

PASTORI M. BALELE
Appellant,

v.

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

**RULING ON MOTIONS
RELATING TO
COMPLAINANT'S
FIRST SET OF
DISCOVERY TO DOR**

Case No. 98-0002-PC-ER

The present dispute involves complainant's motion to compel the Department of Revenue (DOR) to respond to certain discovery requests and DOR's corresponding motion for a protective order. DOR received complainant's first discovery request on March 9, 1998, comprised of the components shown in the chart below. The chart also indicates which portion of the discovery is disputed.

Component Description	Disputed Areas
a. 70 interrogatories directed to DOR.	Interrogatories 19-26, and 35
b. 13 interrogatories directed to Robin Gates, DOR Administrator.	All 13 interrogatories
c. 17 admission requests directed to DOR.	All 17 admission requests
d. 17 admission requests directed to Mr. Gates	All 17 admission requests
e. 42 requests for production of documents.	Production requests 1, 3-5, 8-9, 20-22, 25, 28-29 and 34.

The Findings of Fact below appear to be undisputed by the parties. The facts are based upon information contained in the arguments filed by the parties, as well as from DOR's discovery answers. The facts are made solely for the purpose of resolving the present motion.

FINDINGS OF FACT

1. The Commission received the present complaint on January 6, 1998. Complainant alleged therein (in pertinent part) that the Department of Revenue (DOR) discriminated against him on the bases of color, national origin/ancestry, race and activities protected under the Fair Employment Act (FEA), in regard to a vacant position for which he was not hired. Complainant further alleged as to the Department of Employment Relations (DER) and the Division of Merit Recruitment and Selection (DMRS) that they “refused to intervene” in the DOR selection process “arguing that they had no authority to intervene in the selection process in DOR or other agencies after certification.” (See complaint, p. 3 of attached narrative.)

2. At issue in this case is a vacant Administrative Officer 3 (AO3) position at DOR. Complainant applied for the job and was certified as a potential candidate. DOR did not interview everyone on the certification list. Instead, DOR had the applicants complete what complainant refers to as a “two-page executive summary.” The completed summaries were used by DOR to narrow the number of candidates who would be invited to interview. Complainant was not invited to interview. Interviews were held for other candidates. Ultimately, DOR hired Maytee Aspuro, a minority female.

3. Robin Gates, a white male, was the Administrator of DOR’s Division of Administrative Services where the AO3 vacancy existed. He participated as a member of the interview panel. Previously, he worked for the Department of Workforce Development (DWD) and prior to working for DWD, he worked for the Department of Administration (DOA).

OPINION

The discovery disputes are discussed below. The discussion is organized using the five components noted in the above chart.

I. Component a: Interrogatories to DOR

A. Interrogatories 19-24

Interrogatories 19 through 24 are discussed first below due to the common nature of the materials requested (relating to clerical handling of certain documents) to which respondent DOR has filed similar objections. These interrogatories are shown below, followed by DOR's objection.

Interrogatory 19: State the name of the individual who copied the candidates' responses of the two-stage executive summary.

Interrogatory 20: State the name of individual who received candidates' responses to the two-page executive summary.

Interrogatory 21: State the name of the individual who copied candidates' responses to the two-page executive summary.

Interrogatory 22: State the name of individual who distributed to the raters the candidates' responses to the two-page executive summary.

Interrogatory 23: State the name of individual who received candidates' responses to the two-page executive summary after they were rated.

Interrogatory 24: State the name of individual who stored candidates' responses to the two-page executive summary after they were rated.

Answer to Interrogatories 19-24: Objection on the grounds of relevance. These interrogatories are outside the scope of discovery and not reasonably calculated to lead to the discovery of admissible evidence. Complainant asks about routine clerical duties which are performed by a myriad number of employees both in the Office of Human Resources, the mail room and Robin Gates' office. It is not possible to pinpoint which employee handled the clerical duties involved with the candidates' responses to the "two-page executive summary."

