



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILE: 2007-0023

OTTAWA, APRIL 23, 2007

SYLVIA FENTON

COMPLAINANT

AND

THE DEPUTY MINISTER OF VETERANS AFFAIRS CANADA

RESPONDENT

AND

OTHER PARTIES

MATTER	Request for order for provision of information and request for extension of time
DECISION	The request for order for provision of information is denied. The request for extension of time is granted.
DECISION RENDERED BY	Francine Cabana, Member
LANGUAGE OF DECISION	French
INDEXED	<i>Fenton v. Deputy Minister of Veterans Affairs Canada et al.</i>
NEUTRAL CITATION	2007 PSST 0018

REASONS FOR DECISION

INTRODUCTION

[1] The complainant, Ms. Sylvia Fenton, wishes to obtain an order for provision of information in accordance with a request that she made on February 27, 2007 to the Public Service Staffing Tribunal (the Tribunal) concerning a complaint that she had filed.

[2] The complainant is also requesting an extension of time to file her allegations. The respondent in this case is the Deputy Minister of Veterans Affairs Canada.

BACKGROUND

[3] The complainant submitted her application for the position of “Coaching/Learning Officer”, which was open to “employees of Veterans Affairs who occupy a position in the Ontario Regional Office.” Her application was not accepted for the position.

[4] The complainant subsequently filed a complaint on January 17, 2007, pursuant to subsection 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*), following an indeterminate appointment to the position of “Coaching/Learning Officer” (WP-02) at the Department of Veterans Affairs, in connection with an advertised process (No. 06-DVA-IA-NCCN-379).

[5] Ms. Fenton complains that the appointee “has no experience whatsoever with the National Contact Center Network, nor has she ever worked with the multitude of issues that arise on an ongoing basis.”

[6] On January 24, 2007, the complainant requested the following information:

- 1- Notice of competition
- 2- Statement of qualifications
- 3- Work description
- 4- Successful candidate's résumé
- 5- Questions of the written competition, complainant's answers and successful candidates' answers
- 6- Interview report
- 7- Numerical report, if applicable.

And any other information that had been taken into consideration for the selection.

[Translation]

[7] On February 12, 2007, the respondent gave the complainant the advertised job posting and the statement of merit criteria. On February 14, 2007, the respondent provided the following documents:

- a translated work description for the position of Coaching/Learning Officer
- the appointed candidate's résumé
- the questions and answers of the written examination
- the complainant's answers on the written examination, and her assessment
- the complainant's answers at the oral presentation, and her assessment
- the appointed candidate's answers on the written examination (partially).

[Translation]

[8] The respondent did not provide the appointee's assessment, interview report or digital report.

[9] On April 3, 2007, the complainant clarified her request in responding to the Tribunal's directive asking her to provide it with a list of documents that she still had not received:

- the appointee's reference check
- the selection board members' notes taken during the appointee's written examination
- the selection board members' notes taken during the appointee's interview
- the overall score for the essential qualifications associated with knowledge, abilities and personal suitability.

[Translation]

[10] Consequently, all the remaining documents requested by the complainant pertain to the appointee's assessment.

ISSUES

[11] The Tribunal must answer the following questions:

- (i) Is the information concerning the appointee's assessment relevant?
- (ii) Should the Tribunal grant an extension for filing the allegations?

SUBMISSIONS

A) COMPLAINANT'S POSITION

[12] The complainant submits that she has not received all the information required to prepare her allegations. The information received by the complainant does not allow her to determine whether the appointee obtained the minimum percentage required for the essential qualifications and for the experience factor.

[13] The complainant requires the information in order to determine whether the appointee has all the essential qualifications in terms of experience "(...) in providing training in either a one-on-one or group setting" and in terms of "general knowledge of Veterans Affairs Canada, programs and services, as well as general coaching practices." The complainant mentions work experience in a call centre and experience with a host of issues that arise on an ongoing basis.

[14] The complainant also claims that there is not enough time between the Tribunal's decision on the provision of the requested documents and the filing of the allegations. The complainant is therefore asking that the time limit to file her allegations be extended as a result of the Tribunal's decision.

B) RESPONDENT'S POSITION:

[15] On March 22, 2007, the respondent objected to the request for order for provision of information in respect of documents dealing with the appointee's assessment because this information was not relevant to the complaint. The complainant has not discharged her burden of proving the relevance of the documents concerning the appointee.

