

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 59  
**Date:** May 30, 2025  
**File No.:** HR-DP-3038-24

**Between:**

**Brad Rustad**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canada Revenue Agency**

**Respondent**

**Ruling**

**Member: Ashley Bressette-Martinez**

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## **I. OVERVIEW**

[1] The Complainant, Brad Rustad, filed this motion. He is asking me to order the Respondent, the Canada Revenue Agency (CRA), to give him unredacted copies of documents he says are arguably relevant to his case. Mr. Rustad says the documents exist because he received copies of them, with redactions, from the CRA in response to a *Privacy Act*, R.S.C., 1985, c. P-21 (the “Privacy Act”) request he made. Mr. Rustad wants the CRA to give him unredacted copies of those documents for this proceeding. The CRA says the documents are not relevant to this case because they are about matters that are not referenced in his Statement of Particulars.

[2] If I deny this motion, Mr. Rustad asks that I stay this proceeding until he files a complaint with the Office of the Privacy Commissioner of Canada about the redacted documents.

[3] The CRA asks that both motions be dismissed.

## **II. DECISION**

[4] Mr. Rustad’s motion for disclosure is allowed because the documents he is asking for are arguably relevant to his complaint before the Tribunal.

[5] Since I am allowing his motion for disclosure, I do not need to deal with the motion to stay the proceedings.

## **III. BACKGROUND**

[6] Mr. Rustad’s complaint is about whether the CRA discriminated against him because of his marital status and sex. He alleges he experienced adverse differential treatment during Income Tax and GST audits conducted by the CRA from 2010 to 2021. He says he was treated differently because his spouse is a First Nations’ person and that this is a contravention of section 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA).

[7] While the Canadian Human Rights Commission (the “Commission”) was investigating Mr. Rustad’s complaint, he filed a Privacy Act request for information from the CRA about the audits. The CRA gave Mr. Rustad records in response to his request. Those records contained redactions. He says he submitted the redacted documents to the Commission as part of his disclosure during the investigation.

[8] When Mr. Rustad filed his Statement of Particulars in this proceeding, he did not include a list of documents that are relevant to his case, which he was required to do. Instead, he said he would rely on all the documents he received from the Privacy Act request. In a case management conference call with the parties, I explained to Mr. Rustad that, as part of this process, he needs to provide a list of documents in his Statement of Particulars because this proceeding is entirely new and different from the one before the Commission. I directed him to file a list of documents. He did not do that. Instead, he filed an amended Statement of Particulars and reiterated his intent to use the “entirety of all documents disclosed” in his Privacy Act request. He also asked the Tribunal to order the Respondent to provide unredacted copies of “all documents containing redactions”.

[9] Mr. Rustad was directed to provide the CRA with a particularized list of the documents he wants from the CRA. After receiving his list, the CRA gave him copies of some of the documents but said it would not disclose documents for three of his requests, known as Requests 5, 7 and 8.

#### **IV. ISSUES**

[10] The issues in this motion are:

- i. Should the CRA have to disclose the documents in Request 5?
- ii. Should the CRA have to disclose the documents in Requests 7 and 8?

## V. ANALYSIS

### A. Legal framework

[11] The Complainant pointed out in his submissions that parties in a proceeding at this Tribunal have a right to a full and ample opportunity to present their case and prepare for a hearing (see section 50(1) of the CHRA).

[12] The *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the “Rules of Procedure”), require the parties to disclose the documents in their possession that relate to the facts, issues or remedies that are raised in the complaint. Parties are required to do this early in proceedings, beginning with each party’s Statement of Particulars (Rules 18 and 20 of the Rules of Procedure). The obligation to disclose arguably relevant documents continues throughout the proceeding (Rule 24 of the Rules of Procedure).

