

FILE: 2006-0078

OTTAWA, NOVEMBER 2, 2006

CHARLOTTE CAMPBELL

COMPLAINANT

AND

THE DEPUTY MINISTER OF NATIONAL DEFENCE

RESPONDENT

AND

OTHER PARTIES

MATTER Request for order for provision of information

DECISION The request is granted in part

DECISION RENDERED BY Merri Beattie, Member

LANGUAGE OF DECISION English

INDEXED *Campbell vs. Deputy Minister of National Defence
et al.*

NEUTRAL CITATION 2006 PSST 0011

REASONS FOR DECISION

INTRODUCTION

[1] The complainant seeks an order from the Public Service Staffing Tribunal (the Tribunal) for the provision of information related to a complaint filed pursuant to subsection 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*).

BACKGROUND

[2] The Department of National Defence (DND) identified four vacant AS-01 Company Administration Coordinator positions to be filled. One position was filled by the appointment of a priority employee who had been referred by the Public Service Commission (the PSC), assessed and found qualified. DND also considered and assessed several employees who had been identified as 'affected' due to internal restructuring. A second position was filled by one of the 'affected' employees who was found qualified and declared surplus.

[3] The complainant, Charlotte Campbell, as one of the 'affected' employees, was assessed against the merit criteria for the position. She was advised on March 15, 2006, that she met the education and experience requirements of the position and would be assessed on the remaining essential qualifications.

[4] On March 24, 2006, the complainant was informed that she did not pass the abilities requirements identified on the Statement of Merit Criteria and would not be considered for the position.

[5] DND initiated an internal advertised appointment process (process number 06-DND-IA-EDMTN-045178) to fill the remaining two vacancies.

[6] The complainant submitted an application to the internal advertised process and, on June 14, 2006, she was advised by email that she had already been assessed for this position and found not to have met all of the essential

qualifications. By letter dated June 21, 2006, DND wrote to the complainant and confirmed this information, and informed her that she would be notified in writing of the names of candidates being considered for appointment, the names of candidates being appointed or proposed for appointment, and the right to make a complaint to the Tribunal.

[7] On July 31, 2006, the complainant filed a complaint with the Tribunal.

[8] On August 15, 2006, the Tribunal granted an extension of the time limit for exchange of information between the complainant and the Deputy Minister of National Defence, the respondent, until October 3, 2006.

[9] On September 25, 2006, the complainant wrote to the Tribunal, requesting that the Tribunal order the respondent to provide the following information:

- copies of all applicants' (including priority referrals) résumés and covering letters;
- screening criteria;
- copies of notices sent to applicants concerning their screening results prior to testing;
- list of applicants and appointment times for testing;
- copy of test;
- test criteria and anticipated answers;
- copy of applicants' test and results/marks;
- list of applicants and appointment times for interviews;
- questions and anticipated answers for the interview; and,
- notification to all applicants of who were the successful candidates for the positions.

[10] On October 2, 2006, the reply to the complainant's request was provided on behalf of the respondent. In its reply, the respondent raised the issue of the Tribunal's jurisdiction.

[11] The complainant filed her allegations with the Tribunal on October 11, 2006.

ISSUES

[12] The Tribunal must answer the following questions:

- (i) Does the Tribunal have jurisdiction to order the provision of information in respect of persons with priority entitlement?
- (ii) Is the information requested by the complainant relevant to the complaint filed?

SUBMISSIONS OF PARTIES

[13] The complainant submits that the provision of the questions and answers related to both the process to assess the 'affected' employees and the internal advertised process is necessary to ensure that they were the same and that the same standard was applied in all assessments.

[14] The complainant submits that the list of all candidates is required to ensure that proper procedure was followed to send out notices related to the screening of applicants.

[15] The complainant also states that, while there were four positions, the names of only two people were published as having been appointed.

[16] In its reply, the respondent submits that DND has met its obligation under subsection 16(1) of the *Public Service Staffing Tribunal Regulations*,

SOR/2006-6 (the *PSST Regulations*), since the complainant has already been provided with all relevant information, including:

- screening criteria;
- copy of the test;
- test criteria and anticipated answers; and,
- questions and anticipated answers for the interview.

[17] The respondent further submits that the Tribunal does not have jurisdiction in respect of the two priority appointments and, therefore, cannot order the provision of documents and/or information related to those appointments. The respondent states that those two appointments were made under section 40 of the *PSEA*, namely, priorities – surplus employees. Thus, the respondent submits that, in accordance with section 87 of the *PSEA*, no complaint may be made under section 77 of the *PSEA* in respect of an appointment made under section 40 of the *PSEA*.

[18] The respondent submits that the request for an order for provision of information should be denied.

ANALYSIS

Issue I: Does the Tribunal have jurisdiction to order the provision of information in respect of persons with priority entitlement?

[19] In her request, the complainant specifically seeks the résumés and covering letters of priority referrals. The complainant also submits that the names of only two of the four persons appointed were published and requests notification of the priority appointments to the positions.

[20] In its reply, the respondent states that two of the four vacant AS-01 positions were filled by the appointments of surplus employees with priority entitlement for appointment. The respondent states, and the Tribunal accepts,

that those appointments were made under section 40 of the *PSEA*. Section 40 reads as follows:

40. Notwithstanding section 41, after a deputy head informs an employee that the employee will be laid off pursuant to subsection 64(1) and before the lay-off becomes effective, the Commission may appoint the employee in priority to all other persons to another position under the deputy head's jurisdiction if the Commission is satisfied that the employee meets the essential qualifications referred to in paragraph 30(2)(a) and that it is in the best interests of the public service to make the appointment.

