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## **Long delay by Public Service Commission to make decision on appointment of Chief Executive Officer's position and who has the power to appoint a Chief Executive Officer, Minister or Public Service Commission?**

<b>Legislation</b>	<i>Ombudsman Act, s13(2) Public Service Commission Act</i>
<b>Agency</b>	Public Service Commission
<b>Ombudsman</b>	'Aisea Taumoepeau
<b>Case No.</b>	18/19-77
<b>Date</b>	March 2019

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### **Summary**

Complainant applied for the position of Chief Executive Officer ("CEO") for one of the Ministries under Public Service Commission ("PSC"). The complainant was shortlisted, interviewed and was unofficially informed that the complainant was the successful applicant.

After the interview, the complainant over a period of approximately 5 months vigorously pursued with PSC the status of his interview. PSC's standing response was that the process was ongoing and was not final. Later, the complainant heard on radio 87.5FM station that the Minister responsible for the Ministry (whose CEO position was advertised), publicly state that the Minister wanted to be involved in the recruitment process for the CEO position because this process began under another Minister. The complainant lodged a complaint to the Ombudsman two days before PSC made its final decision. PSC after reviewing all relevant information made the decision that the CEO position be re-advertised.

The Ombudsman concluded that PSC carried out their duties according to the Public Service Act and accepted PSC's reasons for the delay. The Ombudsman formed the opinion that this matter be closed and this was conveyed to the complainant and PSC.

### **Background**

1. On or about April 2018, one of the government ministry's CEO position was advertised.

2. The complainant applied for the position and was shortlisted. In May 2018 the interviewing panel conducted interviews which included the complainant.
3. On 7<sup>th</sup> of June 2018 PSC, advised all applicants who were interviewed in writing that the recruitment is still in progress and has not been finalized yet. They were advised that PSC will inform them about the results once the process is complete.
4. During the months of June to September 2018 the complainant repeatedly made requests to PSC to see what the status of his application was at. This included emails written to the Acting Chairman and CEO.
5. Acting Chairman of PSC wrote to the complainant on 13<sup>th</sup> of June 2018 advising him that due to his multiple emails enquiring about the outcome of the CEO interviews that he will not respond to any further communications. This was to safeguard the integrity of the process.
6. In October 2018 the complainant sent to CEO and members of PSC staff a recorded interview of Minister (responsible for Ministry whose CEO position was advertised) on radio 87.5. This statement related to the Minister not agreeing to the current recruitment process because she was not part of the selection process because it was carried out under a different Minister. She wanted a fresh recruitment process to be instigated by PSC.
7. On the 2<sup>nd</sup> of October 2018 the complainant lodged his complaint with the Ombudsman frustrated with PSC in delaying the process of announcing the results of the interview and wanted to know who held the power of appointment, PSC or Minister.
8. On 4<sup>th</sup> of October 2018 all applicants who were interviewed were informed in writing that the position will be re-advertised and that they are all welcome to reapply.

## **Investigation**

9. The Ombudsman commenced investigation to determine why PSC took so long with the recruitment process and who has the authority to appoint the CEO.
10. PSC was advised of the Ombudsman's intention to investigate the complaint, and comment was requested.
11. The Ombudsman considered and accepted PSC's comments in relation to the long delay which was caused by matters that PSC wanted further clarifications on legal matters from the Attorney General's Office. Turnaround time for the advice took time and PSC acknowledged that the delay was long and unfortunate and is not the normal for recruitment of CEOs.

12. The Ombudsman found that PSC had responded to the complainant on 7<sup>th</sup> of June 2018 informing him and other candidates that PSC will inform them of the results once the process is completed. Further the Acting Chairman of PSC in his email dated 13<sup>th</sup> of June informed the complainant that he will not respond to his query until the process is complete.
13. The Ombudsman found that PSC is not obliged and it is not their practice to advise the outcome of a recruitment process nor contact shortlisted candidates at any stage after the interview until the process is complete. Finalizing the process involves the endorsement of the relevant Minister for the results of the interview.
14. Section 13(2) of the *Public Service Commission Act* governs the appointment process of CEOs. It stipulates that PSC is the authority that appoints Chief Executive Officers but consultation must be carried out with the relevant Minister prior to appointment. This means that when a candidate is selected by the interviewing Panel, PSC must consult with the Minister to see if the Minister is in agreement with the selected candidate. This step is to ensure the best candidate is chosen. Once the candidate is endorsed by the Minister then PSC appoints the CEO.

## **Outcome**

15. Based on the above findings the Ombudsman informed the complainant in writing that he holds the opinion that PSC did carry out its functions according to law and that the complainant's case will be closed.