Complainant's explanation for asking the above interrogatories is shown below (from arguments dated 5/26/98, p. 3):

Complainant requested to know the names of staff who handled the materials to enable him to verify that they copied and presented the same to the review panel in total. In (another case) it was discovered that at a certain stage of handling candidates' materials, some (of) complainant's materials were not presented to the raters.

Complainant wishes to know which of the materials he submitted for the job were received by DOR and reviewed by the rating panel. This is an appropriate area of discovery, which could lead to admissible evidence. Complainant, however, has not asked this preliminary question. Without first establishing that the raters did not see all his materials, he is not entitled to information about the clerical handling of the application materials. To rule otherwise would create an undue burden for DOR. Based on the foregoing, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

B. Interrogatory 25

Interrogatory 25: State the name of DOR employee who is well informed how the two-executive summary as an employment practice for the position in question. Answer: The Interrogatory is vague and unclear. The respondent cannot ascertain what the complainant is asking.

Complainant attempted to clarify his request as shown below (written arguments dated 5/26/98, p. 4):

Interrogatory No. 25 asked the name of DOR employee (sic) who is well informed how the two-executive summary as an employment practice (sic) for the position in question. This is an extremely important question in that the person who will be subpoenaed at trial to explain how the two-page executive summary works and how it was job related. Remember the allegations in the complaint is that the post-certification employment practice, which includes the two page summary, had disparate impact on black people . . . DOR should state the name of individual (sic) who will testify of validity of the two-page executive summary.

DOR responded (letter dated 6/9/98, p. 2) that interrogatory 25 remains unclear, as noted below:

Complainant now states he wants to know the name of the “expert” who can be subpoenaed for trial to testify as to the validity of the two-page executive summary. DOR responded that the question was vague and unclear. DOR reiterates its objection. What is complainant asking? Is he asking who wrote the “executive summary?” Is he asking who knows of the practice of using executive summaries? It is still not clear what he wants.

Complainant’s attempt to clarify the interrogatory added inquiries, which simply could not be read as part of the interrogatory language. Perhaps a clearer way of phrasing an appropriate interrogatory would be to ask who wrote the two-page executive summary for the position at issue and who helped in its development. However, Interrogatory 25 as written by complainant is unclear. Accordingly, this portion of complainant’s motion to compel is denied and DOR’s motion for a protective order is granted.

C. Interrogatory 35

Interrogatory 35: Were there any black people in DOR in May 1997 or at the time complainant was interviewed for the position at issue. Answer: Objection to Interrogatory Number 35. The request is too vague and overbroad. The respondent cannot ascertain what the complainant is asking. Does the complainant ask if DOR has any black individuals employed by it? Does the complainant ask if any black individuals were present in the GEF 3 building at the time of the interviews?

Complainant’s explanation for interrogatory 35 is shown below (written argument dated 5/26/98, p. 5):

This interrogatory is extremely important to establish pattern of State and DOR through Gates excluded blacks from post-certification selection panels. Essentially the complaint is that Respondents, through Gates, had pre-disposition to discriminate against blacks; and one way was to exclude blacks from post-certification selection panels.

DOR's response is shown below (letter dated 6/9/98, p. 2):

If the complainant is asking how many black people were employed by DOR in May 1997, there are no statistics kept by DOR regarding the number of black people employed in May 1997. DOR can produce a payroll report which indicates the race of all persons employed by DOR but this report can only be run for the present period. It is possible that DER keeps these statistics. DOR does not.

DOR has responded to interrogatory 35 as initially written to the best of its ability. The interrogatory as initially written did not ask about the composition of the rating panel. Accordingly, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

D. Interrogatory 26

Interrogatory 26: State how many times had DOR has used the two-page executive summary as practice to screen candidates for further consideration in DOR positions in 1997. Answer: The interrogatory is vague and unclear. The respondent cannot ascertain what the complainant is asking. The "two-page executive summary" as referred to throughout complainant's Interrogatories was developed for the Assistant Administrator 3 position at issue. The use of screening devices or another process of screening applicants are used as needed and at the discretion of DOR supervisors. No statistics are available.

