

In considering GSA Policy 9.4 (iii) which does not specify procedures and timeline for CRO to potentially review previous decisions, and as communicated to parties in this case, I had to take the necessary steps and adequate time to arrive at a decision.

On March 7th, 2014 GSA Chief Returning Officer (CRO) through GSA Speaker received an appeal of a CRO's previous decision that a complainant **had new information (as per GSA Policy 9.4) to appeal CRO decision in respect of Manjeet Chowdhry campaigning past official deadline.**

GSA CRO decision dated March 6, 2014, stated as follows:

"1. CRO does not have enough information to determine that Candidate in question (Manjeet Chowdhry) has violated any of the GSA Policy and Bylaws stated above or in GSA Bylaws, Policy in general.

2. If CRO receives further information on this issue that will warrant a change in the decision above, the CRO will not hesitate to do so according to GSA Bylaws and Policies"

CRO's jurisdiction in an appeal case

As per GSA Policy 9.4 (iii) "If the Speaker is provided with information during an appeal that the CRO did not have while deciding upon a penalty, remedial action, or referral, the Speaker can advise the CRO. The CRO shall have the opportunity to review and potentially revise their decision in light of additional information."

CRO received the information below together with other forwarded messages/evidence from the complainant and CRO forwarded same to respondent for an official response:

1. "Email sent after campaigning ended by Manjeet Chowdhry.

One email was sent at 4:03pm. This email was sent from Manjeet's email and received by [name withheld]. The email has already been forwarded to the CRO. In reviewing this email you will also notice Manjeet apologized for sending this email past 4pm on behalf of this slate. What is still left questionable in this instance is how many emails were sent past 4pm and how many follow-ups Manjeet sent on behalf of his slate addressing the issue.

2. Email sent from [name withheld].

Another email was sent from [name withheld] on March 5th, 12:25pm during voting. I've had confirmation from at least two students, (name withheld) and (name withheld), that this person actively campaigned for Manjeet and his slate. Considering Manjeet's reply in the previous reports concerning one of these emails "Throughout the campaign, I had told everyone even remotely helping me to follow this deadline strictly" all people who actively campaigned were well aware of the

rules. New information is that [name withheld] was an active member of Manjeet Chowdhry campaign team.

3. Texts messages received by [name withheld].

This is a new issue brought to my attention last evening. I've included the attachment of text messages received by [name withheld] that include statements from graduate students that Manjeet Chowdhry and members of his campaigning team were actively campaigning during voting. [name withheld] has agreed to meet with whatever party is necessary to confirm the text messages are from graduate students"

The above allegations/information are considered new information in respect of CRO decision dated March 6, 2014 and if shown to be so may constitute a breach of the following GSA Bylaws and Policies:

1. According to GSA Policy Section 5 "Campaigning" sub section 8 . "After the campaign period has closed, candidate(s) and slate(s) may distribute communications encouraging students to vote in a General or By-Election. Candidate(s) and slate(s) shall not campaign after the campaign period has closed. As denoted in 5.5, "campaigning is defined as any form of promotion of an individual or slate." All campaign materials (including but not limited to posters, Facebook pages, websites, etc) shall be removed before the close of the campaign period"
2. According to GSA Policy (Section 6 "Principles and Rules of Conduct for Elections"" subsection E (xv). "... Don't tolerate, ask, or encourage campaign volunteers or fellow graduate students to violate any GSA Elections Bylaws and Policies (eg distributing materials to unmoderated mailing lists on your behalf), or other applicable policies or laws."
3. According to GSA Principles and Rules of Conduct for Elections 1. Preamble: a. Candidates will conduct themselves in a manner that upholds the fundamental principles of underlying GSA elections – "that they are to be fair, respect the wishes of voters, and conducted in a manner that reflects the excellent, positive reputation of the GSA" (GSA Bylaws, Part VIII, Elections, General Principle). b. Candidates will abide by GSA Bylaws and Policies concerning elections.
4. According to GSA Bylaw PART VIII ELECTIONS Guiding Principle 1.1 "The fundamental principle underlying GSA elections is that they are to be fair, respect the wishes of voters, and conducted in a manner that reflects the excellent, positive reputation of the GSA"

On March 7th CRO sent an email to respondent with details of issues/breaches as provided by complainant. CRO requested the immediate official written/email response of the allegations above with regards to new information about Manjeet Chowdhry campaigning past official campaign deadline.

