

**BEFORE THE  
MERIT SYSTEM PROTECTION BOARD  
FOR  
MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF**

**[REDACTED],**

**APPELLANT,**

**AND**

**MONTGOMERY COUNTY  
GOVERNMENT,**

**APPELLEE**

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**CASE NO. 25-14**

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**FINAL DECISION**

[REDACTED] (Appellant) filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on March 12, 2025<sup>1</sup>. Appellant is appealing denial of employment for a Police Officer Candidate position.

The Board has determined that the record is complete based upon a review of the documents and exhibits provided by the parties and issues the following decision.<sup>2</sup>

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<sup>1</sup> The appeal was submitted online to the MSPB on March 11, 2025, at 6:12 p.m., after Board business hours. The appeal was officially received by the MSPB the next Board business day. *See* MSPB Case No. 18-13 (2018).

<sup>2</sup> Appellant did not label Appellant's attachments. For ease of reference, the Board has done so. Appellant provided the following documents:

1. A. Ex. 1 – Appeal Form #294, filed on March 11, 2025.
2. A. Ex. 2 – Notice of Nonselection, dated March 4, 2025.
3. A. Ex. 3 – Appellant reply to County Response, filed May 13, 2025.

The County provided the following documents:

1. CR. – County Response, filed on April 14, 2025.
2. C. Ex. 1 – Job Bulletin 2024-00070 Police Officer Candidate.
3. C. Ex. 2 – Notice of Nonselection, dated March 4, 2025.
4. C. Ex. 3 – Release of Information Form.

## **FINDINGS OF FACT**

Appellant applied for a Police Officer Candidate position (Grade P1) with the Montgomery County Police Department (MCPD), in response to the County job bulletin for Job Number 2024-00070. C. Ex. 1. The job bulletin stated that applicants who successfully complete the written exam will be provided instructions to complete an online background investigation booklet. *Id.* The job bulletin further advised that candidates must, among other criteria, successfully complete the background investigation “in order to receive a final offer of employment.” *Id.*

Appellant took and passed the written exam on January 15, 2025, and then began the background investigation process on January 29, 2025. CR; C. Ex. 4. The employment history review portion of the background investigation revealed information that would potentially disqualify Appellant. *Id.* Appellant was notified and asked to provide additional information. *Id.* Appellant responded that Appellant filed a FOIA request to another government agency to obtain the information. *Id.*

Without the additional information, MCPD was unable to approve Appellant’s background investigation. *Id.* Due to the need to fill Session 79, on March 4, 2025, Appellant received an email from H [REDACTED] S [REDACTED], informing Appellant that Appellant will no longer be considered for employment as a police officer candidate. C. Ex. 2; C. Ex. 4. Appellant was also instructed to disregard the oral interview that was scheduled for March 5, 2025. *Id.*

## **POSITIONS OF THE PARTIES**

1. Appellant
  - a. The County failed to provide Appellant with information regarding why his application was denied.
2. County
  - a. Appellant is unable to meet the burden of proof that the County’s decision on the application was arbitrary, capricious, or illegal, or based on political affiliation or other non-merit factors.

## **APPLICABLE CODE PROVISIONS AND REGULATIONS**

### ***MONTGOMERY COUNTY CODE***

**Sec. 33-9. Equal employment opportunity and affirmative action.**

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5. C. Ex. 4 – Affidavit of A [REDACTED] M [REDACTED].

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- (c) *Appeals by applicants.* Any applicant for employment or promotion to a merit system position may appeal decisions of the chief administrative officer with respect to their application for appointment or promotion. Appeals alleging discrimination prohibited by chapter 27, "Human Relations and Civil Liberties," of this Code, may be filed in the manner prescribed therein. Appeals alleging that the decisions of the chief administrative officer were arbitrary and capricious, illegal, based on political affiliation, failure to follow announced examination and scoring procedures, or nonmerit factors, may be filed directly with the merit system protection board. Appeals filed with the merit system protection board shall be considered pursuant to procedures adopted by the board. The board may order such relief as is provided by law or regulation.

