

Case: 1:17-cv-00789 (I-Deck)
Assigned To : Jackson, Ketanji Brown
Assign. Date : 4/26/2017
Description: FOIA/Privacy Act

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

ARTHUR S. WEST,
 plaintiff,

 Vs.

UNITED STATES DEPARTMENT OF
THE INTERIOR, UNITED STATES
 defendants

Case No.

PLAINTIFF'S FREEDOM
OF INFORMATION ACT
COMPLAINT

Introduction

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of the Interior (“DOI”).

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff West is a citizen of the United States. The DOI has refused to disclose records to West as required by the FOIA.

1
2
3 4. Defendant DOI is a Department of the Executive Branch of the United States
4 Government, and includes as a component entity the Bureau of Land Management.
5 The DOI is an agency within the meaning of 5 U.S.C. § 552(f).

6 **Allegations**

7 5. On November 10, 2016, West submitted a FOIA request to the Department
8 for the following records:

9 I would like to obtain copies under the FOIA of any time
10 sheets, notes, memoranda or records of Mr. Harvey Sweitzer's
11 participation in the hearings in Private Mining Contest relating
12 to case No. AAFF096515.

13 Several telephone hearings have been held in this case by an
14 unnamed assistant, and it is unclear whether Judge Sweitzer
15 even participated in these proceedings. Any notes, transcripts,
16 or recording of these proceedings are also requested.

17 In addition, I would appreciate copies of Judge Sweitzer's
18 job description, the job description of any assistant of his who
19 has been conducting hearings on his behalf, and any record of
20 any other case demonstrating where Judge Sweitzer may have
21 abdicated or neglected his official duties to allow a
22 subordinate to conduct adjudications in his stead in 2014 –
23 2016.

24 This request should also be interpreted to include (for the
25 period 2014 to present), any performance reviews, complaints,
competency evaluations or accommodations made for or on
behalf of Judge Sweitzer due to any potential or actual health
or age related disability that the honorable Judge might
manifest.

6. In response to this request, the Department improperly redacted records
related to the amount of leave taken by the honorable Judge Sweitzer and may
have failed to produce all records responsive to the request.

7. By improperly redacting records necessary to determine whether a federal
employee was actually exercising his job functions and/or by failing to produce all

1
2 responsive records or a proper Vaughn index, and by failing to make a reasonable
3 search for such records, the defendant DOI violated the FOIA for which it is liable
4 for the relief requested. Plaintiff has exhausted his administrative remedies, and
5 such remedy would be futile in any case.

6 **Cause of Action: Freedom of Information Act Claim (5 U.S.C. § 552)**

7 **8.** By the acts and omissions described above, the defendant Department of the
8 Interior violated the Freedom of Information Act by unreasonably delaying or
9 denying disclosure of records, improperly redacting records, failing to conduct an
10 adequate search and/or failing to produce records or assert valid exemptions in a
11 Vaughn Index, and they did so unreasonably, damaging plaintiff, for which they are
12 liable under 5 U.S.C. § 552 for the relief requested below.

13
14 **Request for Relief**

15 **9.** WHEREFORE, plaintiff respectfully prays that this Court:

- 16 **A.** order defendants to disclose the requested records in their entireties and
17 make copies available to plaintiff;
18 **B.** provide for expeditious proceedings in this action;
19 **C.** award plaintiff its costs and any reasonable attorney fees that may be
20 incurred in this action.

21 Dated this 20th day of April, 2017, in Olympia.

22
23 
24 **ARTHUR WEST**
25



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Departmental Cases Hearings Division

351 South West Temple, Suite 6.300

Salt Lake City, Utah 84101

TELEPHONE (801) 524-5344

FACSIMILE (801) 524-5539

IN REPLY REFER TO: OS-2017-00082

December 14, 2016

Arthur West
120 State Ave. NE #1497
Olympia, WA 98501
Awestaa@gmail.com

Dear Mr. West:

The Office of Hearings and Appeals, Departmental Cases Hearing Division (DCHD), received your Freedom of Information Act (FOIA) request, dated November 10, 2016, on November 15, 2016. The Bureau of Land Management, Alaska, routed your request to DCHD in accordance with 43 C.F.R. §2.4. DCHD has assigned your request control number OS-2017-00082. Please cite this number in any future communications with DCHD regarding your request.