Complainant described his purpose for asking interrogatory 26 as noted below (written arguments dated 5/26/98, pp. 4-5):

Interrogatory No. 26 asked how many times had DOR used the two-page executive summary as practice to screen candidates for (sic) further consideration in DOR positions in 1997. This question is important both to DOR and complainant in establishing if the practice has been used many times or it was random or unique in this position . . . The complaint accused DOR through Gates used the practice to remove complainant from consideration because of his black race and national origin.

DOR replied that it has answered Interrogatory 26 to the best of its ability (letter dated 6/9/98, p. 2).

The Commission disagrees with DOR's assertion that the interrogatory is vague and unclear. A fair reading of the interrogatory language supports complainant's explanation that the question was intended to cover positions filled in 1997, not just the AO3 position at issue in this case. According to DOR, it keeps no statistics from which it readily could be ascertained just how many times a tool like the two-page executive summary was used as a screening device for positions filled in 1997. This response is inadequate.

DOR, in the context of discovery, has a duty to attempt to answer interrogatories. That the information is not available already in summary form does not meet its duty to respond. DOR has an obligation to see if the requested information could be gathered and, if so, to produce the information. The Commission has ruled previously that the responding party is not required to gather and create a document of the requested information at the responding party's own expense. *Balele v. DER, DMRS & DOC*, 97-0012-PC-ER, 7/23/97, and *Vest v. UW (Green Bay)*, 97-0042-PC-ER, 9/10/97. Rather, the responding party has an obligation to produce what exists and if a requested compilation does not exist, the responding party must make available to the requesting party the documents from which the requested compilation could be derived. Based on the foregoing, this portion of complainant's motion to compel is granted and DOR's motion for a protective order is denied. Timeline for Production: DOR must provide complainant with a response to Interrogatory 26 within 3 weeks from the date this ruling is mailed to the parties (as stated on the affidavit of mailing sent with each party's copy of this ruling).

E. Summary of Ruling for Component a

Interrogatory	Motion to Compel Granted?	Need a Protective Order?
19-24	No.	Not applicable
25	No	Not applicable

35	No	Not applicable
26	Yes	No

II. Component b: Interrogatories to Gates

A. Interrogatories 1, and 4 through 12

Interrogatory 1: State the position of Robin Gates just before he left the Department of Workforce Development (DWD).

Interrogatory 4: State the name of Robin Gate's supervisor just before Gates left the DWD.

Interrogatory 5: State the race and color of Robin Gates' supervisor just before Gates left the DWD.

Interrogatory 6: State the reason why Robin Gates left the DWD.

Interrogatory 7: State how may Bureaus Robin Gates oversaw when he worked in DWD as Division Administrator.

Interrogatory 8: State how many sections Robin Gates oversaw when he worked in DWD as Division Administrator.

Interrogatory 9: How many times did Bureau director vacancies under Robin Gates in DWD become vacant during the time you worked for DWD? (Estimate will suffice.)

Interrogatory 10: How many times did Gates appoint black people in Bureau director vacancies under supervision of Robin Gates while [at] DWD? (Estimate will suffice.)

Interrogatory 11: How many times did Section chief positions under Robin Gates' oversight, become vacant during the time Gates worked for DWD?

Interrogatory 12: How many times did Gates select black people as section chiefs in vacancies when Gates worked for DWD as Division Administrator? (Estimate will suffice.)

Answer to Interrogatories 1 & 4-12: Objection on the grounds of relevance. Mr. Gates' employment prior to his employment at DOR is irrelevant to the issues before the Commission. DWD is not a party to this action. Neither has Robin Gates been personally named a party to this action. Robin Gates is in this action only in his employment capacity as an employee of DOR. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Events occurring prior to Robin Gates' employment with DOR are untimely to this action. Mr. Gates left DWD in 1996.

