



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
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May 9, 2014

TO: Teresa Parsons, SPHR
Director's Review Program Supervisor

FROM: Kris Brophy, SPHR
Director's Review Program Investigator

SUBJECT: Rosendo Silva v. Department of Social and Health Services (DSHS)
Allocation Review Request ALLO-13-058

This review follows a management-initiated position review conducted by DSHS Classification and Compensation Unit (CCU) based upon an updated Position Description form submitted for Rosendo Silva's position received by DSHS Human Resources on September 19, 2012. As the Director's designee, I carefully considered all of the documentation in the file, including the exhibits presented during the Director's review conference and comments provided by both parties. Based on my review and analysis of Mr. Silva's assigned duties and responsibilities, I conclude his position should be reallocated to the Forms and Records Analyst 3 classification.

Background

On September 19, 2012, DSHS CCU received an updated Position Description form (PDF) from Mr. Silva's supervisor, Ms. Leah Stajduhar, Acting Chief of Program & Policies, requesting that Mr. Silva's Forms and Records Analyst 2 (FRA 2) position be reallocated to Forms and Records Analyst 3 (FRA 3) (Exhibit B-2).

DSHS CCU conducted a position review and notified Mr. Silva on July 5, 2013 that his position was properly allocated to the FRA 2 class (Exhibit B-1). However, this letter was not postmarked until July 11, 2013 indicating the letter was not deposited in USPS mail until that date. As a result, the request for a Director's review received from Mr. Silva on August 7, 2013 by State Human Resources OFM is considered timely (Exhibit A-1).

I conducted a Director's review conference with the parties on April 9, 2014. Present for the meeting were Mr. Rosendo Silva; Mr. Scott Smriga, Council Representative, WFSE; and Mr. Lester Dickson, Classification and Compensation Specialist, DSHS CCU.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that

best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Duties and Responsibilities

Mr. Silva works in the Field Operations Division of the Children's Administration within DSHS. His position is located in Office Building 2, DSHS, Headquarters, in Olympia Washington. Mr. Silva reports to Ms. Leah Stajduhar, Acting Chief of Programs and Policies. The purpose of his position is to perform centralized records receiving, reviewing and processing functions for the Children's Administration regarding public records requests and requests for disclosure in accordance with the Public Records, Child Welfare, Adoption, and the Juvenile Court Acts. His position also performs records retention and archiving functions for the Children's Administration's Washington state adoption records. Mr. Silva coordinates the disclosure of post adoption confidential information. His position also coordinates the archiving and retrieval of confidential information for youth involved in the Child Welfare system who have been adopted in Washington.

Mr. Silva's duties are described in the PDF (exhibit B-2) submitted for reallocation as follows:

85% **Duty:** Public Records Act (RCW 42.56) Requests.

Tasks:

Receive, review and process public records requests for Children's Administration. In addition to responding to Public Records Requests this position must respond to requests for disclosure under the following laws: RCW 13.50 – Child Welfare, RCW 26.33 – Adoption, and RCW 13.34 – Juvenile Court Act. This position must determine if a request is a Public Record Act request, or a disclosure request under the laws listed above, and respond accordingly. This includes locating, gathering, reviewing, and responding with responsive and disclosable records.

Upon receipt of new requests, review, manage and process requests for public disclosure of client information in the following system areas: Child Protective Services, Child & Family Welfare Services, and legally free cases. Provide written confirmation of request to requestor confirming scope of the request and providing expected timeframe for the production of records if records exist. Retain the records related to the request in accordance with appropriate records retention requirements. Documents managed in these files are legal, health, education, fatality and case activity information. This position works with master files, regional & social worker staff, and the AAG's office to locate, retrieve and redact all necessary records to fulfill requests.

Exercise independent judgment to interpret federal and state statutes, including the Public Records Act, case law, administrative regulations and department policies concerning the disclosure of information. Consult with upper management and AAG'S when necessary on specific records requests in RCW's applicable to information redacted.

