

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 1

Date: January 2, 2025

File No.: T2526/8320

[ENGLISH TRANSLATION]

Between:

Cyrille Raoul Temate

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Public Health Agency of Canada

Respondent

Ruling

Member: John Hutchings

Table of Contents

I.	OVERVIEW.....	1
II.	DECISION.....	1
III.	ISSUES.....	2
IV.	ANALYSIS	2
	A. Parts of two of the documents are protected by solicitor-client privilege. The other documents are not subject to any privilege.....	2
	B. For different reasons, the disclosure of the documents that are not subject to privilege should not be prevented.....	5
V.	ORDER	9

I. OVERVIEW

[1] This is the second ruling in this proceeding. In *Temate v. Public Health Agency of Canada*, 2022 CHRT 31, Member Gaudreault (as he then was) determined the scope of the complaint and attempted to advance case management. The Complainant subsequently filed a number of procedural motions. It was agreed that the Tribunal and the parties would start by focusing on the motion for disclosure the Complainant had filed on November 30, 2022.

[2] Among other things, the Complainant is seeking the disclosure of documents in respect of which the Respondent is claiming privilege or which it considers to be confidential. The Respondent objects to this motion and the Canadian Human Rights Commission (the “Commission”) did not participate. In his direction to the parties dated December 7, 2022, former Member Gaudreault noted that the concepts of confidentiality and privilege are not necessarily synonymous and not necessarily based on the same legal principles. I agree with his observations.

[3] The Respondent provided the Tribunal with confidential copies of the documents the Complainant has numbered 1 to 25 in his motion. I must determine whether privilege can be claimed in respect of these documents.

II. DECISION

[4] I allow the Complainant’s motion in part. Even though parts of two of the documents are protected by solicitor-client privilege, the other documents are not subject to any privilege and are subject to disclosure. For different reasons, I also conclude that the disclosure of the documents that are not subject to privilege should not be prevented.

III. ISSUES

[5] I must determine the following issues:

- i. Are the documents identified in the motion subject to privilege?
- ii. If not, should I prevent the disclosure of the documents not subject to privilege for different reasons?

IV. ANALYSIS

A. Parts of two of the documents are protected by solicitor-client privilege. The other documents are not subject to any privilege.

[6] The Complainant is challenging the solicitor-client privilege claimed in respect of documents 1 and 2.

Number	Name of document	Short description	Date
1	ASPC-PR_Doc.No.07	EMP – 2015-9783 – Chronology – Appendix B	2014-10-17 (to 2016-01-27)
2	ASPC-PR_Doc.No.08	Chronology of Events – EC-07 Process 14-AHS-HIS-IA-NCR-108797	2014-10-17 (to 2015-03-02)

[7] These two chronologies were prepared at the Public Health Agency of Canada (the “Respondent”) regarding a staffing process in which the Complainant participated. The Respondent has already provided the other parties with these two documents, but has redacted a sentence on page 4 of each document.

[8] Solicitor-client privilege is given a broad scope in the case law, and I accept that, as the Respondent notes, it includes any legal advice provided (*Foster Wheeler Power Co. v. Société intermunicipale de gestion et d’élimination des déchets (SIGED) inc.*, 2004 SCC 18 at paras 34 and 41; *Montreuil v. Canadian Forces*, 2006 CHRT 42 at paras 11 to 13).

[9] I have read the redacted sentences. I cannot reveal what they say, but I can confirm that they reflect legal advice provided to the Respondent. Given that the Complainant has not presented any arguments to show that the Respondent has explicitly or implicitly waived

privilege, I am not in a position to conclude that it did so. The redacted sentences in documents 1 and 2 are therefore immune from disclosure because of solicitor-client privilege.

[10] The other documents (3 to 25) concern the same staffing process, including its nature, the Complainant's participation, the participation of other applicants, the assessments, the results and related events, including an informal conversation with the Complainant and discussions within senior management.

Number	Name of document	Short description	Date
3	ASPC-PR_Doc.No.09	Candidate Assessment –14-AHS-HSI-IA-NCR-108797 – EC-07 - Manager	2014-11-24
4	ASPC-PR_Doc.No.10	Compte rendu de l'entrevue EC-07	2014-12-04
5	ASPC-PR_Doc.No.11	Notes manuscrites de l'entrevue EC-07	2014-12-04
6	ASPC-PR_Doc.No.12	Compte rendu de l'entrevue EC-07	2014-12-04
7	ASPC-PR_Doc.No.13	Compte rendu de l'entrevue EC-07	2014-12-04
8	ASPC-PR_Doc.No.14	Notes manuscrites de l'entrevue EC-07	2014-12-04
9	ASPC-PR_Doc.No.15	Notes manuscrites de l'entrevue EC-07	2014-12-04
10	ASPC-PR_Doc.No.16	Compte rendu de l'entrevue EC-07	2014-12-04
11	ASPC-PR_Doc.No.17	Notes manuscrites de l'entrevue EC-07	2014-12-04
12	ASPC-PR_Doc.No.18	Result of the Written Exam - 14-AHS-HSI-IA-NCR-108797 – PHAC – Manager – EC-07	2014-12-04
13	ASPC-PR_Doc.No.19	Note de présentation	2014-12-04

