

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

RE:

Tracking Number: I-19-096

Request by: Justin Albano & Joshua Colby to investigate the decision by the City of Medford to reduce the number of candidates to be appointed as firefighters from Certification No. 04954.

Appearance for Petitioners:

Jillian Ryan, Esq.  
Pyle Rome  
2 Liberty Square: 10<sup>th</sup> Floor  
Boston, MA 02351

Appearance for City of Medford:

Mark E. Rumley, Esq.  
Kimberly Scanlon, Esq.  
City of Medford Law Department  
85 George P. Hassett Drive  
Medford, MA 02155

Commissioner:

Christopher C. Bowman

**RESPONSE TO REQUEST FOR INVESTIGATION**

1. On April 19, 2019, the Petitioners, Joshua Colby and Justin Albano (Petitioners), filed a Petition with the Civil Service Commission (Commission), asking the Commission to exercise its discretion under G.L. c. 31, s. 2(a) to initiate an investigation into the City's November 7, 2018 decision to reduce the number of firefighters to be appointed from Certification No. 04954, which was set to expire on November 30, 2018, from 13 to 11.
2. On April 30, 2019, I held a Show Cause Conference at the offices of the Commission which was attended by the City's Mayor, co-counsel for the City; the Petitioners; their counsel; and counsel for the state's Human Resources Division.
3. As part of the show cause conference, I reviewed a timeline prepared by the City, heard argument as to why an investigation is not warranted; and then heard argument from the Petitioners why an investigation is warranted.
4. The following was not disputed, unless otherwise noted:
  - A. The Petitioners were tied for 20<sup>th</sup> on Certification No. 04954

- B. As of November 7<sup>th</sup>, the City had already selected eleven (11) out of a maximum thirteen (13) candidates, including at least one (1) candidate ranked in the 19<sup>th</sup> tie position.
  - C. According to the City, the Fire Chief was recommending that two (2) of the candidates ranked in the 20<sup>th</sup> tie position (only one of whom is a Petitioner) be appointed.
  - D. Appointing candidates in the 20<sup>th</sup> tie position would result in a bypass of at least one candidate ranked 19<sup>th</sup>.
5. At the show cause conference, the City argued that the decision to not appoint any candidate in the 20<sup>th</sup> tie position was solely related to time constraints related to the pending expiration of the list (November 30<sup>th</sup>); vacation schedules; and the need to do a thorough review regarding whether the City had sufficient reasons to bypass candidate(s) ranked in the 19<sup>th</sup> tie group, which the City argued could not be completed by the November 30<sup>th</sup> deadline.
6. The Petitioners argued that the Commission should review whether the City's decision was related to the fact that the scores for the new eligible list (to be established December 1<sup>st</sup>) were released on October 30<sup>th</sup> and the Appointing Authority's son received a high score, which could potentially place him in a relatively high position on the new eligible list that was eventually established on December 1<sup>st</sup>, 2018.
7. Prior to determining whether an investigation was warranted, I requested the following information:
- I. An affidavit from the City's Fire Chief, who was unavailable to attend the show cause conference, regarding any discussions, emails, text messages, correspondence, etc. between himself, the Mayor and any other individuals regarding his initial recommendation to appoint two (2) candidates from the 20<sup>th</sup> tie group and the subsequent decision to appoint 11, as opposed to 13 candidates from the eligible list that expired on November 30<sup>th</sup>.
  - II. Any correspondence, including, but not limited to: letters, emails, text messages, etc. from / to the Mayor directly or indirectly related to the decision to appoint 11, as opposed to 13 candidates, from the eligible list that expired on November 30<sup>th</sup>.
  - III. Upon submission of such information, the Petitioners had ten (10) days to submit a reply, both to the information, and the City's prior submission, explaining why an investigation by the Commission, in their opinion, is warranted.
8. I subsequently received: a) the affidavit of the City of Medford's Fire Chief; and b) the Position Statement of the Petitioners.
9. Based on a review of the record as of that point, there was insufficient information for me to determine whether "time constraints" (related to the review of candidates to be bypassed) was the primary reason for reducing the total number of candidates to be appointed from Certification No. 04954 from 13 to 11 on November 7, 2018.

