

# Improper use of information against you



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letter carrier. Therefore, I bring the following items to your attention to investigate and address if necessary in your write-up grievance.

## Discipline records

**Let's begin with Article 16, Section 10. If an employee has previously been issued discipline for an infraction, and such discipline was not grieved, the employer may cite that discipline in a subsequent action for up to two years, as explained on page 16-11 of the current *Joint Contract Administration Manual (JCAM)*:**

The purpose of Article 16.10 is to protect employees from having their past records considered when they have shown over a two year period that they performed their job without incurring any further disciplinary action.

If a grievance was filed over the above-referenced discipline, then the employer must comply with the terms bargained in the settlement, or the instruction of an arbitrator.

## Discussion records

**Next, we address Article 16, Section 2, which provides for a non-disciplinary warning (a discussion) to an employee, putting the employee on notice of a rule. This discussion must take place in private (between the supervisor and the employee) and it may not be shared with other supervisors, nor may a record of the discussion be placed in an Official Personnel Folder (OPF). The last sentence in Article 16.2 provides that:**

While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

**I**n March and November of 2016, and again in June of 2018, my column addressed the Counseling At Risk Employees (CARE) program, sharing some of my concerns that USPS was going to misuse the information collected and use it against employees contrary to the clear commitment by USPS Headquarters to not do so. Many new stewards may not know about that commitment, and many seasoned stewards may not be aware of this, so I encourage you to review those columns to make sure that USPS is not violating the commitments it made regarding the CARE program.

In review of arbitration awards on safety-related discipline issued to letter carriers, I am finding references to stale discipline, and stale records that should not surface at all in harm of a

What does “timely” mean in this context? The *Administrative Support Manual (ASM)* used to contain a section titled Privacy Act System of Records. This section was moved to the *Handbook AS-353*, retaining the essential references. In Appendix B of the *AS-353*, you will find a listing of the different categories of records and the rules controlling their retention:

### 120.190 Supervisors' Personnel Records

Retention and Disposal

- a. Counseling Records—Destroy when 1 year old if there has been no disciplinary action initiated against the employee during that period.
- b. Letters of Warning—Destroy when 2 years old if there has been no disciplinary action initiated against the employee during that period.
- c. All Other Records—Dispose of immediately on termination of supervisor/employee relationship.

If your supervisor is keeping discussion records (counseling) beyond the time frame referenced in the *AS-353* at 120.090, then we need to raise this as a record retention rule violation. Note: If there is no dispute that the employee knows the rule, then we should not clutter the grievance with this issue.

## Accident records

### 120.035 Employee Accident Records

Retention and Disposal Records are maintained locally for 5 years. Copies are maintained at Headquarters for 5 years following the end of the calendar year to which they relate as required by OSHA.

**Many years ago, I was assigned to advocate Case #23951 in San Fernando, CA, where Branch 2902 shop steward James Perryman discovered that management had kept its “secret” records in violation of the USPS requirement to adhere to its Privacy Act System of Records.**

On page 17 of that award, Arbitrator Snow writes:

Enormous potential for harm exists when a supervisor may be influenced by documentary records of stale discipline or other outdated historical information in a file. The risk of this harmful influence outweighs the Employer's asserted interest in this case in maintaining a personal history of employees. Such histories are available in the system, and the Employer offered no substantial and legitimate business justification for maintaining such personal histories in supervisory files. The Union was persuasive in its contention that a review of the supervisory files in this case is necessary in order to validate the Employer's compliance with administrative procedures of the ELM, especially in view of compelling evidence suggesting noncompliance.

So...don't let management poison the well. Do all that you can to prevent the creation of an unfair bias against the grievant you represent.

Keep an eye on each other.