You have requested

any time sheets, notes, memoranda or records of Mr. Harvey Sweitzer's participation in the hearings in Private Mining Contest relating to case No. AAFF096515[;]

. . . [a]ny notes, transcripts, or recording of [several telephone hearings in that case;]

. . . copies of Judge Sweitzer's job description, the job description of any assistant of his who has been conducting hearings on his behalf, and any record of any other cases demonstrating where Judge Sweitzer may have abdicated or neglected his official duties to allow a subordinate to conduct adjudications in his stead in 2014-2016[; and]

. . . any performance reviews, complaints, competency evaluations or accommodations made for or on behalf of Judge Sweitzer [for the period 2014 to the present] due to any potential or actual health or age related disability that the honorable Judge might manifest.

We are writing to respond to your request. After a thorough search of our files, it has been determined that no hearings have been held in case no. AAFF096515. Judge Sweitzer and/or DCHD attorney advisor Lucas Smart did participate in five telephone conferences in that case occurring on April 28, 2014; February 6, 2015; March 26, 2015; February 10, 2016; and August 24, 2016. We are interpreting your references to "hearings" and "telephone hearings" to include

these telephone conferences. Judge Sweitzer issued orders to the parties, including yourself, before each conference providing notification of the conference date and after the conference detailing actions taken or to be taken as a result of the conference.

We did locate documents responsive to your request for “time sheets, notes, memoranda or records of Mr. Harvey Sweitzer’s participation in the hearings in Private Mining Contest relating to case No. AAFF096515,” namely one document detailing the telephone conference date, case name and number, and phone number and parties to call and five timesheets of Judge Sweitzer for the time periods during which the telephone conferences occurred. We are providing by email those documents totaling 14 pages, but, under FOIA exemption 6, we are withholding by redaction from those timesheets information as to the nature and balances of Judge Sweitzer’s leave.

Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information. Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency’s performance of its statutory duties or otherwise let citizens ‘know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information as to whether Judge Sweitzer has taken leave based on an illness or based on a vacation and the balances for leave accrued, available, and used. We have determined that Judge Sweitzer has a substantial privacy interest in withholding this information. Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of the agency’s statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of this individual and we are withholding it under Exemption 6. We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of disclosure. Rachel Lukens, Office of Hearings and Appeals FOIA Officer, is responsible for this partial denial. Jennifer A. Heindl, Attorney Advisor, in the Office of the Solicitor was consulted.

We also located records responsive to your request for “copies of Judge Sweitzer’s job description, the job description of any assistant of his who has been conducting hearings on his behalf, and any record of any other cases demonstrating where Judge Sweitzer may have

abdicated or neglected his official duties to allow a subordinate to conduct adjudications in his stead in 2014-2016.” Those records are the job descriptions of Judge Sweitzer and Lucas Smart who participated in the telephone conferences. We are emailing to you those documents totaling 16 pages.

We also determined that DCHD has no records responsive to your request for “[a]ny notes, transcripts, or recording of [several telephone hearings in that case.]” Nor did we locate any records responsive to your request for “any performance reviews, complaints, competency evaluations or accommodations made for or on behalf of Judge Sweitzer [for the period 2014 to the present] due to any potential or actual health or age related disability that the honorable Judge might manifest.” Administrative law judges are not subject to performance reviews.

We have classified you as a “commercial use” requester. As such, we are charging you for all search, review, and duplication costs for processing your request. *See* 43 C.F.R. § 2.39.

The FOIA fee for processing your request is \$171.75, calculated as follows:

0.75 hours	Professional Search Time @ \$10.75 per ¼ hour =	\$ 32.25
1.75 hours	Managerial Search Time @ \$15.50 per ¼ hour =	\$108.50
0.50 hours	Managerial Review Time @ \$15.50 per ½ hour =	<u>\$ 31.00</u>
TOTAL		\$171.75

By email dated December 10, 2016, you agreed to pay the fee of \$171.75.

A bill for collection is enclosed. Please note that, if the fees are not paid within 30 calendar days of the date of the bill, you will owe interest under the Federal law; we will use our debt collection authorities, as appropriate, to collect fees; and we may not be able to process other FOIA requests from you.

You may appeal this response to the Department’s FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe DCHD’s response is in error. You must also include with your appeal copies of all correspondence between you and DCHD concerning your FOIA request, including your original FOIA request and DCHD’s response. Failure to include with your appeal all correspondence between you and DCHD will result in the Department’s rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer’s sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal. DOI FOIA/Privacy Act Appeals Office Contact Information:

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240
Attn: FOIA/Privacy Act Appeals Office
Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

If you have any questions about our response to your request, you may contact Karl Johnson, Senior Attorney, by phone at 801-524-5344, by fax at 801-524-5539, by email at Karl_Johnson@oha.doi.gov, or by mail at: U.S. Department of the Interior, Office of Hearings and Appeals, 351 S. West Temple, Room 6.300, Salt Lake City, UT 84101. You also may seek dispute resolution services from our FOIA Public Liaison, Clarice Julka, at 202-208-6045.