Complainant posed interrogatories 1 and 4-12, apparently, to determine what Mr. Gates' record of hiring minorities was at DWD and whether such record could be used as evidence in the present case. The Commission considered and rejected similar arguments in *Awe v. DATCP*, 89-0040-PC-ER, 11/6/91. Mr. Awe posed certain interrogatories to discover if any of his supervisors participated in past hiring decisions and, if so, whether they recommended him for the positions. Mr. Awe contended such information could be used to show a discriminatory animus on the part of complainant's supervisors, which ultimately lead to his discharge. The Commission's rationale for rejecting Mr. Awe's argument is shown below (from p. 7 of the *Awe* decision):

The only position under consideration here is the one for which complainant was hired and from which he was terminated by respondent. The analysis here is not susceptible to the application of a continuing violation theory; i.e., the transactions involved are discrete transactions. To determine whether these other hiring decisions were motivated by a discriminatory animus against complainant on the part of his supervisors would require the Commission to conduct a complete analysis of these hiring decisions under the Fair Employment Act. In the absence of a timely complaint filed by complainant relating to these other hiring decisions, it would be inappropriate within the context of the instant case for the Commission to conduct such an analysis or to draw a conclusion. Cf. §904.03, Stats. The Commission determines, as a result, that this information is not relevant to the instant case for discovery purposes.

Complainant seeks information about Mr. Gates' prior hiring practices for the same purpose as addressed in *Awe, Id.* The stated rationale in *Awe* applies to the present request as well. Accordingly, the information requested in Interrogatories 1

and 4-12, is irrelevant to the present case. This portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

B. Interrogatories 2-3

Interrogatory 2: State the salary of Robin Gates just before he left the DWD. Answer: Objection on the grounds of relevance. Mr. Gates' employment prior to his employment at DOR is irrelevant to the issues before the Commission. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Events occurring prior to Robin Gates' employment with DOR are untimely to this action.

Interrogatory 3: State the salary of Robin Gates at the time he was employed in the position he occupies now. Answer: Objection on the grounds of relevance. Mr. Gates' salary is irrelevant to the issues before the Commission. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Complainant has not stated why he believes Mr. Gates' salary is an area of inquiry reasonably calculated to lead to the discovery of admissible evidence. Nor does the question appear appropriate to the Commission. Accordingly, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

C. Interrogatory 13

Interrogatory 13: State when and where Robin Gates learned how to develop a Strategic Plan for an agency. Answer: Objection on the grounds of relevance. Mr. Gates was placed in an appointed position in DOR during 1996. His qualifications for his position are not an issue in this case. Neither does the Personnel Commission have jurisdiction over the Governor's appointment process. At issue is whether DOR discriminated against the complainant when it did not offer him an interview for the Administrative Officer position at issue during December, 1997. The alleged act of discrimination occurred in December, 1997. 300 days prior to that time is March, 1997. Any events prior to March, 1997 are outside the 300 day time limit. This interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Complainant has not stated why he believes the information requested in interrogatory 13 constitutes an area of inquiry reasonably calculated to lead to the discovery of admissible evidence. Nor does the question appear appropriate to the Commission. Accordingly, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

D. Summary of Ruling for Component b

Interrogatory	Motion to Compel Granted?	Need a Protective Order?
1, and 4-12	No	Not applicable.
2 and 3	No	Not applicable.
13	No	Not applicable.

III. Component c: Admission Requests to DOR

A. Admission Requests 1 & 2

Admission Request 1: DOR admits that sometime in July 1997, DOR, DER and DMRS jointly advertised an Administrative Officer 3 position, a career executive position, which was to serve in DOR. Answer: Denies that DOR, DER and DMRS jointly advertised an Administrative Officer 3 position. Denies that the position was advertised in July, 1997. Admits that DOR advertised for an Administrative Officer 3 position and that the advertisement was placed in the newspaper on June 29, 1997 and the Current Opportunities Bulletin on June 30, 1997.

Admission Request 2: DOR admits complainant took the exam as required and was certified as eligible to be selected into the position. Answer: Denies Admissions Number 2. Admits complainant submitted the required application materials which consisted of a letter of interest, resume and two page paper. Admits that complainant's name was placed on the Certification of Eligibles list for the position at issue.

Complainant has not stated why he believes DOR's responses were incomplete. The responses appear complete and appropriate to the Commission. Accordingly, this

portion of complainant's motion to compel is denied and respondent's motion for a protective order is granted.