Respondent replied to CRO's request and added a set of information/evidence in support of his response on Monday March 10, 2014.

CRO allowed 24 hours for any follows-ups (as was communicated to all parties) and in collaboration with GSA interim Deputy Returning Officer (DRO) has arrived at a decision (see below). The CRO also occasionally consulted with the GSA Executive Director and her delegate (for advice on process as per GSA Policy).

First, CRO will like to provide the following information:

Some of what has been submitted to the CRO as information and/or evidence have names attached. Some individuals involved have consented in giving their names to the CRO. Some have consented to having their names in the evidence. But others have not. The CRO in collaboration with DRO has decided to avoid the use of names in this ruling (except perhaps the name of the respondent). The CRO has also taken into account the credibility of each piece of evidence based on the information provided.

Complainant's case:

1. Email sent from Manjeet's email and received by [name withheld].

The complainant alleges that candidate Manjeet Chowdhry sent an email and received by [name withheld] at 4:03pm on Monday March 3rd 2014 after the official campaign deadline of 4:00pm MST on March 3, 2014. Complainant further alleges that Manjeet through another email apologized to the recipient for sending an email past 4pm on behalf of this slate.

The respondent's reply included attachments/evidence and information that the emails received by [name withheld] after the official campaign deadline was the result of a technical glitch on the part of third party which was out of his "control." Respondent claims that he "sent this email to [name withheld] at 3:59 PM on March 3, 2014; however, he received this email more than once, and the last time he received this email was at 4:03 PM"

Manjeet, the respondent, has provided evidence that suggest that the first email sent to the recipient in question was sent at 3:59 pm, on March 3rd, 2014. According to respondent, multiple emails were then received by [name withheld] over a short period of time (second one at 4:00pm, third one at 4:01pm, fourth at 4:01 pm, fifth at 4:02pm and sixth one at 4:03) due to a Google technical glitch which respondent says is "out of control."

Respondent also says that "I would also like to mention that I apologized to [name withheld] in this email out of moral obligation for something which was not my fault in the first place and happened merely due to a technical glitch, out of my control."

Further, respondent claims that "Sending six emails over a period of four minutes instead of one would not seem beneficial for the candidate under any circumstances to a reasonable mind. Again, there would not be a more feasible explanation than a technical glitch to a reasonable mind"

However, the complainant nowhere in their email correspondence to CRO mentioned that the recipient of the email sent from Manjeet received multiple emails with the first one at 3:59pm on the said day. Complainant submitted email received by [name withheld] at 4:03pm and another email from Manjeet received by [name withheld] at 4:44pm, all on March 3rd, 2014.

The CRO and DRO has consulted with an expert witness and neutral party from AICT, and the witness has stated that it is highly likely and most common, depending on circumstances such as the service provider, amount of traffic in the communications, and the point in time the email was sent, for an email sent by a user to be received at a different and later time. He also state that there could also be a technical issue in the form of a lag when sending an email to have the recipient receive same email multiple times.

With the information provided by complainant and respondent, CRO is unable to determine exactly what happened with the exchange of emails between Manjeet and [name withheld]. But with the information available and expert opinion provided, CRO has reasons to believe that the practical way in which to reach a factual conclusion in this case is to decide whether it is more likely than not that the event occurred (that there was a technical glitch that affected the delivery of email). While the respondent should have taken reasonable steps to prevent or avoid such technical glitch, **on balance of probabilities**, the CRO has concluded that respondent did not violate GSA Policy 5.8.

