

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE N. W., SUITE 520N

WASHINGTON, D.C. 20004-1710

Telephone No.: 202-434-9933

Telecopier No.: 202-434-9949

April 24, 2018

WILL WILLIS,

Complainant

v.

JEFFREY TYLER for HEART OF  
NATURE (NV), LLC,  
Respondents

DISCRIMINATION PROCEEDING

Docket No. WEST 2018-0218-DM  
MSHA No. WE-MD2017-10

Mine: Silver Peak Mine  
Mine ID: 26-02599

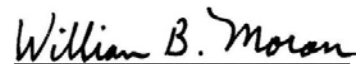
**ORDER REGARDING SECRETARY'S MOTION FOR EXTENSION  
TO RESPOND TO THE COURT'S ORDER**

The Court's April 17, 2018 Order required the Secretary to "inform the Court [by April 20, 2018] whether [he] will provide to the Complainant a copy of the complaint filed by [Complainant Will] Willis and the interview which MSHA conducted in connection Complainant's discrimination complaint filed during August 2017." Order at 1. On the day the Secretary was required to so inform the Court, the Secretary filed a Motion for Extension of Time to Respond to Order to Provide Documents of 17 April 2018, seeking until April 27, 2018 to comply with the Order. ("Motion"). Although the Secretary noted that he is not a party in this section 105(c)(3) discrimination proceeding, he is MSHA's attorney. The Secretary asserted that he needed additional time for its client, MSHA, to contact the Complainant, so as to not run afoul of 5 U.S.C. §552a(b), a provision of the Privacy Act.

Counsel for the Secretary has misapprehended the first part of the Court's Order, which was due by Friday April 20, 2018, mixing a procedural issue with a substantive issue. The Order required the Secretary to advise "[i]f the Complainant, or any party, files a FOIA or Privacy Act request, [whether] MSHA will take prompt action on it and respond appropriately." Order at 1, quoting the Sec'y Email of April 11, 2018. Noting that the Secretary's response was equivocal as to whether the Secretary, acting through its client, MSHA, the Court required the Secretary to advise if he "*will* provide a copy of the complaint and the interview to the Complainant, *assuming* that a FOIA or Privacy Act request is made by the Complainant. If the Secretary refuses to supply the Complainant with a copy of the complaint and the interview, the Secretary is directed to explain all reasons for such refusal, together with the authority for such refusal." *Id.*(emphasis added). The Court was plainly inquiring whether the Secretary, as MSHA's attorney, ultimately will provide a copy of the complaint filed by Willis and the interview which MSHA conducted in connection Complainant's discrimination complaint, filed during August 2017. This is a substantive issue, which can be answered independent of the procedural process which may need to be followed to obtain those documents. Thus, the Court was requiring the

Secretary to respond, apart from procedural hurdles, real or imagined, if he had some substantive basis to refuse delivery of those documents to the Complainant. As the Order then noted, “[i]f the Secretary refuses to supply the Complainant a copy of the complaint and the interview, the Secretary is directed to explain all reasons for such refusal, together with the authority for such refusal.” *Id.* The Court believes that the Secretary could have answered that question in a timely manner, either by conceding that, substantively, the Complainant would be entitled to those documents or by interposing non-procedural grounds for refusing to provide them.

Given that, substantively, the Court believes the Secretary could have answered the first question in a timely manner, but that he did not do so, and now with the time for compliance having passed, the Court directs that *both* aspects of the Court’s Order now be complied with by Friday, April 27, 2018. Accordingly, it is **ORDERED** that the Secretary now fully comply with the Court’s Order by April 27, 2018.

  
William B. Moran  
Administrative Law Judge

Distribution:

Jason Grover, Esq., Office of the Solicitor, U.S. Department of Labor, 201 12<sup>th</sup> Street South,  
Suite 401, Arlington, VA 22202

Jeffery Ward, Esq., 1543 7<sup>th</sup> Street, Suite 300, Santa Monica, CA 90401

Will Willis, 740 Brockman Lane, Bishop, CA 95314

Jerry Tyler, Heart of Nature, LLC, 34710 7<sup>th</sup> Standard Rd., Bakersfield, CA 93314