B. Admission Requests 3-5

Admission Request 3: DOR admits that October 9, 1997, Robin Gates, for DOR, wrote candidates requiring candidates to respond to another question to enable Gates to cut down on the list of candidates on consideration register.

Admission Request 4: DOR admits that DOR/Gates' letter asked candidates how they would develop policies, procedure and management processes to implement the DOR Strategic Plan.

Admission Request 5: DOR admits that candidates were given less than two weeks to respond.

Answer: Denies Admissions 3-5. Admits Robin Gates wrote a letter dated October 9, 1997, to the candidates for the Administrative Officer 3 position. Admits to the contents of the letter as it appears in Appendix 1 attached to respondent's response.

Complainant has not said why he believes DOR's responses were insufficient. DOR referred to the October 9th letter to allow the letter text to speak for itself rather than admit to complainant's interpretation of the letter, which DOR felt was incorrect in some aspects. DOR has made a good-faith attempt to answer these admissions. Accordingly, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

C. Admission Requests 6, 7, 8 and 11

Admission Request 6: DOR admits that Complainant objected to the after certification test and to the individuals who would be involved in scoring the responses

Admission Request 7: DOR admits that complainant wrote to DER, DMRS and DOR accusing Gates of bigotry and blatant prejudice against

Blacks and the complainant for his black race, national origin and employment status.

Admission Request 8: DOR admits that in his letter complainant informed DOR, DER and DMRS that he was familiar with Gates' affidavit which showed that Gates had downgraded Black peoples' exam responses and had refused to hire Blacks because Gates personally did not know them or their experience.

Admission Request 11: DOR admits that it knew plaintiff's concerns that is Gates was prejudiced against Blacks and complainant because of his black race, national origin and his employment status.

Answer: Denies admission requests 6-8 and 11. Admits respondent received a letter from complainant dated October 16, 1997 and another letter dated December 15, 1997, which are attached to respondent's response as Appendix 2 and 3.

Complainant has not stated why he believes DOR's responses were incomplete. Complainant's admission requests refer to letters for which he does not provide the dates and about which he (in some instances) characterizes what was said rather than provides a direct quote from the letter. DOR's response let complainant know which letters it had knowledge of and allowed the text of the letters to speak for themselves. This is an appropriate response that appears to have been made in good faith. Accordingly, this portion of complainant's motion to compel is denied and DOR's request for a protective order is granted.

D. Admission Request 9, 10 and 12 through 17

Admission Request 9: DOR admits that all the certified candidates for the position at issue were qualified for the position. Answer: Denies. Admits that the "certification list" contained names of individuals who had been certified as eligible to be considered for the position at issue.

Admission Request 10: DOR admits that it refused to use the "drawing" practice and proceeded to use the after-certification practices. Answer: Denies. DOR is not familiar with the "drawing practice."

Admission Request 12: DOR admits that it allowed Gates to review or participate in the after-certification review of candidates' response to "two page executive summary of policies, procedures and management process" as required in Robin Gate's letter of October 9, 1997. Answer: Denies. Admits Robin Gates reviewed the candidate's responses to the "two-page executive summary" as he was authorized to do.

Admission Request 13: DOR admits that the administrators-senior executive job group was underutilized for Black people in DOR. Answer: Admits that the Administrative Officer 3 position at issue was underutilized for minorities.

Admission Request 14: DOR (admits) that Pastori M. Balele had sued the DOR at the time of rating Balele submitted his response to the two-page executive summary. Answer: Denies. Admits that the Office of Legal Counsel, DOR and some employees of the Human Resources Section knew that Pastori Balele had sued DOR, along with several other state agencies, on February 24, 1994 alleging unlawful practices in hiring limited term and project positions. Admits DOR's Office of Legal Counsel and some employees of the Human Resources section knew that the Personnel Commission dismissed the complaint on January 16, 1997 at the complainant's request.

Admission Request 15: DOR admits that it knew that the administrators-senior executive job group was underutilized for Black people statewide in 1996. Answer: Denies. Admits the Administrative officer 3 position at issue was underutilized for minorities.

