Issue: Group III Written Notice with termination (failure to follow established written policy); Hearing Date: 07/11/06; Decision Issued: 07/19/06; Agency: DOC; AHO: Carl Wilson Schmidt, Esq.; Case No. 8370; Outcome: Agency upheld in full; **Administrative Review: HO Reconsideration Request received 08/03/06; Reconsideration Decision issued 10/06/06; Outcome: Original decision affirmed; Administrative Review: EDR Ruling Request received 08/03/06; EDR Ruling No. 2007-1414 issued 11/14/06; Outcome: HO's decision affirmed; Administrative Review: DHRM Ruling Request received 08/03/06; DHRM Ruling issued 01/11/07; Outcome: HO's decision affirmed.**

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8370

Hearing Date: July 11, 2006
Decision Issued: July 19, 2006

PROCEDURAL HISTORY

On April 26, 2006, Grievant was issued a Group III Written Notice of disciplinary action with removal for creating a site on myspace.com containing the Agency's logo and referencing confidential case information. The Agency also alleged Grievant accessed the website from work contrary to policy.

On April 28, 2006, Grievant timely filed a grievance to challenge the Agency's action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On June 5, 2006, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On July 11, 2006, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee
Agency Advocate
Witnesses

ISSUE

1. Whether Grievant engaged in the behavior described in the Written Notice?

2. Whether the behavior constituted misconduct?

3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense)?

4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

The Department of Corrections employed Grievant as a Probation and Parole Officer at one of its Facilities. She had been employed by the Agency since November 26, 1999. No evidence of prior disciplinary action against Grievant was presented during the hearing.

Myspace.com is a website permitting individuals to create profiles and place information about themselves or their interests on their profile page. Once a user creates a profile, he or she can invite other users of myspace to "join" his or her profile by adding pictures and links to the user's profile. Users creating profiles on myspace form a "community" to share photographs, journals, and comments. A user can create more than one profile.

Grievant created a personal profile on myspace.com. She noticed that there was no specific profile on myspace.com devoted to probation and parole officers so she decided to create one. On the first or "home" page of the profile, Grievant placed a copy of the Department of Corrections logo. It appears in the form of a patch. The top

line is “VIRGINIA.” The second line is “DEPARTMENT OF.” A copy of the Great Seal of Virginia appears as the third line. The fourth line is “CORRECTIONS.”

Grievant knew that Ms. KM and an Intern working at the Facility also had myspace.com profiles so she invited them to join the probation and parole officer’s group. They did so.[1] As of March 21, 2006, approximately 35 myspace.com users had joined the probation and parole officer’s group. Once they joined, a copy of their photographs from their profile pages and their screen names were placed on the probation and parole group page.

Access to the information on the probation and parole officers page was not limited to members of myspace.com. Anyone with access to the internet could also read Grievant’s probation and parole officers page. If a viewer clicked on the picture of one of the 35 members, the viewer could see the separate profile created by that member. Grievant could control who became a member of the probation and parole officers page, but she could not control what information a member placed on his or her own profile page.

Between December 19, 2005 and April 6, 2006, Grievant used her Agency laptop computer to access myspace.com 185 times including 46 times to login to the site. Of the total number of times Grievant accessed or logged into the site, 171 were between the hours of 8:15 a.m. and 5 p.m.

Grievant posted comments on the site about active cases in which she was involved. Some of the comments described the comments made by victims and family members of offenders for whom she was supervising. For example, Grievant wrote:

> **Message**
>
> **Posted: Jan 3, 2006 10:47 pm**
>
> So last week I received a call at my office from the victim of one of my offenders. He beat her and was picked up and charged for his 3rd A&B on her. She wanted to know if there was anything she or “we” could do to get him out. Then this week I get a call from a father of another one of my guys. He wants to know if there is anything I can do to help his son, who was arrested for assaulting him and his property a couple of weeks ago.
>
> Now what I really want to say is HELL to the NAH!!!! With the first caller I simply advised her to use this time wisely and get some help for herself while her man is locked up. Further, I told her that he would not be allowed to deal with her upon release (IF he is released.) She cried, she blamed herself, she said she pushed him too far by getting angry when he

[1] The Agency removed the Intern from employment and issued a Group I Written Notice to Ms. KM for participating in the probation and parole officers group.

broke and item that meant a lot to her. I found some way to remind her that this is why the Commonwealth takes the burden of prosecution out of the victim's hands in these cases…so that the Police don't end up doing their jobs in vain all the time. She knows there is a possibility that she will end up dead someday but "he's got a good heart."