[21] In accordance with section 87 of the *PSEA*, there is no right of complaint in respect of an appointment of a surplus employee. Section 87 reads as follows:

87. No complaint may be made under section 77 in respect of an appointment under subsection 15(6) (re-appointment on revocation by deputy head), section 40 (priorities – surplus employees), any of subsections 41(1) to (4) (other priorities) or section 73 (re-appointment on revocation by Commission) or 86 (re-appointment following Tribunal order), or under any regulations made pursuant to paragraph 22(2)(a).

[22] The scope of the Tribunal's jurisdiction is clearly stated in subsection 88(2) of the *PSEA*. Subsection 88(2) reads as follows:

88. (2) The mandate of the Tribunal is to consider and dispose of complaints made under subsection 65(1) and sections 74, 77 and 83.

[23] The Tribunal has no jurisdiction in respect of appointments for which no recourse is provided. Accordingly, the Tribunal cannot order the provision of information related to such appointments.

Issue II: Is the information requested by the complainant relevant to the complaint filed?

[24] In considering a request for an order for provision of information, the Tribunal must be satisfied that the parties have complied with subsection 16(1) of the *PSST Regulations*. Subsection 16(1) reads as follows:

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.

[25] The relevance of the information that is sought is therefore the key determination to be made. The requesting party, in this case the complainant, must demonstrate to the Tribunal's satisfaction that there is a clear linkage between the information sought and the matters raised in the complaint; the information must be arguably relevant to the complaint.

[26] Subsection 17(3) of the *PSST Regulations* deals with the form and content of a request for an order for provision of information. Paragraph 17(3)(c) of the *PSST Regulations* specifies that a request must include a detailed explanation as to why the Tribunal should order that the information be provided.

[27] The principal concern in this complaint involves DND's use of the complainant's assessment for the position as an 'affected' employee to determine her results in the advertised process. The complainant refers to the process to assess the 'affected' employees as a non-advertised process. This is not correct. For ease of reference and clarity, the Tribunal will refer to that process as the process to assess 'affected' employees.

[28] There is very little detail in the complainant's written submissions. The Tribunal has also reviewed the complainant's allegations to determine whether they provide a more fulsome explanation for her various requests for information.

[29] In her request, the complainant submits that the test, interview questions and expected answers for the process to assess 'affected' employees and those for the advertised process are required to determine whether the same standard was used for both processes.

[30] The respondent has provided the complainant with the following information: the screening criteria; the test; interview questions; criteria and expected answers. Unfortunately, the respondent does not state whether this

information relates to the process to assess 'affected' employees, the advertised process, or both. The respondent does state that the essential qualifications for the position remained the same for both processes.

[31] The Tribunal accepts the complainant's submissions concerning this information as it relates directly to the decision not to appoint the complainant. The Tribunal is satisfied that the information for both processes is arguably relevant to one of the matters to be decided in this complaint, namely, whether the same standard was used for both processes.

[32] The complainant further submits that the answers provided by the other candidates are also required to determine whether the same standard was used for both processes.

[33] The complainant has alleged that the assessment of one appointee was lenient or non-existent. This allegation relates to the appointment of a priority employee. The Tribunal has concluded at paragraph 23, that it cannot order the provision of information related to the appointment of a priority employee.

[34] The complainant has not provided any explanation as to why the assessments of the other candidates in the advertised appointment process are relevant to this complaint. As stated, the requesting party bears the onus of demonstrating to the Tribunal that the information requested is arguably relevant.

[35] The Tribunal accepts that the complainant's assessment is relevant to the complaint. However, the complainant has not met the onus with respect to her request for information in respect of the other candidates' assessments.

[36] Similarly, the complainant has not provided any submissions in respect of the relevance of the names and appointment schedules for testing and interviews. Again, the complainant has not met the onus with respect to her request for this information.

[37] This complaint also concerns the procedure used by DND for notification of screening results. In her request, the complainant submits that the names of all candidates are required to ensure that the proper procedure was used to send out notices both for screening-in and screening-out of applicants. She also seeks copies of notices of screening results that were sent to applicants.

[38] There is no reference in the *PSEA* to a requirement for notification of screening results. Based on documents provided by the complainant, the Tribunal finds that DND notified the complainant of her screening and assessment results related to both the process to assess 'affected' employees and the advertised appointment process. The complainant has first hand information concerning the procedure for notification of screening results used by DND for both processes.

[39] The complainant has failed to demonstrate a clear linkage between the information requested and the determination of the appropriateness of the procedure used for notification. Accordingly, the complainant has not met the onus with respect to her request for this information.

DECISION

[40] For the reasons stated above, the Tribunal grants the request for an order for provision of information in part.

ORDER

[41] The Tribunal orders that the respondent provide to the complainant the following information: the screening criteria; the test; interview questions; criteria and expected answers used in both the process to assess 'affected' employees and the internal advertised process for the AS-01, Company Administration Coordinator position within 7 days of the date of this decision.

[42] The Tribunal further orders that the respondent provide to the complainant her assessment.

[43] In accordance with section 18 of the *PSST Regulations*, the information obtained under section 16 of the *PSST Regulations* may be used only for purposes of the complaint.

Merri Beattie
Member

PARTIES OF RECORD

Tribunal File:	2006-0078
Style of Cause:	<i>Charlotte Campbell and the Deputy Minister of National Defence et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	November 2, 2006