Admission Request 16: DOR/Affirmative Action officer admits that he or she provided periodic report to the DOR on status of racial diversity in the administrators-senior executive positions job group in DOR 1994, 1995 and 1996 fiscal years. Answer: Denies. There was no position classification or job title of administrators-senior executive positions in DOR in 1994, 1995 and 1996.

Admission Request 17: DOR admits it had no authority to use the two-page executive summary as an employment practice to screen candidates for further consideration in the position at issue. Answer: Denies.

Complainant has not articulated a reason why he believes the answer is insufficient. Complainant may disagree with the denials made, but such disagreement is a potential issue for hearing and is not a proper basis for a motion to compel.

Accordingly, this portion of complainant's motion to compel is denied and respondent's motion for a protective order is granted.

E. Summary of Ruling for Component c

Admission Request	Motion to Compel Granted?	Need a Protective Order?
1 and 2	No	Not applicable.
3-5	No	Not applicable.
6-8 and 11	No	Not applicable.
9-10 and 12-17	No	Not applicable.

IV. Component d: Admission Requests to Gates

A. Admission Requests 1 through 4 and 15 through 17

Admission Request 1: Robin Gates admits that when he was one of the exam-rater at UW-System he downgraded complainant's exam responses because Gates did not believe complainant's African experience was worth to be rated high. Answer: Denies. Objects as irrelevant and untimely and outside the scope of discovery.

Admission Request 2: Robin Gates admits that when he was one of exam-rater at UW-System he downgraded complainant's exam responses because Gates could not verify complainant's African experience in Tanzania, Africa. Answer: Denies. Objects as irrelevant and untimely and outside the scope of discovery.

Admission Request 3: Robin Gates admits that when he was one of three exam-rater at UW-System he downgraded complainant's exam responses because Gates knew that complainant was an administrative assistant 3 and that his job was routine and structured. Answer: Denies. Objects as irrelevant and untimely and outside the scope of discovery.

Admission Request 4: DOR/Gates admits that in the case of the position at UW-System Gates believed complainant's low position in DOA did not entitle him to the UW-System Purchasing Director position complainant was competing for. Answer: Denies. Objects as irrelevant and untimely and outside the scope of discovery.

Admission Request 15: Gates admits that he cannot tolerate to be supervised by a black person. Answer: Denies.

Admission Request 16: Gates admits that he is prejudiced against black people. Answer: Denied.

Admission Request 17: Gates admits he had a bad working relationship with his supervisor just before Gates left DWD. Answer: Denies.

DOR responded by denying admission requests 1-4 and 15-17. Complainant has not articulated a reason why he believes the response is insufficient. Complainant may disagree with the denials made, but such disagreement is a potential issue for hearing and is not a proper basis for a motion to compel further answer. Accordingly, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

B. Admission Requests 5 through 7

Admission Request 5: DOR/Gates admits that while in DOA he and other two individuals interviewed Elizabeth-Snyder Allen for a section chief position.

Admission Request 6: After the interview referenced in 5 above, the two other panel members rated Elizabeth-Snyder highest of all candidates.

Admission Request 7: DOR/Gates admits after the interview referenced in 5 and 6 above Gates refused to hire Elizabeth Snyder-Allen despite the other interviewers vouching for selection of Elizabeth-Snyder Allen.

Answer to Requests 5-7: Objection as irrelevant, untimely and outside the scope of discovery and that DOR has no personal knowledge of the events described.

Complainant posed Admission Requests 5-7, apparently, to determine what Mr. Gates' record of hiring minorities was at DOA and whether such record could be used as evidence in the present case. Based on the Commission's decision in *Awe v. DATCP*, 89-0040-PC-ER, 11/6/91; and for reasons articulated previously in regard to interrogatories 19-24 in component a, this is an irrelevant area of inquiry.

Accordingly, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

C. Admission Requests 8 and 9

Admission Request 8: Gates admits that while in the DOA, Gates refused to insert a non-discriminatory language in grant documents arguing that the grantees were not subject to non-discriminatory provisions of the State of Wisconsin.

Admission Request 9: Gates admits that while in DOA complainant's had advised Gates that the non-discriminatory language in grant approval letters was required under the non-discriminatory provisions of the State of Wisconsin.

