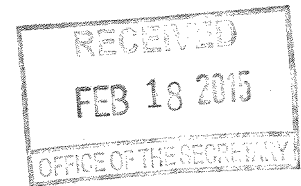


UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION



In the Matter of

THOMAS A. NEELY, JR.

Respondent.

Admin. Pro. File No. 3-15945

**REGIONS FINANCIAL CORPORATION AND REGIONS BANK'S  
OPPOSITION TO RESPONDENT'S MOTION REQUESTING  
ISSUANCE OF SUBPOENA**

Regions Financial Corporation and Regions Bank (collectively, "Regions"), by and through their undersigned counsel, hereby oppose Respondent Thomas A. Neely, Jr.'s ("Neely" or "Respondent") Motion Requesting Issuance of Subpoena ("Motion") and respectfully request that the Administrative Law Judge refuse to issue the Subpoena. Because Respondent's request is overly broad and seeks irrelevant, private, confidential, and proprietary information, the Motion should be denied. In further opposition to the Motion, Regions states as follows:

**I. Personnel Files Generally Are Not Discoverable Because They Contain Confidential Information About Both Employees and Employers.**

As a general rule, personnel files are not discoverable because they implicate important privacy interests of employees and confidential and proprietary affairs of employers. As to employees, personnel files "commonly contain addresses, phone

numbers, income information, medical histories, employment discipline, criminal records, and other sensitive, personal information.” *Raddatz v. Standard Register Co.*, 177 F.R.D. 446, 447 (D. Minn. 1997); *see also Whittingham v. Amherst College*, 164 F.R.D. 124, 127 (D. Mass. 1995) (“[P]ersonnel files contain perhaps the most private information about an employee within the possession of an employer.”). Because these files “often contain sensitive personal information,” courts have been “cautious about ordering their entire contents disclosed willy-nilly.” *Touhy v. Walgreen Co.*, 526 F.3d 641, 648 (10th Cir. 2008); *see also Fullbright v. State Farm Mut. Auto. Ins. Co.*, No. CIV-09-297-D, 2010 WL 300436, at \*2 (W.D. Okla. Jan. 20, 2010); *Ex parte Liberty Mut. Ins. Co.*, 92 So. 3d 90, 101 (Ala. Civ. App. 2012) (“We agree . . . that information contained in personnel files is generally deemed to be private and protected from disclosure.”). This is especially so because the information in personnel files often has “little or no relevancy to the issues” in a case. *Raddatz*, 177 F.R.D. at 447.

The employee’s privacy interests are especially strong when, as here, the request seeks personnel files of nonparties. In these circumstances, courts have been particularly sensitive to objections to the production of personnel files because disclosure risks “a clearly defined, serious, and unnecessary injury to the privacy of the employee who is not a party to the lawsuit.” *Id.* Whether the injury is “emotional,” “economic,” or merely “embarrassing,” it is unfair to inflict that

hardship on someone who is not even a party to the dispute. *Id.*; see also *Gehring v. Case Corp.*, 43 F.3d 340, 342 (7th Cir. 1994).

As to the employer, personnel files contain confidential and proprietary information about the company's business model and internal affairs. For example, the personnel files at issue here contain Regions's evaluations of its employees. Regions performs these evaluations in large part to help its employees perform their job more proficiently. The upshot is that the evaluations often relate confidential and proprietary information about the company's affairs. Moreover, the employer has an interest in the ability to communicate candidly, and that ability is premised on an expectation of confidentiality.

Because of these important interests, public policy strongly cautions against the disclosure of personnel files. See, e.g., *Coker v. Duke & Co.*, 177 F.R.D. 682, 685 (M.D. Ala. 1998) (noting the "strong public policy against the discovery of personnel files"); *In re One Bancorp Sec. Litig.*, 134 F.R.D. 4, 12 (D. Me. 1991) ("There exists a strong public policy against disclosure of personnel files."); *Ex parte Liberty Mut. Ins. Co.*, 92 So. 3d 90, 102 (Ala. Civ. App. 2012) (same). Respondent's Subpoena is in direct contravention of this well-settled policy.

