request or on your behalf.

You are advised that the propounding party understands the attorney client privilege and the attorney work product privilege. The propounding party is not seeking information which is truly attorney client or attorney work product privileged. However, your response will be considered insufficient and a motion to compel will be filed if you respond generally that the information sought is attorney client or attorney work product privileged. If in response to a particular interrogatory or request there is some information which is privileged and some information which is not privileged a general objection is not acceptable. The propounding party is seeking only non-privileged information and documents.

You are requested to respond to the following interrogatories:

- 1 Has MSPB ever determined “as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”

- 2 If so, when and what was its determination.
- 3 Does MSPB perceive it has an inherent conflict of interest in its duty to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”
- 4 Is the reason MSPB has not made complied with its duty to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected,” because it knows it would be negative - the public interest is not being adequately protected - and that would clearly imply MSPB is failing to “protect” the merit systems?
- 5 Has anyone in MSPB ever filed anything - a differing professional opinion, an employee concern, a grievance, anything - about MSPB’s failure or refusal to make this report?
- 6 Has Congress or GAO ever asked MSPB why it has not complied with its duty to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”
- 7 Did any of Administrative Judge Bohlen supervisors or anyone in its office of General Counsel - or anyone else in MSPB - direct, or encourage, him not to recuse in this appeal.
- 8 Did he discuss the motions and requests that he recuse with anyone in MSPB? If so, who and when?
- 9 Why did he not recuse, if not to cover-up MSPB’s failure or refusal to comply with its duty to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected”?
- 10 If OSC fails or refuses to report all its positive PPP determinations, then would not that hinder, if not preclude, MSPB from determining and “report

to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”

- 11 If OSC is failing or refusing to comply with aspects of its non-discretionary statutory duties in investigating PPP and reporting the results of its investigations, would that not require MSPB to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected?”
- 12 If agency heads cannot or will not state that they are complying with their statutory duty at §2302(c)(2)(A) to “prevent PPPs” because their employees are, by some objective measure, adequately protected from them, does that not require MSPB to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected?”
- 13 If the President cannot or will not state, per his statutory duty at §2301(c), that federal agency employment embodies the merit principles, does not require MSPB to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected?”
- 14 Does the Code of Conduct for US Judges set the standard for “impartiality” and “appearance of impartiality” at MSPB? If not, then what does?
- 15 How can an MSPB AJ adjudicate a case involving a significant whistleblower disclosure against MSPB without there being “reasonable questions of their impartiality?”
- 16 Why was this appeal not assigned to an ALJ, given MSPB’s policy of avoiding the appearance of inherent conflicts of interest in its adjudications?
- 17 Why was appellant’s previous appeal - involving the same underlying whistleblower disclosure, the failure or refusal of MSPB to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected,”

assigned to an ALJ, even though the appellant is not an employee of MSPB, see Carson v. MSPB, docket no. AT-1221-14-0637-W-1

If you claim the attorney work product privilege for any document identify the author, date of creation, possessor of the original, possessor of each copy, describe the nature of the document, and explain the purpose of the creation of the document whether in anticipation of litigation or otherwise.

If you claim the attorney client privilege for any documents, other than correspondence to you from your lawyer, correspondence from you to your lawyer, and memoranda of conversations between you and your lawyer in which the only people present were you and your lawyer, for each such document identify the author, date of creation possessor of the original, possessor of each copy, describe the nature of the document, and explain the purpose of the creation of the document.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 4, 2019, I served the agency's Clerk with a copy of the within and foregoing pleading by email at clerk@mspb.gov

A copy of same will be placed in the United States Mail on December 5, 2019 in a properly addressed envelope with sufficient postage affixed thereto to ensure delivery and addressed to:

US Merit Systems Protection Board  
Attn: Clerk of the Board  
1615 M Street, NW  
Washington, DC 20419

/s/

Joseph Carson, PE  
Appellant  
10953 Twin Harbour Drive  
Knoxville, TN 37934  
865-300-5831

# Tab D

**joseph carson**

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**From:** Leavitt, Tristan <Tristan.Leavitt@mspb.gov>  
**Sent:** Wednesday, December 4, 2019 2:54 PM  
**To:** joseph carson  
**Cc:** Office of General Counsel  
**Subject:** RE: Joe Carson discovery request of MSPB

Mr. Carson:

I received your attached request for production of documents and other information from the MSPB. Requests for information from the MSPB and its employees for use in a legal or administrative proceeding in which the MSPB is not a named party are governed by 5 C.F.R. Part 1216. See 5 C.F.R. 1216.102.

Accordingly, to have your requests considered by the MSPB, you must comply with the service requirements set forth in 5 C.F.R. 1216.204. Your request must also comply with the requirements of 5 C.F.R. 1216.203.

Because your request has not been properly served under Section 1216.204, and does not include the information required by Section 1216.203, the MSPB is unable to consider it at this time.

Regards,  
Tristan Leavitt  
*General Counsel/Acting Chief Executive and Administrative Officer*  
*U.S. Merit Systems Protection Board*  
*1615 M Street, NW*  
*(202) 653-7200*

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**From:** joseph carson [mailto:jpcarson@tds.net]  
**Sent:** Tuesday, December 03, 2019 9:42 PM  
**To:** Leavitt, Tristan  
**Subject:** Joe Carson discovery request of MSPB

Mr. Leavitt,

I am certainly willing to discuss these with you or others at MSPB to try to avoid motions to compel.