Determine whether to disclose, withhold, or redact Children's Administration records under the Adoption Statute and write correspondence to requestors citing applicable legal authority for redacting or withholding records. This correspondence serves as a legal decision of DSHS.

Correspond directly with both agency staff and members of the public

requesting disclosure, in order to clarify information, or perform various other customer service duties. Communication of this nature can either be written or verbally over the phone with a written confirmation.

Copy or scan records from hard files or print electronic records. Review and redact records manually, as well as utilize redaction software and equipment to redact records in compliance with state regulations and policies concerning disclosure of information to clients, attorneys, courts and members of the public. Provide correspondence to requestors, detailing the statutory authority for withholding requested information, as applicable. Mail or otherwise provide redacted copies of records to requestors, either through hard copy or electronic format.

Manage workflow and deadlines in order to provide timely response to public disclosure requests to avoid penalties. Manage multiple priorities and complex projects.

Utilize Agency Records Request Tracking System (ARRTS) in accordance with agency Administrative Policy to track and route Adoption Public Records Act requests. Store all correspondence with requestor in ARRTS. Utilize and maintain a post adoption tracking system for those requests applicable to legally free children under RCW 26.33.

Provide training and technical assistance to regional staff regarding organization and archiving requirements, procedures and policies.

Facilitate and manage Washington State adoption records archive program. Prepare and legally review all legally free children's records that are archived for compliance with CA policy. Work with regional and local office staff to ensure files are prepared in the required format for archiving and retrieval. Maintain databases on tracking of all requests that have been archived, and all records requested for disclosure. Keep track of the number of requests and the number of records archived on a yearly basis.

Obtain necessary information from field staff in order to archive, recommend corrective action on those files which do not comply with standards, and prepare Washington State records center box transmittal forms for picking up record which requires diligent Documentation of all numbers. Data entry of child and family personal information in database including "barcode" to locate record. Archived personal information is located in several venues and requires tracking for each venue to search for a file and prevent "lost" records.

Coordinate with record center for destruction of records that have exceeded their retention period, request the pick-up of files for delivery to the record center, provide pick-up and delivery services for individual cases requested by the Adoption Program Manager and other CA staff weekly from the record center.

5% **Duty:** Discovery for Lawsuits and Tort Claims

Tasks:

Coordinate with the Attorney General's Office and CA Discovery Coordinator to interpret, identify, and gather records in response to discovery requests or in preparation for potential or actual litigation. This includes records from electronic systems, including MODIS and FamLink, as well as hard copy records.

5% **Duty: Management Consultation**

Tasks:

Provides management consultation on routine disclosure and archiving requests. CA is currently operating with over 2,000 open Public Records Requests; therefore, the Public Records Forms Analyst is required to respond to management questions and provide guidance to management on public records requests that are more routine in nature.

Mr. Silva explains in his comments that he responds to Tort claims and Discovery requests concerning adoption files. He explains that in 2011 CA received and acted upon approximately 1600 requests for records which come from various areas and individuals including other agencies, attorneys, and adoptive and biological parents. He stated during the review conference that when he receives a request, he clarifies the request and determines the information the requestor is looking for, locates the information, and determines whether information needs to be redacted and if so, redacts the information. He then provides the information to the requestor. He stated that when he is seeking clarifying information from a requestor, he does not get into the technical aspects of information contained in documents. Rather, he tells the requestor what information a file contains.

Supervisor's Comments

Mr. Silva's supervisor, Ms. Leah Stajduhar, Acting Chief of Program & Policy fully supports reallocating Mr. Silva's position to FRA 3 and also indicated to Mr. Dickson during the desk audit on November 27, 2013 that the duties described in the submitted PDF for his position are accurate and complete.