I told the 2nd caller that he is free to do all the footwork he likes to find a place to get his adult son out of jail and into "rehab." As for my office; we've done all we can do for the offender by the time he's locked up.

When I 1st started my job I hoped to help at least 1 probationer/parolee find a better way of life. By the end of my first year, I realized that what I was really doing was protecting the rest of the community from my probationers/parolees – or at least trying…and when I do their families spit on me for it…even when they are the victims.

[*Another member posted a response*]

Posted: Jan 5, 2006 8:17 pm

My degree is in Social Work and prior to becoming a PO, I worked at a crisis intervention center for about 6 years. With that and life experience (more barbed wire than white picket fences) I am quite aware of the stages/how long it takes – if ever – for someone to realize she/he needs to get out of a dangerous situation. That's why I took the time to talk to the 1st caller about getting help for herself while her main is in jail. She had already admitted to being an "alcoholic, an enabler and codependant." She's not my probationer, so I could only say but so much. What I did tell her was to work on herself, it's not her fault and that she did not deserve what happened to her. I also told her there was no use in trying to get him out because I was not going to allow him to see her again. (Note: They aren't married & don't have any children together – thank GOD).

With dear old dad – if he felt that he should be the disciplinarian, he should not have called the Police. It's like crying wolf…"I want you to come now because my son is being psycho but I want you to let him out of jail as soon as he calms down."

The joy of it all is that I don't have to decipher either one of these callers, I was just kinda venting. I don't even have to talk to them if I don't want to. Since I deal with adult offenders, I have no obligation to work with family members. In fact, the offender has to give consent for most info. to be discussed with anyone – even family.

In March 2006, the Chief Probation Officer at the Facility received a telephone call from an employee at another probation and parole facility. The caller asked the

Chief Probation Officer if he knew about the probation and parole officer's myspace.com group and whether his staff had any involvement in the group. The caller knew Grievant's nickname and the nickname appeared as part of the two-word pseudonym Grievant used when accessing and posting on the probation and parole officers group. The Chief Probation Officer began questioning Grievant. She ultimately admitted she was the individual behind the group.

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three groups, according to the severity of the behavior. Group I offenses "include types of behavior less severe in nature, but [which] require correction in the interest of maintaining a productive and well-managed work force."[2] Group II offenses "include acts and behavior that are more severe in nature and are such that an accumulation of two Group II offenses normally should warrant removal."[3] Group III offenses "include acts and behavior of such a serious nature that a first occurrence normally should warrant removal."[4]

The Agency combined several separate offenses into one offense. One of the separate offenses is sufficient to support issuance of a Group III Written Notice with removal. The Hearing Officer will discuss each offense individually.

Great Seal of Virginia

The Probation and Parole image Grievant placed on the website contained the Great Seal of Virginia.[5] The Great Seal of Virginia is the property of the Commonwealth of Virginia and "no persons shall exhibit, display, or in any manner utilize the seals or any facsimile or representation of the seals of the Commonwealth for nongovernmental purposes unless such use is specifically authorized by law."[6] When Grievant placed the image of the Great Seal of Virginia on her website she used the property of the

[2] Virginia Department of Corrections Operating Procedure 135.1(X)(A).

[3] Virginia Department of Corrections Operating Procedure 135.1(XI)(A).

[4] Virginia Department of Corrections Operating Procedure 135.1(XII)(A).

[5] See, Va. Code § 1-500.

[6] Va. Code § 1-505.

Commonwealth of Virginia without authorization.[7] "[U]nauthorized use or misuse of state property …" is a Group II offense.[8]

Use of Internet

DHRM Policy 1.75 permits State employees to use the internet for personal use within certain parameters as follows:

> Personal use means use that is not job-related. In general, incidental and occasional personal use of the Commonwealth's Internet access or electronic communication systems is permitted; however, personal use is prohibited if it:
>
> - interferes with the user's productivity or work performance, or with any other employee's productivity or work performance;
> - adversely affects the efficient operation of the computer system;
> - violates any provision of this policy, any supplemental policy adopted by the agency supplying the Internet or electronic communication systems, or any other policy, regulation, law or guideline as set forth by local, State or Federal law. (See Code of Virginia §2.1-804-805; §2.2-2827 as of October 1, 2001.)