14	ASPC- PR_Doc.No.20	Candidate Assessment Consensus - 14-AHS-HSI-IA- NCR-108797 – EC-07 – Manager	2014-12-10
15	ASPC- PR_Doc.No.26	Essential Qualifications	2014-12-12
16	ASPC- PR_Doc.No.27	Rapport sommaire - 14-AHS-HSI- IA-NCR-108797	2014-12-12 (on or around)
17	ASPC- PR_Doc.No.28	Échange de courriels, Reference Check assessments	2014-12-12 (to 2014-12-22)
18	ASPC- PR_Doc.No.29	Courriel de PIMS-SGIP, E1417R66510 – AHS – EC07 – ON – Priority Referral	2014-12-16
19	ASPC- PR_Doc.No.30	Appointment from a Pool of Qualified Candidates	2015-01-08 (on or around)
20	ASPC- PR_Doc.No.31	Registre des candidat(e)s qualifié(e)s, poste 0009077 EC-07	2015-01-08 (on or around)
21	ASPC- PR_Doc.No.32	Échange de courriels, DRAFT EMAIL Process/Processus 14- AHS-HSI-IA-NCR-108797	2015-01-08 (on or around)
22	ASPC- PR_Doc.No.33	Courriel, Process/Processus 14- AHS-HSI-IA-NCR-108797	2015-01-12
23	ASPC- PR_Doc.No.34	Notes manuscrites – rencontre informelle	2015-01-30
24	ASPC- PR_Doc.No.35	Échange de courriels, EC-07 Informal Discussion, Cyrille Raoul Temate _ 30 janvier 2015 – Mes impressions	2015-02-12 (to 2015-02-16)
25	ASPC- PR_Doc.No.36	Échange de courriels, *Confidential: Re: URGENT – HR Issue (President’s Office)	2016-01-26

[11] The *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the “Rules”), require all parties to include in their Statement of Particulars a list of all the documents in their possession that relate to a fact or issue that is raised in the complaint or to an order sought by any of the parties (ss 18 to 20). In that list, the parties must indicate the documents in respect of which privilege is claimed and the basis for the privilege. In

other words, the parties must specify which documents are arguably relevant to the dispute and, where applicable, claim any related privilege.

[12] In its list of documents, the Respondent included documents 3 to 25 as the ones in respect of which it claims privilege, thereby signalling that these are arguably relevant to the dispute while, at the same time, claiming immunity from disclosure.

[13] However, in its response to this motion for disclosure, the Respondent states that the documents listed above are not privileged under subsection 20(2) of the Rules. The fact that these documents are not privileged is therefore no longer disputed, and this is enough to resolve the first issue I must address: documents 3 to 25 are not subject to privilege. Consequently, they must be disclosed to all parties, like any other arguably relevant document in a party's possession in respect of which privilege is not, or is no longer being, claimed.

B. For different reasons, the disclosure of the documents that are not subject to privilege should not be prevented.

[14] The Respondent submits that these documents should not be disclosed, but for different reasons. It submits that, among other things, they are irrelevant to the complaint, contain personal information from third parties and could identify a person who has requested anonymity.

[15] With respect, I cannot accept these arguments.

[16] The Respondent submits that, in preparing its list of documents, it included all the documents in its possession arguably relevant to a fact or issue raised in the complaint. Yet, according to the Respondent, most of the documents being sought in this motion concern other people than the Complainant whose applications were assessed as part of a staffing process described in the complaint. The Respondent is therefore inviting me to read the documents and to find either that they do not support the Complainant's allegations or that they are not relevant to the determination of the complaint.

[17] The Complainant submits that all the documents mentioned are central to his complaint.

[18] Evidence is assessed at the hearing. At this stage, it would therefore be premature to rule on whether these documents support the allegations in the complaint. In order to decide this motion, I must read the documents not to assess the evidence but rather to validate the claimed privileges. I have already done this.

[19] I note the parties' difference in opinion on the relevance of the documents: the Respondent implicitly recognized the arguable relevance of all the documents in question by including them in its list, but then challenged this relevance in the context of this motion, while the Complainant has been saying that the documents are relevant throughout the disclosure process.

[20] For the purposes of this motion, I must therefore "determine whether the documents sought are **arguably** relevant to the dispute" (*Constantinescu v. Correctional Service Canada*, 2020 CHRT 4 at para 198 [*Constantinescu*] (emphasis added)). I note, moreover, that the Complainant will still have to discharge the burden of proof for his case at the hearing (*Constantinescu* at para 204).

