

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RE:

Tracking Number: I-19-066

Request by: John F. Murphy for the Commission to initiate an investigation regarding the January 25, 2019 Barnstable Deputy Police Chief Assessment Center Examination.

Appearance for Petitioner:

Pro Se
John F. Murphy

Appearance for Human Resources Division:

Melissa Thomson, Esq.
Human Resources Division
100 Cambridge Street: STE 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

1. On January 25, 2019, the Petitioner, John F. Murphy (Lt. Murphy), a lieutenant in the Town of Barnstable (Town)'s Police Department (BPD), sat for an Assessment Center Deputy Police Chief examination, which was held at the Town's School Administration Building.
2. The state's Human Resources Division (HRD) had delegated responsibility for the Assessment Center examination to the BPD and the BPD contracted with a private vendor to conduct the examination.
3. On February 6, 2019, the initial scores (for the assessment center and employment / experience) were released to the examination applicants, including Lt. Murphy.
4. On February 22, 2019, Lt. Murphy filed a "fair test" appeal with HRD to contest whether the examination was a fair test of the applicants' fitness to actually perform the primary or dominant duties of the position for which the examination was held.
5. HRD denied Lt. Murphy's "fair test" appeal as, according to HRD, it was untimely.
6. On March 18, 2019, Lt. Murphy filed an appeal with the Civil Service Commission (Commission), contesting HRD's determination regarding his "fair test" appeal. (See B2-19-065)

7. On March 19, 2019, Lt. Murphy filed a Petition with the Commission, asking the Commission to investigate essentially the same concerns that he brought to HRD's attention via the "fair test" appeal. For example, Lt. Murphy argued that: 1) the failure of the vendor to conduct an in-person orientation with the applicants prior to the examination undermined the test; and 2) certain questions (i.e. – define leadership) and case scenarios (give a community meeting addressing overtime issues) were not appropriate in the context of the Deputy Police Chief position in Barnstable.
8. On April 16, 2019, I concurrently held a pre-hearing conference regarding Lt. Murphy's "fair test" appeal (B2-19-065) and a show cause conference regarding his request for the Commission to conduct an investigation (I-19-066). Present were: Lt. Murphy; counsel for HRD; and counsel for the Town.
9. During the pre-hearing / show cause conference, Lt. Murphy acknowledged that his "fair test" appeal was untimely and withdrew his appeal under Docket No. B2-19-065. However, Lt. Murphy argued that the Commission should exercise its discretion to conduct an investigation into how the Deputy Police Chief examination was administered.

Applicable Civil Service Law and Rules & Final 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, including the written submissions of the Petitioner and his statements at the Show Cause Conference, I have concluded that an investigation is not warranted and recommend that the Commission not exercise its discretion to initiate such an investigation under G.L. c. 31, § 2(a).

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

On April 25, 2019, the Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) voted to adopt the recommendation of Commissioner Bowman; the Commission will not exercise its discretion to initiate an investigation.

Notice to:
John F. Murphy (Petitioner)
Melissa Thomson, Esq. (HRD)
T. David Houghton, Esq. (Town of Barnstable)