

PASTORI BALELE,
Complainant,

v.

**Secretary, DEPARTMENT OF
ADMINISTRATION,
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS, and
Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION,**
Respondents.

**PROTECTIVE
ORDER**

Case No. 01-0067-PC-ER

The parties agree that a protective order should be issued in this matter but disagree as to the language of the order

By letter dated July 2, 2001, respondents proposed the following language:

The following conditions are placed upon access and use of the materials supplied to the complainant by the respondents pursuant to his discovery requests, including employment application forms and resumes, notes by employment interview panel members, reference check records and notes, benchmarks and other standards or criteria, and other evaluation or employment examination records regarding applicants for employment, as well as any data or lists regarding names of career executives and positions. These records, and confidential information contained in them, may be used by the complainant or complainant's legal representative *only* for the purpose of litigating this case or related cases involving identical or similar issues involving the same parties, and may not be used or disclosed by the complainant or complainant's representative to any one else for any other purpose. Any information on said documents including gender, disability, home addresses, home phone numbers, or other data which cannot be released pursuant to law, shall be redacted by respondents prior to providing same to complainant. Upon final resolution of this action, or related actions involving identical or similar issues and the same parties, if requested by respondents the complainant will return to DOA, DER or DMRS any and all documents and copies thereof.

Complainant responded to this proposal by noting that he agreed to all "except the last two sentences":

They say I should return the documents after the resolution of the case. I want to retain the documents for comparison purposes in the future. I know this case is not the last against DOA, DER and DMRS. I know respondents are going to advertise similar positions in the near future. I am sure I will apply for them. I am also sure they will flunk me to pay way for selecting their unqualified friends. . .

Complainant's disagreement is only with the last sentence of respondents' proposed language, requiring him to return the documents containing the confidential information "upon final resolution" of the complaint, if requested.

Respondents correctly note that the complainant has previously agreed to substantially similar language in previous cases: *Balele v. DATCP et al.*, 98-0199-PC-ER, 12/3/99; *Balele v. DHFS et al.*, 99-0122-PC-ER, 7/28/99.¹

Respondents have a strong interest in limiting the dissemination of certain materials relating to the selection process. That interest is subordinate to the interests of a party pursuing an administrative proceeding before the Personnel Commission relating to the selection process. When that administrative proceeding and any "related actions involving identical or similar issues and the same parties" has been finally resolved, the respondents are entitled to the return of the materials. The mere possibility that the information could prove to be of interest to complainant if he is rejected for a future vacancy is an insufficient interest when compared to the respondents' original interests in limiting dissemination of the materials.


Therefore, the Commission accepts the respondents' proposed language and places the following limits on the complainant's use of certain materials:

The following conditions are placed upon access and use of the materials supplied to the complainant by the respondents pursuant to his discovery requests, including employment application forms and resumes, notes by employment interview panel members, reference check records and notes, benchmarks and other standards or criteria, and other evaluation or employment examination records regarding applicants for employ-

¹ Also see *Balele v. DHFS*, 99-0002-PC-ER, and *Balele v. DOC*, 00-0034-PC-ER.

ment, as well as any data or lists regarding names of career executives and positions. These records, and confidential information contained in them, may be used by the complainant or complainant's legal representative *only* for the purpose of litigating this case or related cases involving identical or similar issues involving the same parties, and may not be used or disclosed by the complainant or complainant's representative to any one else for any other purpose. Any information on said documents including gender, disability, home addresses, home phone numbers, or other data which cannot be released pursuant to law, shall be redacted by respondents prior to providing same to complainant. Upon final resolution of this action, or related actions involving identical or similar issues and the same parties, if requested by respondents the complainant will return to DOA, DER or DMRS any and all documents and copies thereof.

Dated: July 16, 2001 STATE PERSONNEL COMMISSION


KURT M. STEGE, Hearing Examiner

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