[21] A party seeking the disclosure of a document must demonstrate a rational connection between the document and the issues raised in the complaint (*Kayreen Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 at para 6).

[22] The Complainant has demonstrated a rational connection between documents 3 to 25 and the issues raised in the complaint. Among other things, the complaint concerns the fact that the Respondent allegedly refused to hire the Complainant on the basis of prohibited grounds of discrimination. The documents relate to a staffing process in which the Complainant participated and the events that followed this process. The Respondent says it did not hire any of the candidates in the pool created as part of staffing process 14-AHS-HSI-IA-NCR-108797 and instead used assignment and deployment tools to fill the position in question.

[23] I find that the staffing process is clearly part of the broader factual framework of the complaint. The different stages recorded in documents 3 to 25 helped the Respondent assess the applicants for the position in question. The fact that it chose to fill the position by deployment or assignment is not necessarily at odds with the relevance of the process to the complaint. The documents in question are therefore arguably relevant and subject to disclosure.

[24] In the alternative, the Respondent also submits that the documents in question must be redacted to protect the personal information of third parties. According to the Respondent, disclosure would highly likely identify a person who has requested anonymity. It adds that protecting the identities of third parties is not contrary to the open court principle.

[25] There is a presumption in favour of open courts. It is established, however, that discretionary limits on court openness are sometimes required to protect other public interests (*Sherman Estate v. Donovan*, 2021 SCC 25 [*Sherman Estate*]). The flexibility the Tribunal must demonstrate in applying this principle is stated in section 52 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA). This provision empowers me to take any measures necessary to ensure confidentiality in certain circumstances (*A.B. and Gracie v. Correctional Service Canada*, 2024 CHRT 103 [*A.B.*]).

[26] Any motion to this effect is based on section 52(1)(c) of the CHRA:

52(1) An inquiry shall be conducted in public, but the member or panel conducting the inquiry may, on application, take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of the inquiry if the member or panel is satisfied, during the inquiry or as a result of the inquiry being conducted in public, that

...

(c) **there is a real and substantial risk that the disclosure of personal or other matters will cause undue hardship to the persons involved such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public; ...**

[Emphasis added.]

[27] The Respondent notes that the third parties mentioned in the documents are not represented and that their personal information should not be exposed to the public. Yet I

see that the Respondent has not presented any argument that “there [would be] a real and substantial risk that the disclosure of the ... identit[ies] [of these third parties] through this Tribunal proceeding would cause [them] severe and undue hardship such that the need to prevent disclosure outweighs the societal interest that [their] identit[ies] be made public” (A.B. at para 17). For example, the situation of the person who has requested anonymity and the possible risks of disclosure are unknown.

[28] The Respondent cites *Melanie Blache v. Bell Canada*, 2022 CHRT 35 at paragraphs 4 to 12 [*Blache*], and *Constantinescu* at paragraphs 183 to 205, to argue that redacting the information regarding third parties to protect their identities in this proceeding does not contravene the open court principle. The Tribunal issued confidentiality orders in those cases.

[29] *Blache* concerned the possible disclosure of accommodation requests containing “sensitive personal information, including medical information” (at para 10). The documents at issue in this motion are of a different nature.

[30] In *Constantinescu*, the Tribunal ordered the disclosure of the logbooks of the recruits who participated in a training course, with the exception of personal information contained therein (e.g., name, photo, address, email address, telephone number and other personal identifiers). However, the documents at issue in this motion do not contain any information that could identify a person in such a way as to pose a significant threat to their safety. Moreover, the names of the third parties appear repeatedly in the Complainant’s motion and in the Respondent’s list of documents.

[31] I therefore cannot conclude that the Respondent has met the high bar required to justify a confidentiality order under section 52(1)(c) of the CHRA and in accordance with *Sherman Estate*. Consequently, the documents that are not subject to privilege do not have to be redacted. However, I would remind the parties of the implied undertaking of confidentiality in respect of documents disclosed before the hearing (*Nordhage-Sangster v. Canada Border Services Agency and Pridmore*, 2023 CHRT 45).

V. ORDER

[32] For the reasons above, I allow the motion for disclosure in part. I dismiss the motion regarding documents 1 and 2. I allow the motion regarding documents 3 to 25.

[33] I will convene a case management conference in order to complete the stage of filing statements of particulars and set dates for the hearing of the complaint.

Signed by

John Hutchings
Tribunal Member

Ottawa, Ontario
January 2, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2526/8320

Style of Cause: Cyrille Raoul Temate v. Public Health Agency of Canada

Ruling of the Tribunal Dated: January 2, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Cyrille Raoul Temate, for himself

Luc Vaillancourt, for the Respondent