Sincerely,


Karl R. Johnson

11/22/2016

Employee Statement

SWEITZER HARVEY C.

Pay Period: 2014 - 10 (04/20/2014 - 05/03/2014)

Date Released: 05/05/2014



Payroll Week: 2

Code Description

Sun 04/27 Mon 04/28 Tue 04/29 Wed 04/30 Thu 05/01 Fri 05/02 Sat 05/03

Functional Area | Cost Center | WBS | Work Order

				S	E	B	OccS	PC	TI
010	REGULAR								
		3:00	1:30	1:00	3:30	2:00			
DMSP00000.000000	DS68250000 DX68201YAGENLAM								
010	REGULAR				0:30				
DMSP00000.000000	DS68250000 DX68201YABUDGET								
010	REGULAR			1:00					
DMSP00000.000000	DS68250000 DX68201YCROYALT								
010	REGULAR	2:30			1:00				
DMSP00000.000000	DS68250000 DX68201YCMNCONT								
010	REGULAR			1:30					
DMSP00000.000000	DS68250000 DX68201YSREGLEG								
010	REGULAR		1:00	3:00		1:30			
DMSP00000.000000	DS68250000 DX68201WCWELSA0								
010	REGULAR		0:30						
DMSP00000.000000	DS68250000 DX68201YAPERSNL								
010	REGULAR	0:30		1:00		1:30			
DMSP00000.000000	DS68250000 DX68201YCSPECED								
010	REGULAR	2:00	1:00	1:00	2:00	1:00			
DMSP00000.000000	DS68250000 DX68201YCGENLNP								
010	REGULAR	1:00	2:30		1:00				
DMSP00000.000000	DS68250000 DX68201YCGRAZNG								
[REDACTED]	LEAVE-USED					2:00			
DMSP00000.000000	DS68250000 DX68201 [REDACTED]								
Total Status	REL	9:00 REL	8:00 REL	7:00 REL	8:00 REL	8:00 REL	REL	Weekly Total Hours:	40:00
								Pay Period Total:	80:00



Employee Statement

11/22/2016

SWEITZER HARVEY C.

Pay Period: 2014 – 10 (04/20/2014 – 05/03/2014)

Date Released: 05/05/2014

Leave Balances:



Verified by:	SWEITZER HARVEY C.	05/02/2014
Validated by:	BOWMAN PATRICIA A.	05/05/2014
Certified by:	MENTORE-SMITH HOPE Y.	05/05/2014



Employee Statement

11/22/2016

SWEITZER HARVEY C.

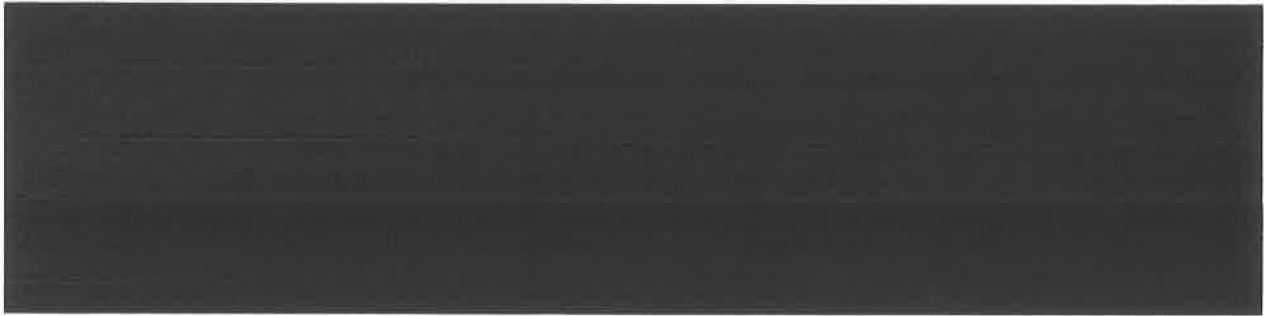
Pay Period: 2015 - 4 (01/25/2015 - 02/07/2015)

