

Decision of the European Ombudsman on complaint 73/2005/ELB against the European Personnel Selection Office

Decision

Case 73/2005/ELB - Opened on 27/01/2005 - Decision on 26/10/2005

Strasbourg, 26 October 2005

Dear Mr X,

On 22 December 2004 you made a complaint to the European Ombudsman against the European Commission concerning your participation in Open competition COM/A/3/02.

Since the competition notice states that, from 1 January 2003, the European Personnel Selection Office ("EPSO") will be responsible for the organisation and management of competitions, and since this Office answered your letters, I decided to treat your complaint as being against EPSO. On 27 January 2005 I sent your complaint to the Director of EPSO. An opinion containing the joint comments of the European Commission and EPSO was received on 28 April 2005. I sent you that opinion, inviting you to make observations, which you did on 13 June 2005.

I am now writing to inform you of the results of my investigation.

THE COMPLAINT

According to the complainant the facts can be summarised as follows:

The complainant works for a Community agency. He took part in Open competition COM/A/3/02 (administrators in the field of research), during which various incidents occurred. During the pre-selection tests an English test paper was given to him by mistake. He asked for a French test paper, but there was none available. Having obtained satisfactory scores in the tests, he was invited to the written and oral tests.

In the case of the oral tests, the complainant was not informed that he was being invited to the tests until he received a list of test centres from EPSO. He then contacted EPSO and was told that his name was on the list of candidates invited to the oral tests. Because the test date was close, he asked for his oral test to be postponed. EPSO refused. At the end of the oral tests, he



was not among the 55 best candidates and was excluded from the competition.

On 28 April 2004 the complainant sent an e-mail to the chair of the Selection Board, in which he drew attention to the various incidents that had occurred during the competition. He received no reply. On 21 June 2004, he made a complaint to the European Ombudsman (1937/2004/ELB). The Ombudsman contacted EPSO, which agreed to reply on 13 July 2004. The Ombudsman therefore closed the case.

In its reply dated 13 July 2004, EPSO explained that the invitations to the oral tests had all been sent out on 23 January 2004 and that this had been announced on its website. It also explained that requests to postpone the dates of oral tests are refused for organisational reasons.

On 22 December 2004 the complainant wrote again to the Ombudsman, stating that he wished to renew his complaint because he was not satisfied with EPSO's response. In his view, incidents had occurred in the course of the competition that had negatively affected his application. He felt that the selection procedure was unfair. The complainant added that EPSO's reply of 13 July 2004 was sent by registered post to his workplace without being marked "Personal" and had therefore been opened by post room staff. EPSO also faxed the reply without indicating that it was confidential.

The complainant alleges that EPSO failed to provide explanations for the incidents during the competition which worked to his detriment. He also alleges that EPSO did not respect the rules on confidentiality when it replied to him on 13 July 2004.

THE INQUIRY

The opinion of the European Commission and the European Personnel Selection Office

The Ombudsman sent the complaint to the Director of EPSO. The Ombudsman received an opinion from the Commission, which was presented as containing the joint views of EPSO and the Commission. The opinion can be summarised as follows:

The complainant took part in Open competition COM/A/3/02 (Field 4 – Socioeconomic and ethical aspects of research and technological development (RTD) activities). He took part in the pre-selection tests held on 20 March 2003. When the complainant registered, he chose French as his main language and English as his second language. His results were not sufficient for him to be admitted to the next stage of the competition.

On 2 May 2003, the complainant sent a letter to the Selection Board reporting a problem during the distribution of test paper (b), which was given to him in English instead of in French. The Board then decided to admit him to the next stage of the competition, inviting him to complete the official application form, and then to admit him to oral test (e). At the end of the tests, the complainant was not among the candidates who obtained the 55 best scores (56.6 points minimum) for tests (d) and (e) and his name could not be placed on the reserve list. He obtained 54.4 points.



Regarding the mistake that occurred during the distribution of the test papers, the Commission and EPSO indicate that, in accordance with the report from the centre, this incident was in fact recorded. It should be pointed out that two candidates reported having received test paper (b) in English instead of in French, but only at the end of the test. However, during the talk by the test centre's spokesperson, all candidates are asked to check before the starting signal is given that they have the test papers in the language they selected when they registered. It is also important to remember that, when a competition is held, a minimum of one extra copy of the test paper is always provided in each Community language listed in the competition notice. Thus it is always possible to cope with any errors in distribution, provided that they are reported in good time, that is before the start of the tests. If the complainant had reported before the start of the tests the mistake that had occurred when his test paper (b) was distributed, the team in the centre would have been able to provide him with a French version of the test paper. Because of the mistake during the distribution of the tests, the Selection Board decided not to penalise the candidate and therefore to admit him to the next stage of the competition.

