



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILE: 2006-0066

OTTAWA, OCTOBER 3, 2006

LORRIE ODDIE

COMPLAINANT

AND

THE DEPUTY MINISTER OF NATIONAL DEFENCE

RESPONDENT

AND

OTHER PARTIES

MATTER	Request for an order for provision of information
DECISION	Request is granted
DECISION RENDERED BY	Sonia Gaal, Vice-Chair
LANGUAGE OF DECISION	English
INDEXED	<i>Oddie v. Deputy Minister of National Defence et al.</i>
NEUTRAL CITATION	2006 PSST 0009

REASONS FOR DECISION

BACKGROUND

[1] This decision deals with a request for an order for provision of information under paragraph 17(3) of the *Public Service Staffing Tribunal Regulations* (the *PSST Regulations*) filed by the complainant, Ms. Lorrie Oddie, on August 2, 2006. She asked for the disclosure of the assessment information and the reference check information for the successful candidate, Ms. Cheryl Hogan.

[2] The complainant participated in an advertised selection process (No. 06-DND-IA-KGSTN-045000) for a PE-04 level position as Human Resources Officer with the Department of National Defence (the respondent). She was unsuccessful in this process and filed a complaint with the Public Service Staffing Tribunal (the Tribunal) on July 13, 2006 alleging abuse of authority pursuant to paragraph 77(1)(a) of the *Public Service Employment Act* (the *PSEA*) in establishing and/or applying the merit criteria.

[3] According to emails on file, the complainant initiated the exchange of information on July 21, 2006. The Human Resources Officer advised the complainant she would receive some of the documents requested in the following days but documents pertaining to Cheryl Hogan's assessment would be withheld.

[4] Following the exchange of information between the respondent and herself, the complainant submitted that this exchange strongly suggested bad faith, personal favouritism and discrimination.

[5] On August 29, 2006, the Tribunal required more particulars from the complainant in order to assess her request for provision of information.

[6] On August 31, 2006, the complainant provided the Tribunal with extensive details on the process as a whole, the content of the reference check and the interview. She also explained how she believed she was treated unfairly and reiterated the relevancy of the documents requested to her allegations of bad faith, favouritism and discrimination.

[7] The complainant submitted that the selection board contacted persons who did not work with her and were not in a position to give her a fair assessment. For example, the selection board spoke with a former co-worker who also worked with the complainant's husband in the past where the working relationship was difficult. She believes the former co-worker's reference was not necessary and was prejudicial as it tarnished her good reputation.

[8] The selection board also spoke with a woman who never worked with the complainant but rather worked with the successful candidate. In her opinion, the woman should not have been contacted at all.

[9] According to the complainant, the selection board was probing the references and focused on her alleged weaknesses but she is doubtful the successful candidate was treated in a similar manner. Furthermore, she stated the selection board misinterpreted some of the references' answers to her detriment.

[10] In addition, eight references were contacted which, in her opinion, represented an unusually large number of reference checks.

[11] Finally, she noted that Ms. Hogan and herself were assessed by different selection boards, which caused her concerns.

ISSUE

[12] Are Ms. Hogan's assessment information and reference check information relevant to the complaint?

SUBMISSIONS

[13] The complainant argues that the requested information is relevant to her complaint of bad faith, discrimination and favouritism. In her opinion, she and the successful candidate were treated differently because the selection board did not conduct as full a reference check for the successful candidate as it did for her.

[14] In her opinion, both the selection process and the reference check process were flawed. In order to clearly argue the true extent of the difference in treatment she received, she submits it is imperative that she review the assessment and the reference check information.

[15] The respondent is opposed to providing this information as it believes it is not relevant to the complaint. The respondent submits the complainant provided sufficient detail in support of her allegations of abuse of authority and does not require this additional information.

[16] Furthermore, the respondent notes that the complainant has not alleged that Ms. Hogan does not meet the essential qualifications in the statement of merit criteria or that there was an abuse of authority with respect to Ms. Hogan's assessment.