Date Released: 02/09/2015

Payroll Week: 2

Code	Description	Sun 02/01	Mon 02/02	Tue 02/03	Wed 02/04	Thu 02/05	Fri 02/06	Sat 02/07	
Functional Area Cost Center WBS Work Order									
									S E B OccS PC TI
010	REGULAR		1:00	1:00	1:00	1:00			
DMSP00000.000000 DS68250000 DX68201YAGENLAM									
010	REGULAR			1:00		4:00			
DMSP00000.000000 DS68250000 DX68201YCGENLNP									
010	REGULAR		4:00	2:00					
DMSP00000.000000 DS68250000 DX68201YCGRAZNG									
010	REGULAR								
DMSP00000.000000 DS68250000 DX68201YCAKCONV									
010	REGULAR		2:00	3:00	2:00				
DMSP00000.000000 DS68250000 DX68201YCROYALT									
010	REGULAR		2:00	1:00					
DMSP00000.000000 DS68250000 DX68201YCISDA00									
010	REGULAR				4:00	3:00			
DMSP00000.000000 DS68250000 DX68201WCWELSA0									
									8:00
DMSP00000.000000 DS68250000 DX68201 [REDACTED]									
	Total		9:00	8:00	7:00	8:00	8:00		Weekly Total Hours: 40:00
	Status	REL	REL	REL	REL	REL	REL	REL	Pay Period Total: 80:00

Leave Balances:



Verified by: SWEITZER HARVEY C. 02/09/2015
Validated by: BOWMAN PATRICIA A. 02/09/2015
Certified by: GOODWIN JANET A. 02/09/2015

11/22/2016

Employee Statement

SWEITZER HARVEY C.

Pay Period: 2015 - 8 (03/22/2015 - 04/04/2015)

Date Released: 04/06/2015



Payroll Week: 2

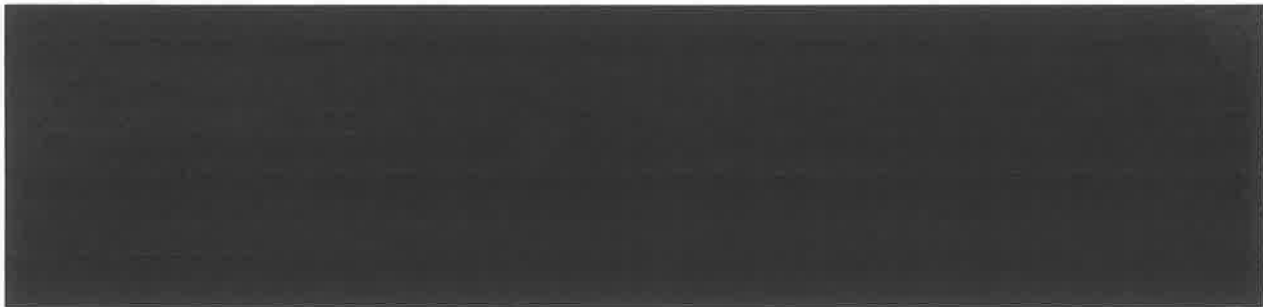
Code Description

Sun 03/29 Mon 03/30 Tue 03/31 Wed 04/01 Thu 04/02 Fri 04/03 Sat 04/04

Functional Area | Cost Center | WBS | Work Order

					S	E	B	OccS	PC	TI
010	REGULAR									
		1:00	1:00	1:00	2:00	1:00				
	DMSP00000.000000 DS68250000 DX68201YAGENLAM									
010	REGULAR									
		2:00	2:00		1:00	1:00				
	DMSP00000.000000 DS68250000 DX68201YCGENLNP									
010	REGULAR									
			4:00							
	DMSP00000.000000 DS68250000 DX68201YCGRAZNG									
010	REGULAR				5:00	3:00				
	DMSP00000.000000 DS68250000 DX68201YCROYALT									
010	REGULAR									
			1:00	4:30						
	DMSP00000.000000 DS68250000 DX68201YCSMCRA0									
010	REGULAR									
		4:30		2:00						
	DMSP00000.000000 DS68250000 DX68201WCWELSA0									
	LEAVE-USED									
										2:00
	DMSP00000.000000 DS68250000 DX68201									
	LEAVE-USED									
										2:00
	DMSP00000.000000 DS68250000 DX68201									
	Total	7:30	8:00	7:30	8:00	9:00				Weekly Total Hours: 40:00
	Status	REL	REL	REL	REL	REL	REL	REL		Pay Period Total: 80:00

Leave Balances:



Verified by: SWEITZER HARVEY C. 04/03/2015
 Validated by: BOWMAN PATRICIA A. 04/06/2015
 Certified by: GOODWIN JANET A. 04/06/2015

11/22/2016



Employee Statement

SWEITZER HARVEY C.