The Agency has not presented sufficient evidence to establish that Grievant's use of the internet exceeded incidental or occasional use. Although Grievant accessed the internet approximately 171 times during work hours, the amount of time she spent on the internet for personal use was not presented during the hearing. If Grievant spent a few seconds per visit to myspace.com, her usage would be insignificant. If she spent a few hours per visit, her usage would not be reasonable. Based on the evidence presented, it is not possible to determine how much time Grievant devoted to using the internet for her personal interests.

The Agency contends some of the images on Grievant's website were objectionable because they showed women in provocative poses wearing bathing suits. Upon review of the documents submitted, the images the Agency contends are objectionable appear in the profile of another member of the probation and parole officer's group. Grievant did not upload the images to the probation and parole officer's

[7] Grievant argued the logo is in the public domain and, thus, could be freely copied. She offered as an example that the Agency's patch could be purchased on ebay.com. Grievant's argument fails. The fact that an image has been posted on the internet and can be copied by others does not mean its owner has abandoned ownership of the image. Sale of a patch on ebay reveals nothing regarding whether intellectual property has been abandoned.

[8] DOC Operating Procedure 135.1(XI)(B)(5).

page. This page merely provides a link to the page of the member who actually uploaded the images. Grievant is not responsible for the images uploaded by another member to that person's web site.[9]

Confidential Information About Offenders

"[V]iolation of DOC Operating Procedure 130.1, *Rules of Conduct Governing Employees Relationships with Offenders*" is a Group III offense.[10] DOC Operating Procedure 130.1 states:

> Confidential Information. Information pertaining to the record, offense, personal history, or private affairs of offenders is for official use only. Employees shall seek to obtain such information only as needed for performance of official Department duties, and shall not discuss such information except as required in the performance of official duties.[11]

Grievant posted several comments disclosing confidential information about offenders. For example, she wrote:

> So last week I received a call at my office from the victim of one of my offenders. He beat her and was picked up and charged for his 3rd A&B."
>
> He wants to know if there is anything I can do to help his son, who was arrested for assaulting him and his property a couple of weeks ago.
>
> I also told her there was no use in trying to get him out because I was not going to allow him to see her again. (Note: They aren't married & don't have any children together – thank GOD).

These examples show Grievant discussed the offenses (e.g. third assault and battery) and private affairs (e.g. they aren't married and don't have any children together) of offenders. Grievant knew or should have known she could not discuss information about offenders. This conclusion is supported by Grievant's statement:

> In fact, the offender has to give consent for most info. to be discussed with anyone – even family

The Agency has presented sufficient evidence to show that Grievant acted contrary to DOC Operating Procedure 130.1 thereby justifying the issuance of a Group III Written

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[9] In addition, the Agency did not mention sexually explicit content as a basis for issuing the Written Notice. Grievant did not receive adequate notice of the Agency's contention prior to the hearing.

[10] DOC Operating Procedure 135.1(XII)(B)(25).

[11] DOC Operating Procedure 130.1(IV)(D).

Notice.[12] Upon the issuance of a Group III Written Notice, removal from employment is permitted. Accordingly, the Agency's removal of Grievant from employment must be upheld.

Grievant argues that she did not use the names of the offenders and, thus, someone reading the website would not know the persons about whom she wrote. Grievant's argument fails because the policy does not require disclosure of an offender's identity before information about him must be held in confidence.

Mitigation

Grievant contends the disciplinary action should be mitigated.[13] *Va. Code § 2.2-3005.1* authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Employment Dispute Resolution…."[14] Under the EDR Director's *Rules for Conducting Grievance Hearings*, the Hearing Officer may mitigate based on considerations including whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action, and (3) the disciplinary action was free of improper motive. The *Rules* further require the Hearing Officer to "consider management's right to exercise its good faith business judgement in employee matters. The agency's right to manage its operations should be given due consideration when the contested management action is consistent with law and policy." In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action with removal is **upheld**.

APPEAL RIGHTS

You may file an administrative review request within **15 calendar** days from the date the decision was issued, if any of the following apply:

[12] Failure to follow an established written policy is usually a Group II offense. In this case, the Agency has its own Standards of Conduct and has elevated violation of DOC Operating Procedure 130.1 to a Group III offense.

[13] For example, Grievant contends the Agency did not notify her that using the Agency's logo would result in disciplinary action. Grievant's argument has merit. If the Hearing Officer assumes for the sake of argument, however, that the Agency failed to provide Grievant with adequate notice regarding the use of the Agency's logo, the Agency has presented sufficient evidence to show that she revealed confidential offender information. Thus, the outcome of this case would remain unchanged.

[14] *Va. Code § 2.2-3005.*

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.