ANALYSIS

[17] The Tribunal's powers for ordering that information be provided are found in subsection 17(4) of the *PSST Regulations*:

17. (4) If the Tribunal is satisfied that the provision of the information will not present any of the risks referred to in paragraphs (1)(a) to (c), the Tribunal must order that the information be provided to the complainant or the deputy head or the Commission.

[18] One must also look to section 16 of the *PSST Regulations* as it deals with the exchange of information between the parties:

16. (1) In the interest of facilitating the resolution of the complaint, the complainant and the deputy head or the Commission must, as soon as possible after the complaint has been filed, exchange all **relevant** information regarding the complaint.

(2) The exchange of information must be completed no later than 25 days after the date of the letter by which the Executive Director acknowledges receipt of the complaint.

(3) If the complainant and the deputy head or the Commission do not complete the exchange of all **relevant** information as required by subsections (1) and (2), the Tribunal may order the parties to complete the exchange of information within a time specified by the Tribunal. (emphasis added)

[19] One of the criteria for the exchanged information is that it must be relevant. It logically follows that an order for production of information must also deal with *relevant* information.

[20] Relevance is not always an easy concept to ascertain. On the one hand, individuals who have filed complaints with the Tribunal will generally want to receive as much information as they can on the selection process to prepare their allegations and, subsequently, their case. On the other hand, respondents will be reluctant to exchange information that, in their opinion, is not relevant, or that relates to other candidates as the old system of relative merit no longer exists under the *PSEA*. Since candidates are assessed individually on the basis of the established merit criteria under the new staffing regime, information regarding other candidates may not always be relevant for the complainant in proving that there has been abuse of authority.

[21] As a result, the Tribunal must ensure that it finds the right balance between these two important but competing interests. Complainants should receive information that is *relevant* but respondents should not be required to disclose information just because the complainant thinks it could or might be useful.

[22] The word “relevant” is defined as follows in the *Canadian Oxford Dictionary*, (2004): “bearing on or having reference to the matter in hand.” It could therefore be said that requested information must have a bearing on the crux of the complaint. The complainant must demonstrate to the Tribunal’s satisfaction that there is a clear nexus, or in other words, concrete linkage between the information sought and the matter at hand. In addition, the request must be sufficiently specific so there is no dispute as to what is desired. Finally, the Tribunal must be satisfied that disclosure of the information will not cause undue prejudice.

[23] The Tribunal has carefully reviewed all the documents submitted by the complainant and the respondent. The complainant provided extensive information and details on the whole process as it applies to herself. For instance, she explained that some answers were not assessed properly during her interview; she also reviewed the contents of the conversations with her references and attempted to explain answers that were interpreted negatively. She provided the background to some situations that were raised during the reference check as well as her relationship, or lack thereof, with some of the people contacted. She also provided copies of emails submitted by certain people contacted as references to explain their answers.

[24] In summary, the complainant's main concern is that she was not assessed fairly and that there was favouritism towards the successful candidate. The Tribunal is satisfied that the background information presented by the complainant and the issues she has raised are sufficiently detailed and have a clear nexus on the crux of the complaint to warrant the disclosure of the information requested. In order to argue her allegation of difference in treatment between Ms. Hogan and herself, this information is necessary and relevant. The Tribunal is also satisfied that disclosure of the information will not cause undue prejudice to the respondent or Ms. Hogan.

DECISION

[25] For all these reasons, the Tribunal grants the request for an order for provision of information.

ORDER

[26] The Tribunal hereby orders the respondent to provide the complainant with the assessment of Ms. Cheryl Hogan as well as the reference check questions and answers of the references and provide a copy to the Tribunal. This is to be completed by October 10, 2006.

[27] The complainant has until October 20, 2006 to file her allegations with the usual timelines applicable thereafter.

[28] In accordance with subsections 17(5) and (6) and section 18 of the *PSST Regulations*, the Tribunal sets the following condition: the complainant or her representative, if applicable, cannot divulge or share with anyone who is not a party to this complaint any information provided to her by the respondent concerning Ms. Hogan.

Sonia Gaal
Vice-Chair

PARTIES OF RECORD

Tribunal File:	2006-0066
Style of Cause:	Oddie v. Deputy Minister of National Defence <i>et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	October 3, 2006