Regarding the oral test, the complainant was invited to the test scheduled for 25 February 2004 by letter dated 23 January 2004 sent to the address he had given on his registration and application forms. Following his request by telephone, a copy of this invitation was faxed to him on 12 February 2004 using the number he had given. As indicated in the letter of invitation, organisational requirements relating to the oral tests mean that it is not possible to change the date or time of the test except in cases of *force majeure*, and where a request is accompanied by documents proving the alleged event. In this case the Selection Board may exceptionally decide to change the date and time of the interview. No request of this kind was submitted in writing by the complainant after receiving the invitation.

The Commission and EPSO are keen to point out that the message sent by the complainant to the chair of the Selection Board on 28 April 2004 was not made known to them until after the Ombudsman had intervened. Nor could the chair of the Board find any trace of this message. Until the closure of the competition, all communication with candidates was handled by the Recruitment Policy Unit, now EPSO. The complainant did not send this unit a copy of the letter dated 28 April 2004.

Because of the postal delivery problem reported by the complainant at the time the invitation to the oral test was sent out, and because the complainant gave his address as that of his workplace, EPSO used that address to ensure its reply dated 13 July 2004 would reach the complainant without any problem. A copy of this letter had also been faxed to the same number as the one he gave for sending the invitation to the oral test. Unlike other candidates, he did not indicate that this address could not be used. Candidates should be reminded that they should provide the information needed to enable EPSO to send them the necessary communications, by post or by other means. In this particular case, the complainant gave an address for which a postal delivery problem had been noted, and this cannot be blamed on EPSO, which correctly used the contact details provided by the complainant. If a workplace address was used, this was only because of the circumstances explained above, since no information to the contrary had been made known to EPSO.

The complainant's observations



In his observations the complainant made the comments summarised below:

Regarding the pre-selection tests, the complainant reported having received the test paper in English instead of in French at the time the papers were distributed, thereby following the instructions given by the examination centre spokesperson to report any problem with the papers. The person distributing the papers then clearly indicated that she did not have a French version of this test and that the complainant should therefore continue the test using the English paper. She would mention this incident in her report on the tests.

Regarding his contact with EPSO in the period following the pre-selection tests, the complainant's frequent telephone calls to EPSO on the subject of the test paper incident are not mentioned. He trusted EPSO's internal procedures to settle the matter justly and fairly without the need to send a registered letter. He decided to send a letter to the chair of the Selection Board when he realised that his request had not been dealt with because the only letter from EPSO contained a breakdown of the results of the pre-selection tests.

Regarding the invitation to the oral test, he only found out about the existence of an invitation when he received a letter from EPSO containing a map explaining how to find the venues for the oral tests. He repeats that a member of staff at EPSO refused to change the date of his oral test.

Regarding the rules on confidentiality, the complainant emphasised that the fax number given was that of his workplace.

The complainant expresses his surprise at the scant regard given to the word of a candidate.

THE DECISION

1 Alleged failure to explain the incidents that occurred

1.1 The complainant took part in Open competition COM/A/3/02. During this competition, several incidents occurred that the complainant considered to be out of the ordinary. During the pre-selection tests an English test paper was distributed to the complainant instead of a French test paper. In addition, he was made aware of his invitation to the oral test with very little notice. On 28 April 2004, the complainant drew the Selection Board's attention to these incidents. Following intervention by the Ombudsman, he received a response on 13 July 2004. Dissatisfied with this response, the complainant lodged a new complaint with the Ombudsman. In this complaint he alleges that EPSO has not provided explanations for the incidents during the competition which worked to his detriment.

Incident during the distribution of the pre-selection tests

1.2 In their opinion, the Commission and EPSO indicate that, in accordance with the report by the centre, a mistake did arise during the distribution of the test papers. Two candidates reported having received test paper (b) in English instead of in French, but only at the end of the test. During the talk by the test centre's spokesperson, all candidates are asked to check before the starting signal is given that they have the test papers in the language they chose when they registered. A minimum of one extra copy of the test is always provided in each Community



language listed in the competition notice. Thus it is always possible to cope with any errors in distribution, provided that they are reported in good time, that is, before the start of the tests. If the complainant had reported before the start of the tests the mistake that had occurred when his test paper (b) was distributed, the team in the centre would have been able to provide him with a French version of the test paper. Because of the mistake during the distribution of the tests, the Selection Board decided not to penalise the candidate and therefore to admit him to the next stage of the competition.

1.3 In his observations, the complainant states that he reported having received a test paper in English instead of in French at the time the papers were distributed. The person distributing the papers then clearly indicated that she did not have a French version of this test, and that the complainant should therefore continue the test using the English paper.