Joe Carson, PE  
Knoxville, TN  
865-300-5831

# Tab E

## Part 1216 Discovery Request for Documents and Information in Legal Proceedings

December 4, 2019

Clerk of the Board  
MSPB  
1615 M St, NW  
Washington, DC 20419-0002

**Via:** email and postal mail

Dear Clerk of the Board,

Attached to this request is a discovery request for production of documents and interrogatories for my pending appeal at MSPB's Atlanta Regional Office, Carson v. Department of Energy, docket no. AT-1221-19-0536-W-2.

To provide the information listed at 5 CFR §1216.203

- 1) MSPB, Atlanta Regional Office (as can be determined by the docket no.)
- 2) As the docket no. indicates, it's a whistleblower reprisal appeal. All the filings for the appeal are available at the Board's e-filing system.
- 3) See attached discovery requests: 1) request for production, and 2) interrogatories
- 4) To my knowledge, I seek no confidential records. In my IRA appeal, I need to demonstrate "reasonable belief" in my whistleblower disclosure against MSPB. The AJ denied my motion to certify an interlocutory appeal about his failure or refusal to disqualify himself on the grounds of their being "reasonable questions about his (as anyone else in the Board) impartiality." I see the information about his not doing so to present at part of an appeal to a reviewing Court, as well as to share with Congress and the media, because I suspect his actions were directed by his supervisors and/or MSPB's General Counsel, because the last thing the Board wants is a fair and impartial determination of my reasonable belief in my whistleblower disclosure against the Board.
- 5) To the best of my knowledge, this information is not available from another source.
- 6) I do not seek to depose anyone at the Board, nor seek the testimony of any Board employee.
- 7) I have been pursuing an objective resolution of my whistleblower disclosure against MSPB for over 15 years, as my personal, post 9/11, mission. I have been in regular litigation with the

Board about my whistleblower disclosure, yet it remains unresolved, due to the Board's steadfast efforts to prevent it, in my opinion. So the previous litigation is not relevant, my whistleblower disclosure remains unresolved.

8) I am pro se. My name, address and phone are:

Joseph Carson, PE  
10953 Twin Harbour Drive  
Knoxville, TN 37934  
865-300-5831  
jpcarson@tds.net

The agency representative contact information is:

Kristopher Muse  
Department of Energy  
Oak Ridge Office  
Office fo Chief Counsel  
PO Box 2001  
Oak Ridge, TN 37831  
kristopher.muse@science.doe.gov  
865-576-1217

9) N/A, no MSPB employee testimony is sought

Respectfully,

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph Carson, PE  
10953 Twin Harbour Drive  
Knoxville, TN 37934  
865-300-5831  
jpcarson@tds.net

# Tab F

**joseph carson**

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**From:** joseph carson <jpcarson@tds.net>  
**Sent:** Monday, December 30, 2019 12:26 AM  
**To:** 'tristan.leavitt@mspb.gov'; 'mspb@mspb.gov'  
**Subject:** Carson v. DOE; AT-1221-19-0536-W-2; discovery requests on MSPB  
**Attachments:** appellant-opposition-osc-stay-discovery.pdf

Dear MSPB,

Per 5 CFC 1201.73(c) and (d)(3), I wish to resolve/prevent disputes over discovery. The attached document reflects my view of my discovery request of MSPB – to extent it is “directly material” to the Board’s pending jurisdictional determination, I seek it. To extent it is not directly material to that determination, I am willing to stay it.

Respectfully,

Joe Carson, PE  
Knoxville, TN  
865-300-5831

# Tab G

**joseph carson**

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**From:** joseph carson <jpcarson@tds.net>  
**Sent:** Tuesday, January 7, 2020 10:42 PM  
**To:** 'Leavitt, Tristan'; 'MSPB'  
**Subject:** Joe Carson discovery request and requirements 5 CFR section 1201.73(c)(ii), AT-1221-19-0536-W-2.

Dear Mr. Leavitt,

By 5 CFR section 1201.73(c)(ii), I must discuss or attempt to discuss my anticipated motion for issuance of subpoena for discovery against MSPB, based on its untimely, and, I contend, inadequate response of January 2, 2020. To the extent it is in my control, I must make a good-faith effort to resolve the discovery dispute and narrow the areas of disagreement.

Per that requirement, I no longer seek responses to interrogatories 10-13 and 15. I am willing to discuss and make a good faith effort with any appropriate person at MSPB to narrow the scope of items 1-9 of Production and items 5-6 of Interrogatories and make them less burdensome.

I am willing to discuss and make a good faith effort to understand why you determined that item 10 of production and item 17 of Interrogatories are directly material to my appeal and, if warranted, drop or amend these items.

With respect to your claims of privilege for items 1-10 of Production and 1-9 and 15-16 of Interrogatories, because your letter does not comply with the requirements of Rule 26(5)(A)(ii) of the Federal Rules of Civil Procedure to:

*“describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”*

Because it does not, I cannot, at this point, make a good-faith assessment of the privilege claims and modify, as warranted, my discovery requests.

I am certainly open to other ideas, such as what I suggested in my letter to your of January 5, 2020, to resolve the discovery dispute.

Respectfully,

Joe Carson, PE  
865-300-5831  
Knoxville, TN