10. In order to obtain additional information, I scheduled a status conference and asked the City to make available any persons who could address: a) whether the City's Appointing Authority, at the time, did (or did not) reference time constraints as a reason for reducing the number of candidates to be appointed from 13 to 11; b) the process used to review bypass reasons in May 2018, including the amount of time required by the Appointing Authority regarding that review.
11. Further, I asked the Petitioners and the City to provide the Commission with any information regarding whether the Petitioners (or the other candidate recommended by the Fire Chief in November 2018) had any personal or family connections to any person employed by the City.
12. On June 25, 2019, I held a status conference that was attended by the City's Mayor, co-counsel for the City; the Petitioners; their counsel; and the City's Fire Chief at which time I received responses to the above-referenced issues.

#### *Applicable Civil Service Law and Rules & Response*

G.L. c. 31, § 2(a) allows the Commission to conduct investigations. This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen's Association et al v. Civ. Serv. Comm'n, No. 2006-4617, Suffolk Superior Court (2007). See also Erickson v. Civ. Serv. Comm'n & others, No. 2013-00639-D, Suffolk Superior Court (2014). The Commission exercises this discretion, however, "sparingly". See Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011).

After careful review and consideration of the entire record in this matter, I have concluded that an investigation is not warranted.

It is undisputed that the name of the Mayor's son appears on the current eligible list for Medford firefighter, established on December 1, 2018. It appears that the Mayor has taken all appropriate actions to fully recuse herself from any future hiring cycles in which her son could be a candidate.

The issue here is whether, *prior to the establishment of the eligible list*, on November 7, 2018, the Mayor took action that could potentially benefit her son, to the detriment of the two (2) Petitioners.

As part of the status conference, the Fire Chief walked through the well-established process for reviewing firefighter candidates in Medford which includes: a) the Fire Chief's detailed review of each candidate's employment application; b) the Fire Chief developing a list of questions about each candidate that he would like addressed in the background investigation, in addition to the standard background questions; c) completion of background investigations by the Medford Police Department, including recorded interviews; d) review of the background

investigations by the Fire Chief; and e) Fire Chief makes recommendations to the Mayor regarding the appointment of candidates.

When the Fire Chief met with the Mayor on November 7, 2018 and recommended the appointment of one of the Petitioners and one other candidate, the Medford Police Department had not completed the background investigations of the candidates and, thus, the Fire Chief had not completed his normal review of those background investigations. In fact, it is unclear whether the Fire Chief, at any point prior to the expiration of the eligible list on November 30, 2018, ever had the opportunity to review the background investigations of all the firefighter candidates.

It would have been inappropriate for the Mayor to make any appointments prior to the completion of the background investigations, particularly considering that the appointment of the candidates recommended by the Fire Chief would have resulted in a bypass of higher ranked candidates, which requires sound and sufficient reasons by the Appointing Authority. Her decision not to go forward with the full complement of appointments that had been authorized from the prior eligible list was justified. Further, after a careful review of all the information presented, including the statements of the Mayor who voluntarily appeared before the Commission on two (2) different occasions regarding this matter, I do not believe that her decision here was based on any personal or political reasons.

For these reasons, I have concluded that an investigation by the Commission is not warranted and this matter, docketed under Tracking No. I-19-096, is closed.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a 4-0 vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – Not Participating]) on July 18, 2019.

Notice to:  
Jillian Ryan, Esq. (for Petitioners)  
Mark Rumley, Esq. (for City of Medford)  
Kimberly Scanlon, Esq. (for City of Medford)  
Patrick Butler, Esq. (HRD)