

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**JENNIFER HARLESS,
Grievant,**

v.

Docket No. 2024-0802-DOA

**DEPARTMENT OF ADMINISTRATION/
OFFICE OF TECHNOLOGY,
Respondent.**

DECISION

Grievant, Jennifer Harless, is employed by Respondent, Department of Administration within the Office of Technology (“WVOT”). On May 23, 2024, Grievant filed this grievance against Respondent stating, “Failure to make accommodations under the Americans with Disabilities Act. Denied representation and mention of any specific disciplinary action. I was reprimanded for a data breach. Harassment. Retaliation.” As relief, Grievant requested, “To be made whole in every way including extensive training on all disabilities cover[ed] under the ADA, as well as harassment and discrimination training.”

On April 16, 2025, the chief administrator waived the grievance to level two of the grievance process. On July 31, 2025, Respondent, by counsel, filed a motion to dismiss. By order entered October 7, 2025, the undersigned dismissed Grievant’s claims relating to disability as the Grievance Board lacks jurisdiction to hear the same and allowed the requested relief to be amended to request that the written reprimand be removed.

Following mediation, Grievant appealed to level three of the grievance process on November 3, 2025. A level three hearing was held on May 19, 2026, before the undersigned at the Grievance Board’s Charleston, West Virginia office. Grievant in person and self-represented. Respondent appeared by Chief Information Officer (“CIO”)

Heather D. Abbott and was represented by counsel, Mark S. Weiler, Assistant Attorney General. This matter became mature for decision on June 17, 2026, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

At the time of the filing of the grievance, Grievant was employed by Respondent as a Human Resources Assistant. Grievant protests a written reprimand asserting she did not violate policy and that the level of discipline was not justified. Respondent proved Grievant violated policy and a signed confidentiality agreement and that a written reprimand was justified. Accordingly, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. At the time of the filing of the grievance, Grievant was employed by Respondent as a Human Resources Assistant.
2. On May 8, 2024, Grievant inadvertently posted a detailed payroll report to WVOT's internal website Career Opportunities page. The report contained the name, OASIS id number, employee and employer deductions, leave, pay, and overtime information for each of Respondent's 214 employees. R. Ex. 1 & 2.
3. The report appeared on the website when Grievant saved the report into a shared folder that caused it to appear on the website. R. Ex. 2.
4. The report was posted to the website for approximately twelve hours before it was discovered and removed. R. Ex. 4.

5. The website is accessible only to WVOT's employees and a few other public information employees. R. Ex. 2.

6. Only one employee accessed the report before it was discovered and removed from the website. The employee did not share or copy the report. R. Ex. 2.

7. The Department of Administration's Confidentiality Agreements policy requires each employee to sign a confidentiality agreement. R. Ex. 6.

8. The Employee Confidentiality Agreement defines confidential information as follows:

Confidential information includes, but is not limited to, any information or data that is not public, or information the release of which is protested or regulated by statute, rule or policy. Some examples of Confidential Information include, but are not limited to" Personally Identifiable Information (PII); demographic information; medical information; financial information;...internal personnel matters;...and any information that the improper release thereof would or might constitute an invasion of privacy for the individual concerned....

R. Ex. 6.

9. Confidential information can only be used or disclosed "in the official capacity of employment," or "in the context of a legitimate work situation and/or...with staff who are known by me to have prior authorization by my superior to have access to the data." R. Ex. 6.

10. By her signature on April 28, 2015, Grievant certified that she understood and would abide by the confidentiality agreement. R. Ex. 6.

11. Respondent also requires that all employees complete yearly training on confidentiality. Test. Abbott.

12. Respondent was required to report the disclosure of information to the State Privacy Office, which investigated the incident.

13. WVOT's General Counsel was required to file a Post incident Response Assessment and to obtain a Confidentiality and Non-Disclosure Statement from the employee who accessed the report. R. Ex. 4 & 5.

14. WVOT determined that it was not required to notify its employees that their information had been posted to the website as the information had only been accessed by one employee who was already subject to a confidentiality agreement and who was required to agree to the additional Confidentiality and Non-Disclosure Statement.

15. Grievant acknowledged she had made a "huge mistake" and apologized. R. Ex. 8.

16. On May 13, 2024, Human Resources Manager Rebecca S. Ferrell issued Grievant a written reprimand for a "data breach" for placing the payroll report into the incorrect folder, which resulted in the report posting to the internal website.

17. Respondent requires employees to display a photograph of the employee as the employee's Google profile photo. G. Ex. 1.

18. In response to Grievant's Freedom of Information Act request, CIO Abbott attached Grievant's Position Description Form, which included the last four digits of Grievant's social security number. G. Ex. 2.

19. Respondent mailed holiday cards to employees at their home addresses and Grievant protested the sharing of her home address to do so. G. Ex. 3, Test. Grievant.

Discussion

The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. W.VA. CODE ST. R. § 156-1-3 (2018). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id.*

Respondent asserts the written reprimand was justified for Grievant's violation of policy and confidentiality agreement. Grievant admits she made a clerical error but argues there was no "data breach" because the records she disclosed were public records. Grievant further argues the written reprimand was not justified because the incident was classified as "low-risk" by Respondent and because Respondent disclosed employees' Personally Identifiable Information in other contexts.