Summary of Mr. Silva's Perspective

Mr. Silva asserts his position should be reallocated to the FRA 3 class to more accurately reflect the level of responsibility and scope of duties assigned to his position. Mr. Silva asserts his position provides management consultation and determinations on responses to public service requests as stated at the FRA 3 level which includes:

- exercising independent judgment and decision making authority for making the initial denial of access to adoption and other records;
- interpreting and applying federal and state laws, rules and policies;
- prioritizing and replying to records requests in required response timeframes;
- working with master/sealed files and consulting with regional support program managers and social workers to locate, retrieve, scan and redact necessary records to fulfill public disclosure requests;
- providing training to region two and three employees;
- specializing in retrieving, preparing and scanning Documents in the PPDM, and safe hard and redacted copies in the App Xtender software, and
- exercising primary responsibility for coordinating directly with the Attorneys General of the Attorney General's Office (AAG) to manage client privacy complaints or client inquiries about adoption files.

Mr. Silva asserts that his position requires intensive application of his knowledge and skills in records management, that his duties involve functioning as a management consultant for adoption records problems and issues across the state, and that he acts as the public disclosure coordinator and consultant for management for all public records requests. Mr. Silva contends that his position falls within the definition of the FRA 3 class. Mr. Silva also asserts that the specific activities he performs are encompassed in the typical work statements of the FRA 3 classification. Therefore, Mr. Silva asks that his position be reallocated to the FRA 3 classification.

Summary of DSHS's reasoning

DSHS acknowledges that Mr. Silva consults and collaborates with managers to coordinate the collection and redaction of information to fulfill public disclosure requests; however DSHS contends the scope of his responsibility does not include providing senior level consultation to management in response to public record requests as required by the FRA 3 level class.

DSHS asserts Mr. Silva's decision-making is consistent with the work performed at the FRA 2 level. DSHS asserts he works independently and the majority of his work involves performing routine work of a generally recurring nature within his assigned area of responsibility. DSHS asserts Mr. Silva seeks assistance with the AGO, his supervisor, or other program areas to respond to and resolve complex or non-routine public disclosure or other records requests.

In total, DSHS contends Mr. Silva's position does not meet the requirements of the FRA 3 class.

For these reasons, DSHS contends Mr. Silva's position is properly allocated to the FRA 2 class.

Comparison of Duties

When comparing the assignment of work and level of responsibility to the available class specifications, the Class Series Concept (if one exists) followed by the Definition and Distinguishing Characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

Comparison of Duties to Forms and Records Analyst 2

The definition of the Forms and Records Analyst 2 classification states:

Positions at this level provide consultation to managers and perform journey-level forms and/or records work such as analyzing manual, electronic and/or automated forms and/or records management problems, developing and implementing plans for rectifying system deficiencies, designing forms and coordinating forms production. Incumbents assist with and coordinate records retention, migration, transfer and disposition, utilize manual, electronic and/or automated systems, and provide consultation on forms and/or records management programs and system requirements. Incumbents conduct record inventories, assist with reviewing and updating record retention schedules and coordinate, retrieve information for and respond to public record requests.

Mr. Silva performs the duties described within the definition of the FRA 2 class. Mr. Silva is fully competent and qualified in all aspects of the body of work he performs. However, the FRA 2 class does not fully address the scope of duties Mr. Silva performs in his position.

In Johnson v Department of Ecology, PRB Case No. R-ALLO-10-005 (2010), the Personnel Resources Board, (PRB) held that the:

Appellant's position performs the duties described within the definition of the FRA 2 class. But, this level does not address complexity of the multiple program records maintained in the region, the intensive application of knowledge and experience Appellant must use in order to respond to requests, or the level of consultation he performs for complex records containing sensitive information or for records involved in litigation.

Mr. Johnson performed duties comparable to those performed by Mr. Silva. Similar to this case, the FRA 2 class does not fully address the scope of work Mr. Silva performs with respect to the complexity of adoption files and related records maintained statewide for the Children's Administration. Additionally, this class does not address the intensive application of knowledge and experience Mr. Silva must use in order to respond to public disclosure requests for adoption and related files for the entire Administration, or the level of consultation he provides to supervisors and program managers regarding complex adoption files containing sensitive adoption and other information, or for the scope and level of complexity of the adoption files and records involved in litigation for which Mr. Silva must respond.