1.4 The Ombudsman draws attention to the case-law of the Court of First Instance: "(...) *it falls to the Community institutions to ensure that for all candidates in a competition, the tests progress as calmly and as normally as possible. To this end, the administration is required to ensure the competition is well organised and, in particular, that the materials distributed to the candidates are carefully prepared. (...) However, it should be pointed out that any irregularity occurring during the course of the tests should affect the legality of the tests only if it is of a substantial nature and likely to distort the results of the tests. When this kind of irregularity occurs, it falls to the defending institution to prove that it did not affect the results of the tests.*" (1)

1.5 The Ombudsman also points out that, in accordance with the European Code of Good Administrative Behaviour, " *The official shall, when he has responsibility for the matter concerned, provide members of the public with the information that they request. (...) The official shall take care that the information communicated is clear and understandable* ". The Ombudsman notes that, in its letter of 13 July 2004, in reply to the complainant's e-mail dated 28 April 2004, EPSO (2) does not deal with the issue of the mistake that occurred in the distribution of the pre-selection test papers. He notes, however, that as part of this inquiry, explanations have been given to the complainant.

1.6 The Ombudsman notes that there is disagreement between the complainant and EPSO regarding the course of events during the pre-selection tests. He considers that he would not be justified in continuing his inquiry into this aspect of the complaint. It seems unlikely that the dispute between the complainant and EPSO over the facts can be resolved. Furthermore, on the assumption that the complainant's account of the facts is accurate, the measures taken by the Selection Board, namely to admit him to the oral test, made up for any negative consequence of this error for the complainant.

Incident concerning the invitation to the oral test

1.7 In their opinion EPSO and the Commission indicate that the complainant had been invited to the oral test on 25 February 2004 by letter dated 23 January 2004 sent to the address he had given on his registration and application forms. Following his request by telephone, a copy of this invitation was faxed to him on 12 February 2004 using the number he had given. As indicated in the letter of invitation, organisational requirements relating to the oral tests mean



that it is not possible to change the date or time of the test except in cases of *force majeure*, and where a request is accompanied by documents proving the alleged event. In this case the Selection Board may exceptionally decide to change the date and time of the interview. No request of this kind was submitted in writing by the complainant after receiving the invitation.

1.8 The Ombudsman observes that, in its letter of 13 July 2004, EPSO indicated that the invitation to the oral test had been sent out on 23 January 2004 and that a communication had been published on EPSO website a few days later.

1.9 The Ombudsman notes that, in accordance with the competition notice, "*Bearing in mind the time taken for post to be delivered and the information on the timetable available on the website <http://ec.europa.eu/recruitment> [Link], it is your responsibility to contact the Recruitment Policy Unit by fax or letter if you have received neither an invitation to attend nor a letter stating that you have not been admitted to the competition.*" He also notes that the complainant contacted EPSO to obtain information on his invitation to the oral test.

1.10 The Ombudsman considers it regrettable that the invitation to the oral test sent on 23 January 2004 did not reach the complainant and understands that the late receipt of information on the oral test could have had negative consequences for the complainant's participation in the test. However, he does not consider that fault has been demonstrated on the part of EPSO: the possibility that there could have been a problem concerning the delivery of the post has not been ruled out. He notes that, as stated in the competition notice, the complainant contacted the appropriate department when he considered that he should have received information on his application and his possible participation in the oral test. In conclusion, the Ombudsman considers that there has been no maladministration on the part of EPSO regarding this aspect of the complaint.

2 Alleged failure to observe the rules on confidentiality

2.1 The complainant also considers that EPSO did not observe the rules on confidentiality when it replied to him on 13 July 2004.

2.2 In the opinion, EPSO explains that because of the postal delivery problem reported by the complainant at the time the invitation to the oral test was sent out, and because the complainant gave his address as that of his workplace, EPSO used that address to ensure its reply dated 13 July 2004 would reach the complainant without any problem. A copy of that letter had also been faxed to the same number as the one he gave for sending the invitation to the oral test. Unlike other candidates, he did not indicate that this address could not be used. Candidates should be reminded that they should provide the information needed to enable EPSO to send them the necessary correspondence, by post or by other means. In this particular case the complainant gave an address for which a postal delivery problem had been noted, and no blame can be attached to EPSO, which correctly used the contact details provided by the complainant. If a workplace address was used, this was only because of the circumstances explained above, since no indications to the contrary had been forwarded to EPSO.

2.3 The Ombudsman notes that the complainant's e-mail of 28 April 2004, which EPSO replied to on 13 July 2004, gave the complainant's work address and a work fax number. He also notes



the explanations given by EPSO and particularly the fact that the work fax number had already been used by EPSO for sending the invitation to the oral test. The Ombudsman considers that, in view of the circumstances, it was reasonable for EPSO to reply to the address indicated on the e-mail of 28 April 2004 and is of the opinion that there has been no maladministration regarding this aspect of the complaint.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to be no maladministration on the part of EPSO. The Ombudsman therefore closes the case.

The Director of EPSO will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Case T-159/98 *Yvan Torre and others v. Commission* [2001] ECR IA-83, points 46-47.

(2) The Ombudsman recalls that from 1 January 2003 EPSO was responsible for the organisation and management of recruitment competitions for the European institutions.