Answer to Requests 8-9: Objection as irrelevant, untimely and outside the scope of discovery and that DOR has no personal knowledge of the events described.

Complainant, presumably, wishes to show through these admission requests that Mr. Gates had the authority and obligation to include a requirement about non-discriminatory hiring in grant documents and failed to do so. Such topic is removed further from the issues in the present case than the hires made by Mr. Gates at agencies other than DOR. The topic is irrelevant under the Commission's rationale in *Awe*. Accordingly, this portion of complainant's motion to compel is denied and respondent's motion for a protective order is granted.

D. Admission Requests 10 through 14

Admission Request 10: DOR/Robin Gates admits that he approached Maytee Aspuro to ask her to compete for the position at issue. Answer: Objection as irrelevant.

Admission Request 11: DOR/Maytee Aspuro admits that she had called or contacted Robin Gates that she was interested in the position at issue. Answer: Objection as irrelevant and if these events took place prior to Maytee Aspuro becoming an employee of DOR it is outside the scope of discovery.

Admission Request 12: Gates admits that while as administrator in DWD he hired Maytee Aspuro. Answer: Objection as irrelevant, untimely and outside the scope of discovery.

Admission Request 13: Gates admits that while as administrator in DWD he did not advertise the position for which he hired Maytee Aspuro. Answer: Objection as irrelevant, untimely and outside the scope of discovery.

Admission Request 14: Gates admits that while as administrator in DWD he upgraded Aspuro position after Aspuro was hired. Answer: Objection as irrelevant, untimely and outside the scope of discovery.

Ms. Aspuro was on the certification list for the position in question. How she came to apply for the job is a topic, which could lead to the discovery of admissible evidence. Ms. Aspuro's past connections with Mr. Gates, who played a part in the hiring decision, also is a topic, which could lead to the discovery of admissible evidence. Whether Mr. Gates gave Ms. Aspuro preferential treatment at DWD (requests 13 and 14) perhaps is further afield, but still could lead to the discovery of admissible evidence. Accordingly, this portion of complainant's motion to compel is granted and DOR's motion for a protective order is denied. Accordingly, this portion of complainant's motion to compel is granted and DOR's motion for a protective order is denied. Timeline for Production: DOR must provide complainant with a response to Admission Requests 10-14 within 3 weeks from the date this ruling is mailed to the parties (as stated on the affidavit of mailing sent with each party's copy of this ruling).

F. Summary of Ruling for Component d

Admission Request	Motion to Compel Granted?	Need a Protective Order?
1-4 and 15-17	No	Not applicable.
5-7	No	Not applicable.
8-9	No	Not applicable.
10-14	Yes	No.

V. Component e: Document Requests to DOR

A. Document Request 20

Document Request 20: Produce the document showing the benchmarks used to rate the interview for the positions at issue. Answer: There were no benchmarks used to rate the interview for the position at issue. Attached are the interview questions.

Respondent provided the existing documentation. Complainant has not expressed any theory to support a motion to compel further answer to this request. Accordingly, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

B. Document Requests 28-29

Document Request 28: Produce all correspondence between DOR/Robin Gates' office and DOR/Secretary's office before the successful candidate was selected for the position in question.

Document Request 29: Produce all documents and correspondences between DOR/Robin Gates and DOR/Secretary's office after the successful candidate was selected for the position in question.

Answer: Objection. These requests are overbroad and neither limited by time or subject matter. To answer Request Number 28 and 29 would be unduly burdensome. Respondent also invokes §71.78, Stats., which is the taxpayer information confidentiality statute and §§230.13, 19.85, Wis. Stats., and 29 CFR 16.07, 32.15; 42 CFR 2.1; and 5 USCS §552a.

The Commission agrees with DOR that document requests 28 and 29 must be rephrased to limit the request by subject matter and time. For example, complainant could request correspondence between Robin Gates' office and the Office of DOR's Secretary which pertain to recruitment, examination, interviews and hiring for the AO3 position up to the point in time where the successful candidate was hired and all paperwork relating to the hire was completed. Since the text of the current document

request is too broad, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

C. Document Request 34

Document Request 34: Produce all correspondence between DOR and DER and DMRS after the successful candidate was selected into the position in question. Answer: Objection. This request is overbroad and not limited as to time or subject matter. To answer this request would be unduly burdensome.