2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Please address your request to:

   Director
   Department of Human Resource Management
   101 North 14th St., 12th Floor
   Richmond, VA 23219

3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Please address your request to:

   Director
   Department of Employment Dispute Resolution
   830 East Main St. STE 400
   Richmond, VA 23219

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 15 calendar days of the date the decision was issued. You must give a copy of all of your appeals to the other party and to the EDR Director. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when administrative requests for review have been decided.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.[15]

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

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Carl Wilson Schmidt, Esq.
Hearing Officer

[15] Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 8370-R

Reconsideration Decision Issued: October 6, 2006

RECONSIDERATION DECISION

Grievance Procedure Manual § 7.2 authorizes the Hearing Officer to reconsider or reopen a hearing. "[G]enerally, newly discovered evidence or evidence of incorrect legal conclusions is the basis …" to grant the request.

Grievant contends that the information she disclosed was not confidential because it was could not be linked to individual offenders. Grievant's argument fails because the policy does not require inclusion of offender names before information becomes confidential. The policy refers to information "pertaining to" offenders.[16] Grievant's comments were referring to specific offenders and specific facts pertaining to those offenders. If one of these offenders read Grievant's comments on myspace.com, he or she would recognize about whom Grievant was speaking.[17]

Grievant contends probation and parole officers routinely speak of offender information in general terms. For example, when conducting training which is open to the public, confidential information will be discussed, according to Grievant. Grievant's argument fails because discussions occurring during training sponsored by the Agency would be within the context of the Agency's business operations over which it has control. DOC policy prohibits employees from discussing confidential information "except as required in the performance of official duties." Confidential information disseminated during training open to the public would be "in the performance of official

[16] Offenders are defined by the Policy 130.1 as "Inmates, Probationers, and Parolees under the supervision of the Department."

[17] Although Grievant used a pseudonym to identify herself, she was widely known in the probation and parole community by that name. It is reasonable to believe that an offender or an offender's family could discover that Grievant posted her comments using her widely known pseudonym.

duties" and, thus, not prohibited by policy. Thus, any evidence Grievant would present during a re-hearing regarding public training would not affect the outcome of this case.

Grievant contends Grievant's offense would be best considered as a Group II offense rather than as a Group III offense with removal. As explained in the original Hearing Decision, the Agency has elevated Grievant's offense to a Group III level in its Standards of Conduct thereby justifying its issuance to Grievant of a Group III Written Notice with removal.

Grievant's request for reconsideration does not identify any newly discovered evidence or any incorrect legal conclusions. For this reason, Grievant's request for reconsideration is **denied.**

APPEAL RIGHTS

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decision

Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director before filing a notice of appeal.

S/Carl Wilson Schmidt

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Carl Wilson Schmidt, Esq.
Hearing Officer

POLICY RULING OF THE DEPARTMENT OF
HUMAN RESOURCE MANAGEMENT

In the Matter of the
Virginia Department of Corrections

January 11, 2007

The grievant has requested an administrative review of the hearing officer's decision in Case No. 8370. The grievant was issued a Group III Written Notice with termination. She filed a grievance to have the disciplinary action reversed. In his decision dated July 19, 2005, the hearing officer upheld the agency's disciplinary action. The grievant requested an administrative review from the Department of Employment Dispute Resolution (EDR) and a reconsideration of the decision by the hearing officer. A decision issued by EDR upheld the hearing officer's decision and the hearing officer denied the grievant's request to revise his decision. In her request to this Agency, the grievant stated that the hearing officer misinterpreted and misapplied the applicable Department of Corrections (DOC) policy. The agency head of the Department of Human Resource Management has asked that I respond to this request for an administrative review.

FACTS

The Virginia Department of Corrections employed the grievant as a Probation and Parole Officer at one of its facilities until she was terminated. She was issued a Group III Written Notice and terminated for (1) creating a public membership website on the internet and using the DOC badge/logo, which contains the Great Seal of Virginia, as an identifier for the site and identifying herself as a Probation and Parole Officer with the Virginia Department of Corrections; (2) accessing this website numerous times during business hours; and (3) sharing confidential and sensitive information with others about DOC offenders in violation of DOC Operating Procedure 130.1.

The grievant created a personal profile page on myspace.com on which she posted personal information and information about offenders in the probation and parole system. On the home page of the profile she placed a copy of the Department of Corrections logo, a copy of the Great Seal of Virginia, and the words "VIRGINIA" and "DEPARTMENT OF CORRECTIONS." She invited others, including an intern and other probation and parole officers, to join the group. A copy of their photographs from their profile pages and screen names were placed on the group page. The myspace.com website is public and anyone with access to the internet could read whatever was posted on the group site. The grievant could not control what any group member placed on their own profile page.