## **II. Respondent's Tenuous Showing of Relevancy Does Not Outweigh the Important Privacy and Proprietary Interests in Personnel Files.**

Respondent cannot satisfy his burden to overcome the general rule against disclosure of personnel files. To justify disclosure of the files, Respondent must

make two showings: that the files are “clearly relevant” and that the “need for discovery is compelling because the information sought is not otherwise readily obtainable.” *In re Sunrise Sec. Litig.*, 130 F.R.D. 560, 580 (E.D. Pa. 1989); *Ex parte Liberty Mut. Ins. Co.*, 92 So. 3d at 102. Because of the privacy interests at stake and the proprietary information contained within personnel files, “[g]eneral allegations . . . do not suffice to render these records discoverable.” *Ex parte Liberty Mut. Ins. Co.*, 92 So. 3d at 102. Instead, Respondent must “make an initial fact-specific showing” concerning the need for the records. *Id.* Here, Respondent’s burden is even higher than the ordinary standard because he seeks discovery related to nonparties. *See, e.g., Zukoski v. Phil. Elec. Co.*, No. C.V.A. 93-4780, 1994 WL 637345, at \*3 (E.D. Pa. Nov. 14, 1994) (“It is a generally accepted rule that standards for non-party discovery require a stronger showing of relevancy than for party discovery.”).

Respondent fails to make either required showing. First, Respondent fails to establish that the personnel files are “clearly relevant.” *In re Sunrise Sec. Litig.*, 130 F.R.D. at 580. Neely states that he “believes” that “there will be conflicting testimony by some of the witnesses in this matter, thereby making the credibility of the witness a critical component in the hearing,” Motion at 1-2, but courts have specifically rejected the blanket proposition that a party is entitled to personnel files for potential witnesses. *See Hicks v. Kan. Masonic Home*, No. 97-1307-MLB,

1998 WL 173197, at \*2 (D. Kan. Mar. 5, 1998) (“[T]he mere fact that a person may be a witness in a case does not automatically warrant access to their personnel file.”); *Haselhorst v. Wal-Mart Stores, Inc.*, 163 F.R.D. 10, 11 (D. Kan. 1995) (“[T]he court finds that a blanket request for personnel files of any potential witness or other employee whose name is mentioned in discovery is unwarranted.”). Moreover, Neely’s speculations are far too general to amount to the “fact-specific showing” required to justify the disclosure of the files. *Ex parte Liberty Mut. Ins. Co.*, 92 So. 3d at 102. His broad request is instead an improper fishing expedition. *See, e.g., Fair Housing Center of the Greater Palm Beaches v. High Point of Delray Condo. Ass’n*, 2006 WL 8066685, at \*3 (S.D. Fla. Oct. 23, 2006) (rejecting a request for a subpoena of a witness’s personnel file because “it [wa]s clear” that the request sought the file “in order to go on a fishing expedition for information with which to impeach him as a witness” with “no factual basis for believing that such impeachment evidence will be found in his file”).

Second, Respondent does not so much as allege—much less make a sufficient showing—that “the information sought is not otherwise readily obtainable.” *In re Sunrise Sec. Litig.*, 130 F.R.D. at 580. Respondent cannot justify disclosure of personnel files with “only a general showing of relevance and no showing as to why the material which [he] seek[s] is not available from other sources.” *Coker*, 177 F.R.D. at 685. Respondent’s bare assertions simply do not

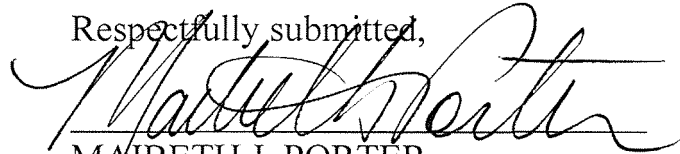
satisfy his burden to show that “the value of the information sought would outweigh the privacy interests of the affected individuals.” *Onwuka v. Fed. Express Co.*, 178 F.R.D. 508, 517 (D. Minn. 1997).

Likewise, Respondent fails to demonstrate a need for “[a]ll internal and/or external job postings describing associated duties and experience required for positions” from 2008 through 2010 for Regions employees. Motion at Exhibit A, p. 5 (Request 2). Respondent makes the conclusory assertion that these documents “will aid in the determination of credibility by providing an unbiased evaluation of employee performance and reveal whether any disciplinary action against the employee was necessary,” Motion at 2, but that rationale makes no sense. “[I]nternal and/or external job postings” do not include employee evaluations or disciplinary actions, and Respondent fails to provide any other reason for their disclosure. Because the request seeks irrelevant and proprietary information, it also should be denied.

## **CONCLUSION**

For the reasons stated above, Regions respectfully requests that the Administrative Law Judge refuse to issue the Subpoena as described in Respondent’s Motion Requesting Issuance of Subpoena.

Respectfully submitted,



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