Pay Period: 2016 - 5 (02/07/2016 - 02/20/2016)

Date Released: 02/22/2016

Payroll Week: 2

Code	Description	Sun 02/14	Mon 02/15	Tue 02/16	Wed 02/17	Thu 02/18	Fri 02/19	Sat 02/20			
Functional Area Cost Center WBS Work Order											
						S	E	B	OccS	PC	TI
010	REGULAR			2:00	3:00	2:00	1:00				
	DMSP00000.000000 DS68250000 DX68201YAGENLAM										
010	REGULAR			2:00		1:00	2:00				
	DMSP00000.000000 DS68250000 DX68201YCGENLNP										
010	REGULAR				1:00						
	DMSP00000.000000 DS68250000 DX68201YCGRAZNG										
010	REGULAR					2:00					
	DMSP00000.000000 DS68250000 DX68201YCROYALT										
010	REGULAR			2:30	1:00						
	DMSP00000.000000 DS68250000 DX68201YCSMCRA0										
010	REGULAR					1:00	1:00				
	DMSP00000.000000 DS68250000 DX68201YSREGLEG										
010	REGULAR							1:00			
	DMSP00000.000000 DS68250000 DX68201YCSPECED										
010	REGULAR			1:00	3:00	1:00					
	DMSP00000.000000 DS68250000 DX68201WCWELSA0										
	██████████ LEAVE-USED							3:00			
	DMSP00000.000000 DS68250000 DX68201██████████										
050	HOLIDAY-NOT WORKED		8:00								
	DMSP00000.000000 DS68250000 DX68201YALVHOL0										
	Total		8:00	7:30	8:00	7:00	8:00		Weekly Total Hours:		38:30
	Status	REL	REL	REL	REL	REL	REL	REL	Pay Period Total:		80:00



Employee Statement

11/22/2016

SWEITZER HARVEY C.

Pay Period: 2016 – 5 (02/07/2016 – 02/20/2016)

Date Released: 02/22/2016

Leave Balances:



Verified by:	SWEITZER HARVEY C.	02/22/2016
Validated by:	BOWMAN PATRICIA A.	02/22/2016
Certified by:	LIN JANET H.	02/22/2016



Employee Statement

11/22/2016

SWEITZER HARVEY C.

Pay Period: 2016 - 19 (08/21/2016 - 09/03/2016)

Date Released: 09/02/2016

Payroll Week: 2

Code Description

Sun 08/28 Mon 08/29 Tue 08/30 Wed 08/31 Thu 09/01 Fri 09/02 Sat 09/03

Functional Area | Cost Center | WBS | Work Order

		S	E	B	OccS	PC	TI		
010	REGULAR			2:00	1:00	1:00	1:00		
DMSP00000.000000 DS68250000 DX68201YAGENLAM									
010	REGULAR			3:00					
DMSP00000.000000 DS68250000 DX68201YCGRAZNG									
010	REGULAR			2:00					
DMSP00000.000000 DS68250000 DX68201YCROYALT									
010	REGULAR			1:00		2:00			
DMSP00000.000000 DS68250000 DX68201YCMNCONT									
010	REGULAR			1:00					
DMSP00000.000000 DS68250000 DX68201YCSMCRA0									
010	REGULAR				2:00				
DMSP00000.000000 DS68250000 DX68201YSREGLEG									
010	REGULAR				1:00	1:00			
DMSP00000.000000 DS68250000 DX68201YAPERSNL									
010	REGULAR			4:00	3:00				
DMSP00000.000000 DS68250000 DX68201WCWELSA0									
010	REGULAR			2:00	4:00	2:00			
DMSP00000.000000 DS68250000 DX68201YCGENLNP									
[REDACTED] LEAVE-USED									
DMSP00000.000000 DS68250000 DX68201 [REDACTED]									
[REDACTED] LEAVE-OTHER-USED									
DMSP00000.000000 DS68250000 DX68201 [REDACTED]									
Total			8:00	9:00	8:00	8:00	7:00	Weekly Total Hours: 40:00	
Status		REL	REL	REL	REL	REL	REL	Pay Period Total: 80:00	

Employee Statement

11/22/2016



SWEITZER HARVEY C.

Pay Period: 2016 – 19 (08/21/2016 – 09/03/2016)

Date Released: 09/02/2016

Leave Balances:



Verified by: SWEITZER HARVEY C.	09/02/2016
Validated by: BOWMAN PATRICIA A.	09/02/2016
Certified by: LIN JANET H.	09/02/2016