The overall scope of the complexity of the work he performs for a majority of his time reaches beyond the FRA 2 level class. For example, Mr. Silva reviews, manages and processes requests for public disclosure information in multiple system areas including Child Protective Services, Child & Family Welfare Services, and legally free cases. The documents managed in these files contain legal, health, education, fatality and case activity information. Mr. Silva works with master files, regional & social worker staff, and the AAG's office to locate, retrieve and redact all necessary records to fulfill all adoption-related public disclosure requests for the CA.

Mr. Silva exercises independent judgment to interpret federal and state statutes, including the Public Records Act, case law, administrative regulations and department policies concerning the disclosure of information. He also consults with upper management and staff attorneys at the AGO when necessary on specific records requests in RCW's applicable to information redacted.

Further, as stated in the PDF for his position, Mr. Silva independently determines whether to disclose, withhold, or redact Children's Administration records under the Adoption Statute. This scope of responsibility is addressed at the FRA 3 level. In addition he writes correspondence to requestors citing applicable legal authority for redacting or withholding records. In addition, Mr. Silva must manage workflow priorities and deadlines in order to provide timely response to public disclosure requests to avoid penalties. He also must manage multiple priorities and complete complex public disclosure assignments and projects.

Mr. Silva consults and collaborates with managers to coordinate the collection and redaction of information to fulfill public disclosure requests. The scope of his responsibility includes consulting with management and making determinations in response to public record requests which is more appropriately addressed at the FRA 3 level.

For these reasons his position should not be allocated to the FRA 2 class.

Comparison of Duties to Forms and Records Analyst 3

The Definition for FRA 3 class states.

Positions at this level are specialists in two or more system areas such as financial records, student records, resident records, and/or health records, or function as a management consultant for complex manual and/or electronic forms and/or records problems, or provide management consultation and determinations on responses to public record requests. Incumbents may oversee the work of subordinate staff and coordinate the day-to-day delivery, distribution, access, maintenance and retention of manual and/or electronic forms and/or records.

There are no Distinguishing Characteristics for this class.

The allocating factors for the FRA 3 class include three primary options. One of the options involves providing management consultation and determinations on responses to public record requests.

Mr. Silva functions as a management consultant on public records requests regarding statewide adoption files and records for the Children's Administration. This includes making determinations on responses to adoption record requests for the CA including whether certain information must be redacted prior to disclosure or whether information contained in files should be considered a public record subject to disclosure. In addition, Mr. Silva oversees and coordinates the day-to-day delivery, distribution, access, maintenance and retention of complex manual and electronic adoption files and related records for the Children's Administration.

Additionally, the PDF for his position states that he consults with regional and other management staff on public disclosure and archiving requests. For example, Mr. Silva consults with adoption program managers seeking clarification on records requested from the field. He also consults with non-adoption staff in the field including managers and line staff and assists them in determining what should or should not be included in adoption files and related records. He also consults with internal staff handling adoption cases across the state. Mr. Silva exercises independent judgment to interpret federal and state statutes, including the Public Records Act, case law, administrative regulations and department policies concerning the disclosure of information.

He also consults with upper management and staff attorneys at the AGO when necessary on specific records requests in RCWs applicable to information redacted. During the review conference, Mr. Silva stated that he works with his manager or the AGO staff to obtain recommendations regarding complex requests. For example, in exhibit A-2, a foster mother requested a Social Security Number for a former foster child in order for the child to obtain summer employment. Because that information is not normally provided, Mr. Silva requested and received an opinion by the AGO staff attorney regarding how to respond to the request.

Further, as stated in the PDF for his position, Mr. Silva independently determines whether to disclose, withhold, or redact Children's Administration records under the Adoption Statute.

The overall scope and level of responsibility associated with these aspects of Mr. Silva's work is consistent with Johnson, in which the Board held:

...He also makes determinations on responses to complex public record requests such as whether certain information must be redacted prior to disclosure or whether information contained in files should be considered a public record subject to disclosure. In addition, Appellant oversees and coordinates the day-to-day delivery, distribution, access, maintenance and retention of manual and electronic records for the region. The complexity of Appellant's duties and his level of responsibility are described by the definition of the FRS3 classification.