Grievant argues there was no "data breach" because the records she disclosed were public records, citing *Manns v. City of Charleston Police Dep't*, 209 W. Va. 620, 550 S.E.2d 598 (2001). *Manns* related to a Freedom of Information Act ("FOIA") request for civil and criminal complaints against police officers and was later applied specifically to public employee payroll records in *In re Gazette FOIA Request*, 222 W. Va. 771, 671 S.E.2d 776 (2008). *In re Gazette* applied the following test:

"In deciding whether the public disclosure of information of a personal nature under W.Va.Code § 29B-1-4[a](2) (1980) would constitute an unreasonable invasion of privacy, this Court will look to five factors:

1. Whether disclosure would result in a substantial invasion of privacy and, if so, how serious.

2. The extent or value of the public interest, and the purpose or object of the individuals seeking disclosure.
3. Whether the information is available from other sources.
4. Whether the information was given with an expectation of confidentiality.
5. Whether it is possible to mould relief so as to limit the invasion of individual privacy.' Syllabus Point 2, *Child Protection Group v. Cline*, 177 W.Va. 29, 350 S.E.2d 541 (1986)." Syllabus Point 4, *Manns v. City of Charleston Police Dept.*, 209 W. Va. 620, 550 S.E.2d 598 (2001).

Syl. Pt. 5, 222 W. Va. At 773, 671 S.E.2d at 778.

This case does not involve a FOIA request but rather Grievant's careless disclosure of payroll records on a website. Grievant disclosed Personally Identifiable Information, financial information, and information that "might constitute an invasion of privacy." *In re Gazette* did not determine that public employees have no right to privacy regarding payroll information; the Court simply found that the invasion of privacy was not "substantial" and that the FOIA request sought the information "for a valuable public interest." See, 222 W. Va. At 783, 671 S.E.2d at 788. Grievant was required by Respondent's confidentiality policy and her agreement to keep the payroll records in confidence. She could only share such information "in the context of a legitimate work situation and/or...with staff who are known by me to have prior authorization by my superior to have access to the data." While Respondent may be required to disclose the payroll information under *In re Gazette* if a proper FOIA request was received, there was no required or legitimate reason or valuable public interest for Grievant to disclose the payroll information on the website. Therefore, Respondent proved Grievant violated Respondent's confidentiality policy and her confidentiality agreement.

Grievant further argues the written reprimand was not justified because the incident was classified as “low-risk” by Respondent and because Respondent’s disclosure of employees’ Personally Identifiable Information in other contexts. That the breach was classified as “low-risk” does not negate Respondent’s justification for reprimanding Grievant. A written reprimand is a lesser form of discipline. Respondent considered the nature of the breach when determining to issue a lesser form of discipline.

Grievant asserts Respondent “condon[es] executive-level external breaches and insitutionaliz[es] the widespread sharing of Personally Identifying Information.” These assertions are not supported by the three examples Grievant submitted as evidence: requiring employees to display a photograph of the employee as the employee’s Google profile photo, Director Abbott’s inclusion of the last four digits of Grievant’s social security number in an email to Grievant, and mailing holiday cards to employees’ home address. Director Abbot did not violate confidentiality provisions by sharing the last four digits of Grievant’s own social security number with Grievant. Requiring employees to display a photograph to identify themselves is a disclosure proper in the official capacity of employment. While the mailing of holiday cards to employees at their home address is a gray area, the disclosure of address information would be to the employee/employees preparing the mailing in the capacity of their employment. Respondent did not explain the holiday cards, but such activities are generally considered employee morale initiatives, which would be considered a “legitimate work situation” for purposes of the confidentiality agreement. Even if it could be said that the holiday card mailing was not a “legitimate work situation,” it is not comparable to Grievant’s negligent sharing of multiple types of sensitive information to the website.

Grievant violated Respondent's policy and the confidentiality agreement she signed, which resulted in significant work by administrative staff to document, report, and mitigate the incident. Grievant was aware of her responsibilities and carelessly violated the same. Respondent proved it was justified in issuing Grievant a written reprimand.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. W.VA. CODE ST. R. § 156-1-3 (2018). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id.*

2. *In re Gazette* applied the following test to determine whether public employee payroll information must be disclosed pursuant to a Freedom of Information Act request:

"In deciding whether the public disclosure of information of a personal nature under W.Va.Code § 29B-1-4[a](2) (1980) would constitute an unreasonable invasion of privacy, this Court will look to five factors:

1. Whether disclosure would result in a substantial invasion of privacy and, if so, how serious.
2. The extent or value of the public interest, and the purpose or object of the individuals seeking disclosure.
3. Whether the information is available from other sources.
4. Whether the information was given with an expectation of confidentiality.
5. Whether it is possible to mould relief so as to limit the invasion of individual privacy.' Syllabus Point 2, *Child*

Protection Group v. Cline, 177 W.Va. 29, 350 S.E.2d 541 (1986)." Syllabus Point 4, *Manns v. City of Charleston Police Dept.*, 209 W. Va. 620, 550 S.E.2d 598 (2001).

Syl. Pt. 5, 222 W. Va. At 773, 671 S.E.2d at 778.

3. Respondent proved it was justified in issuing a written reprimand to Grievant for violation of the confidentiality policy and confidentiality agreement.

Accordingly, the grievance is **DENIED**.

"The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed." W. VA. CODE § 6C-2-5(a) (2024). "An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure." W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b) (2024).

DATE: July 28, 2026

Billie Thacker Catlett
Chief Administrative Law Judge