The evidence shows that the grievant accessed the myspace.com site 185 times within a period of less than four months, with 171 of those times between the hours of 8:15 a.m. and 5:00 p.m. The evidence also shows that the grievant posted comments

on the site that were comments made by victims and family members of offenders she was supervising. While other individuals posted comments in response to her postings, this case deals only with the disciplinary action taken against the grievant.

Relevant policies include the Department of Human Resource Management's Policy No.1.60, Standards of Conduct, which states that it is the Commonwealth's objective to promote the well being of its employees in the workplace and to maintain high standards of professional conduct and work performance. This policy also sets forth (1) standards for professional conduct, (2) behavior that is unacceptable, and (3) corrective actions that agencies may impose to address behavior and employment problems. Section V, Unacceptable Standards of Conduct, of that policy sets forth examples of unacceptable behavior for which specific disciplinary action may be warranted. These examples are not all-inclusive. The Department of Corrections has developed its own set of guidelines, similar to those as outlined in Policy 1.60, that govern employee work behavior and performance. Also, DHRM Policy 1.75 provides guidance for use of the Internet.

DISCUSSION

Hearing officers are authorized to make findings of fact as to the material issues in the case and to determine the grievance based on the evidence. In addition, in cases involving discipline, the hearing officer reviews the facts to determine whether the cited actions constitute misconduct and whether there are mitigating circumstances to justify reduction or removal of the disciplinary action. If misconduct is found, but the hearing officer determines that the disciplinary action is too severe, he may reduce the discipline. By statute, the DHRM has the authority to determine whether the hearing officer's decision is consistent with policy as promulgated by DHRM or the agency in which the grievance is filed. The challenge must cite a particular mandate or provision in policy. This Department's authority, however, is limited to directing the hearing officer to revise the decision to conform to the specific provision or mandate in policy. This Department has no authority to rule on the merits of a case or to review the hearing officer's assessment of the evidence unless that assessment results in a decision that is in violation of policy and procedure.

The hearing officer stated that the Agency combined the three allegations and entered them on a single Group III Written Notice. He further stated that each allegation, if proven to be true, would be sufficient to sustain its own disciplinary action.

Concerning the unauthorized use of the Great Seal of Virginia, the hearing officer stated, "The Great Seal of Virginia is the property of the Commonwealth and "no persons shall exhibit, display, or in any manner utilize the seals of the Commonwealth for nongovernmental purposes unless such use is specifically authorized by law." When Grievant placed the Great Seal of Virginia on her website she used the property of the Commonwealth without authorization. "[U[nauthorized use or misuse of state property …" is a Group II offense." This Agency will have no further discussion on this matter because there was no separate and distinct disciplinary action, such as a Group II

Written Notice, taken against the grievant for this violation. Rather, the disciplinary action for this violation was included in the Group III Written Notice.

Concerning the use of the Internet, the hearing officer stated, in part, "The Agency has not presented sufficient evidence to establish that Grievant's use of the internet exceeded incidental or occasional use. Although Grievant accessed the Internet approximately 171 times during work hours, the amount of time she spent on the Internet for personal use was not presented during the hearing. If Grievant spent a few seconds per visit to myspace.com, her usage would be insignificant. If she spent a few hours per visit, her usage would not be reasonable. Based on the evidence presented, it is not possible to determine how much time Grievant devoted to using the internet for her personal interests."

Concerning the posting of confidential information about offenders, the hearing officer cited, in part that DOC Operating Procedure 130.1 states, "Confidential Information. Information pertaining to the record, offense, personal history, or private affairs of offenders is for official use only. Employees shall seek to obtain such information only as needed for performance of official Department duties, and shall not discuss such information except as required on the performance of official duties." The hearing officer further concluded that the grievant posted several comments disclosing confidential information about offenders. He further concluded that while the names of the offenders about whom she wrote were not posted, the policy does not require disclosure of an offender's identity before information about him must be held in confidence. For the reason cited immediately above, the hearing officer upheld the Group III Written Notice with termination.

This Agency has considered the grievant's concerns that the violation does not rise to the level of a Group III offense. It is clear that DOC identified the violation, posting of offender information on a website, as a Group III level offense. Thus, the Department of Human Resource Management has no bases for interfering with the hearing officer's decision.

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Ernest G. Spratley
Manager, Employment Equity Services