Public Service Staffing Tribunal | Tribunal de la dotation de la fonction publique

DECISION: I-06-0009-01

FILE: 2006-0009

OTTAWA, MAY 26, 2006

MARIE-CLAUDE LAROSE

COMPLAINANT

AND

THE CHIEF COMMISSIONER OF THE CANADIAN HUMAN RIGHTS COMMISSION

RESPONDENT

AND

OTHER PARTIES

MATTER	Request for order for provision of information
DECISION	The request is granted
DECISION RENDERED BY	Guy Giguère, Chairperson
INDEXED	*Larose v. Chief Commissioner of the Canadian Human Rights Commission et al.*
NEUTRAL CITATION	2006 PSST 0001

REASONS FOR DECISION

BACKGROUND

[1] On March 16, 2006, Marie-Claude Larose filed a complaint with the Public Service Staffing Tribunal (the Tribunal) concerning an acting appointment made on or about March 1, 2006, to the Canadian Human Rights Commission (CHRC) under a non-advertised process (No. 2006-HRC-ACIN-LEGL-014).

[2] The exchange of information took place on April 18, 2006. At that time, a document entitled "Non-Advertised Staffing Justification" was given to the complainant, but some parts of it had been blacked out. On May 2, 2006, Ms. Larose submitted a request to the Tribunal to obtain full access to this document under subsection 17(2) of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *Regulations*). Ms. Larose explained that she wanted to analyse the document in connection with her complaint. Furthermore, although it is intended that such a document may be dated and signed, it was not; the complainant wants to know why. Finally, she stated that she wants to know who made the handwritten amendment to the document.

[3] Maureen Armstrong, delegated by the Chief Commissioner of the CHRC, replied to this request for order on May 10, 2006. In her reply, she noted that the document was neither signed nor dated because it had been sent by e-mail. She explained that the handwritten amendment had been made by the manager of the position. She said that the censored sentences had been blacked out by the access to information officer to ensure compliance with the *Privacy Act*, R.S.C. 1985, c. P-21 (the *Privacy Act*).

ANALYSIS

[4] Section 16 of the *Regulations* provides that the complainant and the deputy head must exchange all relevant information within 25 days following the filing of the complaint. The purpose of this exchange of information is to facilitate, very early on in the process, the resolution of the complaint by the principal parties to the dispute. Through an open and thorough exchange of information relevant to the complaint, it is hoped that misunderstandings will be cleared up and that the complainant and the deputy head will be able to resolve the complaint themselves, without intervention by the Tribunal. However, if disclosure of relevant information is refused, the complainant or the deputy head, as the case may be, may apply to the Tribunal for an order that the information be provided.

[5] Section 17 of the Regulations reads as follows:

> **17.** (1) Despite section 16, the complainant or the deputy head or the Commission may refuse to provide information referred to in that section if providing that information might
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> (*a*) threaten national security;
>
> (*b*) threaten any person's safety; or
>
> (*c*) affect the validity or continued use of a standardized test or parts of the test or affect the results of a standardized test by giving an unfair advantage to any individual.
>
> (2) If a party refuses to provide information under subsection (1), the complainant or the deputy head or the Commission may request the Tribunal to order that the information be provided.
>
> (3) The request must be in writing and must include
>
> (*a*) the name, address, telephone number, fax number and electronic mail address of the party making the request;
> (*b*) the Tribunal's file number for the complaint;
> (*c*) a detailed explanation as to why the Tribunal should order that the information be provided;

> (*d*) the signature of the party making the request; and
> (*e*) the date of the request.
>
> (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.
>
> (5) The Tribunal may make the order subject to any conditions that the Tribunal considers necessary, including any conditions that are necessary to prevent the provision of the information from presenting any of the risks referred to in paragraphs (1)(*a*) to (*c*).

[6] Some passages of the document were not disclosed. Without challenging the relevance of these passages, Ms. Armstrong noted that they contain personal information. From a reading of the original document, it appears that the passages contain personal information concerning the education and employment history of Karen Izzard, the person appointed, as contemplated in section 3 of the *Privacy Act*.

[7] A federal institution is authorized to disclose personal information when it is required to do so by subpoena or order of an entity like the Tribunal or as stipulated in its rules of procedure. Accordingly, paragraph 8(2)(*c*) of the *Privacy Act* provides that personal information under the control of a government institution may be disclosed when it is "for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information."

[8] Paragraph 99(1)(*a*) of the *Public Service Employment Act*, S.C. 2003, c. 22 (the *PSEA*) stipulates that the Tribunal has the power to "summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath in the same manner and to the same extent as a superior court of record." Moreover, paragraph 99(1)(*e*) of the *PSEA* makes it clear that the

Tribunal has the power to compel, at any stage of a proceeding, any person to produce any documents that may be relevant to any matter brought before it.

[9] It is worthwhile to note, for similar situations that may arise in future, that the deputy head does not have to wait for the Tribunal to order the disclosure of relevant personal information to provide this information to the complainant. Indeed, subsection 16(1) of the *Regulations* provides that the complainant and the deputy head “must, (…), exchange” all relevant information (which is even clearer than the French version of "*se communiquent*"). This rule of procedure, made in accordance with paragraph 8(2)(c) of the *Privacy Act*, makes it possible to expedite the resolution of complaints without the Tribunal having to make an order.

[10] Having examined the document in respect of which the request for an order has been made, I find, for the purposes of this complaint, that a copy of the original document should be disclosed to the complainant. Disclosure of personal information is authorized under the terms of paragraph 8(2)(*c*) of the *Privacy Act*. This information is relevant to the complaint in this matter, and its disclosure does not involve any of the risks contemplated in paragraphs 17(1)(*a*) to (*c*) of the *Regulations*.

[11] For all these reasons, I am making the following order:

ORDER

[12] I order the Deputy Head or his or her delegate, where applicable, to see that a complete version of the document entitled “Non-Advertised Staffing Justification”, with no passages blacked out, is delivered, for the purposes of this complaint, to Marie-Claude Larose and to her representative.

Guy Giguère
Chairperson

PARTIES OF RECORD

Tribunal File:	2006-0009
Style of Cause:	Marie-Claude Larose and the Chief Commissioner of the Canadian Human Rights Commission *et al*.
Hearing:	Written request decided without the appearance of the parties
Date of Reasons:	May 26, 2006