Mr. Silva also coordinates with the Attorney General's Office and CA Discovery Coordinator to interpret, identify, and gather records in response to complex discovery requests or in preparation for potential or actual litigation. This includes records from electronic systems, including MODIS and FamLink, as well as hard copy records. Mr. Silva also reviews adoption files developed by social workers or other CA staff to make sure the information is appropriate for inclusion in the file. As stated in Johnson, these activities denote, "...a higher level of complexity and requires an intensive application of knowledge and experience in order to provide consultation and review and gather complex records containing sensitive information or for records involved in litigation."

Additionally, this class does not contain distinguishing characteristics; therefore we look to the typical work statements for guidance regarding examples of work performed at this level. Mr. Silva's position duties are consistent with the following:

Schedules and coordinates manual and electronic forms and/or records management services including files consulting, records retention scheduling, essential records scheduling, and similar services, in one or a group of organizational units and negotiates service agreements with department personnel;

Manages manual and/or electronic records retention, disposition, transfer, and storage systems and programs;

Reviews and processes public record requests;

May receive public records requests, assist requestor in defining the scope of records requested, assist staff in identifying records responsive to a request, identify and redact information exempt from disclosure, provide records to requestor, and retain records related to requests in accordance with records retention requirements;

Mr. Silva's duties are consistent with these statements and his position more accurately aligns with the scope of duties stated at the FRA 3 level. This includes receiving public records requests, assisting requestors in defining the scope of records requested, identifying records responsive to a request, identifying and redacting information exempt from disclosure, providing records to the requestor, and retaining the appropriate records related to requests in accordance with records retention requirements.

As a whole, the overall complexity of his assigned duties and his level of responsibility are more accurately described by the FRA 3 classification.

In Salsberry v. Washington State Parks and Recreation Commission, PRB Case No. R-ALLO-06-013 (2007), the Personnel Resources Board addressed the concept of best fit. The Board concurred with the former Personnel Appeals Board's conclusion that while the appellant's duties and responsibilities did not encompass the full breadth of the duties and responsibilities described by the classification to which his position was allocated, on a best fit basis, the classification best described the level, scope and diversity of the overall duties and responsibilities of his position, Allegri v. Washington State University, PAB Case No. ALLO-96-0026 (1998).

Most positions within the civil service system occasionally perform duties that appear in more than one classification. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. See Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

For each of the reasons stated above, Mr. Silva's position should be reallocated to the FRA 3 class.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides in relevant part, the following:

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, WA 98504-0911. An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The PRB Office is located on the 4th floor of the Insurance Building, 302 Sid Snyder Avenue SW, Olympia, Washington, 98501-1342. The main telephone number is (360) 902-9820, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Rosendo Silva, DSHS
Lester Dickson, DSHS
Lisa Skriletz, OFM

Enclosure: List of Exhibits

ROSENDO SILVA v DSHS

ALLO-13-058

List of Exhibits

A. Rosendo Silva Exhibits

1. Director's Review Form from Rosendo Silva received by State HR, OFM on August 7, 2013
2. Email examples regarding consultation with staff attorneys from the AGO
3. Examples of correspondence with outside attorney's regarding file requests
4. Examples of correspondence/file requests from private parties
5. Examples of internal referral/information requests
6. Examples of acceptance/denial correspondence
7. Email from Rosendo Silva to Tonya Fox dated January 10, 2012 regarding training

B. DSHS Exhibits

1. Allocation determination letter from Lester Dickson to Rosendo Silva dated July 5, 2013
2. Position Description form submitted for position review for Rosendo Silva's position, position #B042 date stamped September 19, 2012
3. Organizational Chart for Field Operations Division, CA
4. Lester Dickson desk audit interview notes dated November 27, 2012
5. State HR Class Specification for Forms and Records Analyst 1, 112I
6. State HR Class Specification for Forms and Records Analyst 2, 112J
7. State HR Class Specification for Forms and Records Analyst 3, 112K