[16] According to the respondent, the complaint pertains to the appointee's lack of experience with regard to the National Contact Centre Network, and the appointee's lack of work experience concerning a host of problems to be resolved in day-to-day work.

[17] Experience was assessed at the screening stage of the appointment process, not during the interview or during the reference check. The respondent thus argues that the appointee's written examination, interview and assessment are not relevant. The written examination, the interview and the reference check were used to assess other qualifications included in the statement of merit criteria, but not the experience factor.

ANALYSIS

Question I: Is the information concerning the appointee's assessment relevant?

[18] According to the French version¹ of subsection 17(4) of the *PSST Regulations*, the Tribunal may order the provision of information where that information is relevant to the complaint:

17. (4) S'il est d'avis que les renseignements sont **pertinents** et que leur communication ne présente aucun des risques mentionnés aux alinéas (1) a) à c), le Tribunal ordonne qu'ils soient communiqués, selon le cas, au plaignant, à l'administrateur général ou à la Commission.

(emphasis added)

[19] It is also appropriate to take into account section 16 of the *PSST Regulations*, SORS/2006-6 (the *PSST Regulations*) which pertains to 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)

¹ The English version does not contain the concept of *pertinence* (relevance). The English version of subsection 17(4) reads: "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."

[20] In *Jolin v. Deputy Head of Service Canada et al.*, [2006] PSST 0006, the Tribunal set out the definition of the word “relevant”:

[11] Relevance is the essential element for ordering the provision of the document or information requested. The *Petit Robert* dictionary (2004) defines “*pertinent*” as “having reference to the matter, relating to the very substance of the matter [translation].”

[21] Furthermore, the Tribunal has dealt with the relevance of information in a number of decisions, particularly in *Oddie v. Deputy Minister of National Defence et al.*, [2006] PSST 0009, which describes the components of the relevance test:

[22] (...) 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.

[22] In *Aucoin v. President of the Canada Border Services Agency et al.*, [2006] PSST 0012, the Tribunal further specified that the requested information must have bearing on the crux of the complaint and be essential for the adequate preparation of the case:

[38] (...) the requested information must have bearing on the crux of the complaint and be essential for the adequate preparation of the case. This is what the complainant must demonstrate to the satisfaction of the Tribunal. To simply assert that one requires the information is not sufficient.

[23] Consequently, the complainant must prove that the information requested with respect to the appointee’s assessment has bearing on the crux of the complaint and that there is concrete linkage between the information and the issue, namely, abuse of power in the appointee’s selection.

[24] The complainant claims that the appointee has no experience with the National Contact Centre Network, and has never worked with a host of issues that arise on an ongoing basis. The complainant has not provided arguments in relation to other aspects of the appointment process, other than the appointee’s experience.

[25] The complainant received the appointee's résumé, which indicates her experience. The information on record indicates that the respondent assessed experience at the screening stage. Experience was not assessed subsequently.

[26] Other than experience, the Tribunal does not see any concrete linkage between the crux of the complaint and the information regarding the appointee's assessment of merit criteria. However, the complainant has already received the information concerning experience which was assessed at the screening stage. The complainant has not established a direct link between the information requested and her complaint. The Tribunal finds that the information requested is not relevant.

[27] The Tribunal wishes to point out that the exchange of information is not a fishing expedition. The Tribunal has indeed ruled on this kind of exercise in *Smith v. Commissioner of the Correctional Service of Canada et al.*, [2006] PSST 0013:

[13] (...) A mere suspicion raised by a party that a document or documents may be relevant, without more, amounts to a fishing expedition. The complainant's speculation that something might be uncovered if she is permitted access to the requested information is insufficient to warrant an order for provision of that information.

[28] Given the fact that the complainant has not discharged her burden, the Tribunal denies the request for an order for provision of information with respect to the appointee's assessment.

Question II: Should the Tribunal grant an extension of time for filing the allegations?

[29] The Tribunal has considered the request for an extension of time for filing the allegations. Given the fact that the complainant's representative was out of the country until April 13, 2007, the Tribunal grants the request for an extension of time until April 30, 2007. The complainant must file her allegations by this date.

DECISION

[30] For all these reasons, the Tribunal denies the request for order for provision of information.

[31] The Tribunal grants the request for extension of time.

Francine Cabana
Member

PARTIES OF RECORD

Tribunal File:	2007-0023
Style of Cause:	<i>Sylvia Fenton and the Deputy Minister of Veterans Affairs Canada et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	April 23, 2007