***MONTGOMERY COUNTY PERSONNEL REGULATIONS, 2001***

**SECTION 6. RECRUITMENT AND APPLICATION RATING PROCEDURES**

**6-4. Reference and background investigation requirements; Review of applications.**

- (a)
- (1) The CAO may establish reference and investigation requirements for County positions to verify prior work performance, experience, and job-related personal characteristics of applicants and employees.
  - (2) The CAO must ensure that all reference checks, background investigations, and criminal history records checks of employees and applicants are conducted as required under County, State, and Federal laws or regulations.
  - (3) All applicants and employees must comply with established reference and investigation requirements.
- (b) The OHR Director must review and evaluate an application submitted to determine if the applicant is eligible for the announced vacancy. The OHR Director may disqualify an applicant at any point in the hiring process if:

\* \* \*

- (5) there is evidence of a job-related factor that would hinder or prohibit the applicant's satisfactory performance of the duties and responsibilities of the position; or

\* \* \*

6-14. Appeals by applicants. Under Section 33-9 of the County Code, a non-employee or employee applicant for a merit system position may file an appeal directly with the MSPB alleging that the decision of the CAO on the individual's application was arbitrary and capricious, illegal, based on political affiliation or other non-merit factors, or that the announced examination and scoring procedures were not followed.

#### **SECTION 34. GRIEVANCES**

34-9. Grievance procedure.

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(d) Burden of Proof.

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(2) The grievant has the burden of proof in a grievance on any other issue.

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#### **SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS AND INVESTIGATIONS**

35-2. Right of appeal to MSPB.

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(c) An applicant or employee may file an appeal directly with the MSPB over a denial of employment.

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#### **ISSUE**

Was the County's decision on Appellant's application arbitrary and capricious, illegal, or based on political affiliation or other non-merit factors, or announced examination and scoring procedures that were not followed?

#### **ANALYSIS AND CONCLUSIONS**

To prevail in a nonselection case, an appellant must demonstrate that the decision was arbitrary, capricious or illegal. MCC § 33-9(c); MCPR §34-9(d)(2). The County argues that

Appellant failed to meet his substantial burden of proof.

The County may establish the qualifications for a position and conduct a background investigation before selecting an applicant for a position. MCPR § 6-4(a)(1).

In this case, Appellant was asked to provide clarifying information regarding his background check submission dealing with his prior work history. Appellant was unable to timely provide the information. Thus, the County decided not to continue processing Appellant's application for employment. We have previously determined that an applicant's failure to provide complete and accurate information during the recruitment process is reasonable grounds for the County to rescind a conditional offer of employment. *See* MSPB Case No. 16-15 (2016). Thus, the County's actions were not arbitrary, capricious, illegal, or based on political affiliation or other non-merit factors.

Appellant's argument that the County should provide more specific information regarding the reason for the decision to end its consideration of Appellant's application is without merit. We find that the County's decision was due to the fact Appellant did not provide requested information regarding his prior employment. Had Appellant done so, an inquiry into the rationale may have been necessary.


For these reasons the Board finds that Appellant has failed to prove that the County's decision on his application was arbitrary and capricious, illegal, or based on political affiliation or other non-merit factors. We note that the County indicated in its Response that Appellant was not disqualified from applying for future police recruit classes. C. Ex. 4.

### ORDER

Based on the above analysis, Appellant's appeal of the County's denial of employment for the position of Police Officer, is hereby **DENIED**.

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, § 33-15, *Judicial review and enforcement*, and MCPR, § 35-18, *Appeals to court of MSPB decisions*, within 30 days an appeal may be filed with the Circuit Court for Montgomery County, Maryland, in the manner prescribed under Chapter 200, Title 7 of the Maryland Rules.

For the Board  
June 18, 2025

  
Sonya E. Chiles  
Chair