While GSA policy does not require candidates to report such occurrences to CRO, it would seem proper for candidate Manjeet to have contacted the CRO about the said glitch as soon as he learned about it. That said, considering the nature of the issue, the current GSA Policies and Bylaws and the state of 2014 GSA elections CRO is unable to prescribe any disciplinary actions. As worded in current GSA policy, even if a candidate is shown to have campaigned after the deadline, GSA policy does not state any specific disciplinary action to be prescribed, unlike other offences, stated in GSA Policy, which constitute grounds for disqualification.

More importantly, according to GSA Bylaw PART VIII ELECTIONS Guiding Principle 1.1 "The fundamental principle underlying GSA elections is that they are to be fair, respect the wishes of voters, and conducted in a manner that reflects the excellent, positive reputation of the GSA." CRO has concluded that any disciplinary action taken against the respondent, considering the nature of the issue, the evidence available and state of the 2014 elections, would go against the principle of respecting the wishes of voters.

2. Email sent from [name withheld] to undisclosed recipients

It is important to note that this issue was brought to CRO's attention in the original complaint and was dismissed. (CRO decision on original complaint is worth revisiting).

The new information provided by complainant is that the sender of the email to undisclosed recipients "was an active member of Manjeet Chowdhry campaign team."

Respondent has stated in his response "I didn't have a campaigning team during the elections." It is important to note that candidates of GSA elections may have volunteers to help their campaign BUT as per GSA Policies and Bylaws candidates are not required to have or manage a campaign team in GSA elections. Based on the information available on this issue, CRO has concluded that the respondent did not violate any GSA Policy or Bylaw.

3. Texts messages received by [name withheld].

Complainant forwarded a set of text messages (with no recipients) to CRO as information and/or evidence that shows that respondent campaigned after the official campaign deadline of 4:00pm MST on March 3, 2014.

These text messages were brought to the attention of the respondent. Respondent in his response officially requested for "the unnamed people in the conversations to confirm our case." Complainant declined such request.

In addition the respondent replied with additional information on these texts messages, which included parts of the texts that respondent claimed were omitted from the original text messages forwarded by complainant.

It is important to note that CRO has received an email from a student who is a recipient of one of the text messages submitted as information/evidence. The student claims in part as follows:

"It has been brought to my notice that a particular private conversation between [name withheld] and me has been used as evidence against Mr. Manjeet Chowdhry, one of the VP External candidates for this year's GSA election.

I am surprised, firstly because I was not informed that screenshots of my private conversation with a friend would be used without my consent for OFFICIAL purposes. Secondly, the texts in the screen shot were misleading. It portrays Mr Chowdhry spoke to me about voting for him after the official campaigning deadline. This was not the case and therefore I have attached the original unedited conversation to bring clarity to this situation.

I want to specifically point out that the "Mr. G" pointed out in the conversation refers to a completely different individual and not Manjeet Chowdhry. I am still left

wondering as to how a piece of unverified possibly “critical” evidence was passed along in this manner”

The above quote notwithstanding, CRO has determined that the complainant has not shown that the respondent campaigned past 4pm MST on March 3, 2014 the official deadline for close of campaigning. The information on the face of the text messages from the complainant, taken together with the response from the respondent and the additional testimony from a recipient of one of the text messages the CRO has concluded that complainant has not shown that the candidate in question has violated GSA Policy 5.8 or any other GSA policy or Bylaws.

Conclusion:

In view of the above, and considering the nature of the issues, and in light of current GSA Policies and Bylaws, and the state of the 2014 GSA General elections the CRO is unable to prescribe any disciplinary action against respondent and unable to revise his previous decision dated March 6, 2014.

As per GSA Policy 9.4 candidates have twelve (12) hours from the time the CRO’s email is RECEIVED for an emailed appeal to be RECEIVED by the Speaker as denoted in GSA Policy, Elections, Section 9, Elections Appeals.

Dated: Thursday March 13, 2014