

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**LINDO RODRIGUES,**

*Appellant*

v.

**Case No.:** B1-11-303

**HUMAN RESOURCES  
DIVISION,**

*Respondent*

**ORDER OF DISMISSAL**

On October 11, 2011, Lindo Rodrigues, the Appellant, filed an appeal with the Civil Service Commission (Commission). In his appeal, the Appellant raised questions regarding the grading of his civil service examination for the position of police officer by the State's Human Resources Division (HRD).

On November 15, 2011, a pre-hearing conference was held at the offices of the Commission and a status conference was held on February 14, 2012, both of which were attended by the Appellant and counsel for HRD.

Based on the statements of the parties and the documents submitted, the following appears to be undisputed:

1. On April 30, 2011, the Appellant took the civil service examination for police officer, administered by HRD.
2. According to HRD, the written examination consists of three (3) sections. Section 1 contains forty-eight (48) questions and is meant to assess the general cognitive skills of the test-taker.
3. If the test-taker fails the first section of the examination, he/she is considered to have failed the entire examination and the second and third sections are not scored.
4. On September 2, 2011, the Appellant was notified by HRD that he failed Section 1 of the April 30<sup>th</sup> examination and, thus, had failed the examination.
5. Over a period of several months after September 2<sup>nd</sup>, the Appellant made multiple requests to HRD to provide him with his score on Section 1 along with the passing score for Section 1.

6. HRD responded to the Appellant via email stating, “Candidates do not receive a numerical score if they do not successfully pass each of the three sections of the examination.”
7. On October 11, 2011, the Appellant filed an appeal with the Commission seeking, in part, information regarding his score on Section 1 along with the passing score on said section.
8. At the pre-hearing conference and status conference, HRD stated that it does not provide the information requested by the Appellant to test-takers.
9. Subsequent to the status conference, HRD provided information to the Appellant (via the Commission) stating that he “missed” eighteen (18) of the forty-eight (48) questions on that cognitive portion (Section 1) of the examination, a score that was in the 2.1 percentile of all test-takers. According to the vendor that administered the examination, “this placed Lindo Rodrigues below the cognitive test cut score resulting in a failing score on the cognitive portion of the [exam].”
10. On March 1, 2012, the Commission forwarded the above-information to the Appellant and inquired whether, based on this information, he wished to proceed with his appeal. The Appellant did not respond to the Commission’s inquiry.

## CONCLUSION

The primary purpose of the Appellant’s appeal was to obtain information from HRD regarding his score on a portion of a civil service examination. Having now been provided with some of that information, it appears that he no longer wishes to pursue his appeal with the Commission. For that reason, the Appellant’s appeal under Docket No. B1-11-303 is hereby *dismissed*.

The Commission, however, based on the facts presented here, along with other appeals that have come before the Commission (e.g. – Sances v. Human Resources Division, 23 MCSR 101 (2010)), is concerned that HRD is construing statutory provisions related to public records and confidentiality in a way that: 1) unnecessarily impedes an individual’s ability to obtain information regarding his / her score and/or how that score was determined; and 2) makes it difficult for appointing authorities to make hiring and promotion decisions based on basic merit principles.

Here, Mr. Rodrigues asked simple, reasonable questions related to his civil service examination including: a) what was my score on Section 1? and b) what score is considered passing? Only after months of inquiries to HRD and after filing an appeal with the Commission was Mr. Rodrigues able to get a *partial* answer to those questions. He was finally told how many questions he “missed” on the cognitive portion of the exam and that, since only 2.1% of the test-takers “missed” that many or more questions, he failed to meet the “test cut score”. What the “test cut score” actually was remains a mystery to the Appellant – and the Commission.

This is strikingly similar to the posture that HRD took in Sances. In Sances, the Appellant, as part of a two-part civil service examination for firefighter, took and passed the Entry-Level Physical Abilities Test (ELPAT) portion of the examination by passing 6 out of 7 portions of

the ELPAT. Convinced that he had passed all 7 portions of the ELPAT, Mr. Sances asked HRD which portion of the ELPAT he failed. Citing provisions of the public records law, HRD refused to provide Mr. Sances with that information, prompting his appeal to the Commission.

HRD is on solid ground when it shields information that could potentially undermine the integrity of the examination process (i.e. – not releasing copies of prior examinations when certain questions may be used on future examinations). The information requested by Mr. Sances and Mr. Rodrigues, however, does not fall into that category. They made reasonable requests that would aid them in understanding what their actual score was and how it was calculated. We see nothing in the civil service or public records laws that prevents HRD from providing such information to all test-takers and we urge them to do so on a going-forward basis.

HRD also appears to have taken an overly restrictive view of public records laws when it comes to providing examination scores to appointing authorities. Individuals who take and pass civil service examination are placed on appropriate “eligible lists” based on their examination score and other factors such as their veteran status, residency and other statutory preferences.

These eligible lists and the certifications created whenever there is a vacancy do not contain the candidates’ test scores. While HRD once included this information on promotional certifications, they stopped including these test scores on promotional certifications several years ago. Thus, today, appointing authorities are forced to make hiring and promotional decisions without knowing the candidates’ scores on the examination. Rather, the appointing authority is only provided with the rank order of candidates, which is determined in part by the examination score. For example, if a city or town is seeking to make a promotional appointment to the position of police captain, they would create a certification from the eligible list containing a sufficient number of names to meet the statutory “ $2n + 1$ ” formula. If the three highest ranked-candidates all indicate that they are willing to accept appointment, those are the three candidates from whom the city or town must select.

However, in the above-referenced example, the city or town would not know the examination scores of the candidates. For instance, the city or town would not know if the three candidates scored 100, 99 and 98 respectively - or 100, 85 and 70 respectively. While test scores alone should not determine whether an individual is the most qualified, access to this information would provide appointing authorities with objective, accurate information upon which to make an informed decision (i.e. – was there a 2-point differential in examination scores or a 30-point differential in examination scores?)

In fact, even the courts have often looked to the examination scores when reviewing Commission decisions related to bypass appeals. (See Francis E. Murphy, III v. Cambridge and Mass. Civ. Serv. Comm’n, No. 03-0815, Middlesex Super. Court (2004). (City was not required to give any particular weight to the 8-point score differential on the civil service exam for two candidates competing for the position of Fire Chief.)

While HRD has a statutory and fiduciary responsibility to preserve the integrity of the examination process and shield confidential information from public disclosure, it need not

interpret statutes in an overly protective way that inhibits transparency and informed hiring and promotional decisions. We urge them to review their policies in this regard.

Civil Service Commission

Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on April 19, 2012.

A True Record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:  
Lindo Rodrigues (Appellant)  
Elizabeth Whitcher, Esq. (for HRD)  
John Marra, Esq. (HRD)