Complainant's stated reason for requesting this information is the same as shown above for document requests 28 and 29. The Commission agrees the request is too broad. It must be limited by subject matter and by time, as discussed in regard to document requests 28 and 29. Accordingly, this portion of complainant's motion to compel is denied and DOR's motion for a protective order is granted.

D. Document Requests 1, 3-5, 8-9, 21-22 and 25

Document Request 1: Produce the selected candidate's response to the AHQ for the position at issue after it was rated by AHQ panel members. Answer: Objection. These are closed personnel transactions under §230.13, Stats.

Document Request 3: Produce the document showing the benchmarks used to rate candidates' responses to the AHQ for the position at issue summary. Answer: Objection. No benchmarks were used to rate candidates' responses to the AHQ for the position at issue summary. The raters used a rating sheet for the Administrative Officer 3 position at issue. The rating sheet is a closed personnel transaction under §230.13, Stats.

Document Request 4: Produce a copy of document showing name of rater as against score of candidates' responses to the AHQ. Answer: Objection. These are closed personnel transactions under §230.13, Stats.

Document Request 5: Produce the document listing names, race, scores and rankings of candidate's for the position at issue before candidates

were subjected to the two-page executive summary. Answer: Objection. These are closed personnel transactions under § 230.13, Stats.

Document Request 8: Produce interviewed candidates' responses to the two-page executive summary after the responses were rated. Answer: Objection. These are closed personnel transactions under §230.13, Stats.

Document Request 9: Produce the selected candidate's response to the two-page executive summary after her responses were rated. Answer: Objection. These are closed personnel transactions under §230.13, Stats.

Document Request 21: Produce a copy of interviewers' notes for all candidates interviewed for the question at issue. Answer: Objection. These are closed personnel transactions under §230.13, Stats.

Document Request 22: Produce a copy of application materials of the successful candidate for the position in question. Answer: Objection. These are closed personnel transactions under §230.13, Stats.

Document Request 25: Produce copy of the application materials of the successful candidate she submitted for the position in question. Answer: Objection. These are closed transactions under §230.13, Stats.

The documents requested above are relevant to complainant's case and are discoverable. The closed record protections of §230.13, Stats., pertain to keeping personnel matters closed *to the public*, not to complainant in the context of litigation where the information is relevant to his claims. *Balele v. DER, DMRS & DOC*, 97-0012-PC-ER, 7/23/97 and *Duncan v. DOC*, 96-0064-PC-ER, 7/31/97. Accordingly, this portion of complainant's motion to compel is granted and DOR's motion for a protective order is denied. Timeline for Production and Need for Protective Order: DOR must complete the task of gathering the requested documents within 3 weeks of the date this ruling is mailed to the parties (as stated on the affidavit of mailing sent with each party's copy of this ruling). The materials related to document requests 1, 3, 4, 5, 8, 9, 21, 22 and 25 are protected from public disclosure under §230.13, Stats. It is standard procedure under these circumstances for the party responding to discovery to request a protective order prior to turning the materials over to the requesting party.

The Commission attaches to this ruling a proposed statement of the protective order. A cover letter accompanies Mr. Balele's and DOR's copy of this ruling. The conference will be held for the purpose of finalizing the language of the protective order.

F. Summary of Ruling for Component e

Production Request	Motion to Compel Granted?	Need a Protective Order?
20	No	Not applicable.
28-29	No	Not applicable.
34	No	Not applicable
1, 3-5, 8-9, 21-22 & 25	Yes	Yes

ORDER

Complainant's motion to compel is granted in part and denied in part as detailed in this ruling. Respondent's motion for a protective order is granted in part and denied in part as detailed in this ruling. Respondent shall respond to discovery within the timeframes noted in this ruling.

Dated: July 7, 1998.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


JUDY M. ROGERS, Commissioner

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