[13] The parties are correct that this Tribunal considers the principles of disclosure that were set out in *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 at paras 4–10 [*Brickner*] when determining if documents ought to be disclosed. A requesting party does not have a high threshold to meet for establishing arguable relevance, and the tendency is to allow more rather than less disclosure (*Philips v. Ritchie-Smith Feeds Inc.*, 2019 CHRT 43 at para 10 [*Philips*]). A requesting party needs to show that there is a rational connection between the information they are seeking and the facts, issues or relief identified by the parties (*Brickner* at para 6). A review of a party’s Statement of Particulars can be valuable in identifying what is at issue in a complaint and can make it easier to identify what may be arguably relevant in a case and likely to contribute to advancing the debate and issue in the case (*Turner v. Canada Border Services Agency*, 2018 CHRT 1 at paras 43–44 [*Turner*]). But the Statement of Particulars is not the only consideration in determining what is and what is not relevant to a complaint.

[14] A request for documents should be particularized and should not be speculative or what is described as a “fishing expedition” (*Brickner* at para 7). The documents need to be in the party’s possession since the Tribunal cannot order a party to create documents that do not exist (*Brickner* at para 10). The Tribunal can also consider whether the probative

value of the document outweighs the prejudicial effect on the proceeding (*Brickner* at para 8). However, the Tribunal is not required to order disclosure where it would delay the proceedings or when the information is related to a side issue rather than the main issue in dispute (*Brickner* at para 8).

[15] Disclosure is critical in ensuring that proceedings are fair and efficient and that parties understand the case they need to meet so they can prepare for a hearing. However, just because a document is disclosed, it does not mean it will be produced or admitted as evidence at a hearing (*Brickner* at para 9).

**(i) Should the CRA have to disclose the documents for Request 5?**

[16] Yes, the CRA needs to disclose documents for Request 5 because they are arguably relevant to the main issue in dispute in Mr. Rustad's complaint.

[17] The CRA's submissions explain that Request 5 is about a risk assessment prepared by one of the auditors who worked on Mr. Rustad's audits. It was completed to determine the impact of the Covid-19 pandemic on Mr. Rustad.

[18] Mr. Rustad says that there is a rational connection between his allegations that he was treated differently by the CRA during several audits and Request 5. He says that the content of these documents may show why the CRA treated him the way it did since the auditor who prepared the risk assessment is the same auditor who worked on his Income Tax and GST audits.

[19] The CRA argues, however, that the Request 5 documents are not about the audits which gave rise to this complaint.

[20] The parties do not dispute that the documents being requested are identifiable and in the possession of the Respondent (*Brickner* at paras 7 and 10). And, while I agree that the risk assessment is not raised in Mr. Rustad's Statement of Particulars, there is a link between the risk assessment and the main issue in dispute in this complaint which is sufficient to meet the threshold required for arguable relevance. The auditor who worked on the risk assessment is the same auditor who worked on Mr. Rustad's Income Tax and GST

audits. Mr. Rustad's allegations of discrimination are about what she allegedly did and said during the work on his audits (*Brickner* at para 6).

[21] I would also note that the Respondent said in its submissions that it disclosed the document in Request 5 "with part of the *Privacy Act* redaction lifted". Mr. Rustad pointed out that no privilege was claimed for this redaction or document. Rule 20(2) of the Rules of Procedure requires the Respondent to provide a list of documents for which privilege is being claimed and the basis for that privilege. Since the CRA is not claiming a privilege over this document, it must disclose it to Mr. Rustad without redactions in keeping with Rule 20(1)(e) of the Rules of Procedure.

**(ii) Should the CRA have to disclose the documents for Requests 7 and 8?**

[22] Yes, the CRA needs to disclose documents for Requests 7 and 8 because they are arguably relevant to the main issue in dispute in Mr. Rustad's complaint.

[23] Mr. Rustad requested documents about a referral that was made to the CRA's Criminal Investigation Division (CID). The requests are:

- Request 7 : Email and form T134 Referral attached thereto ((PA docs 0005633- plus additional pages regarding the form T134).
- Request 8 : Any documents related to the T134 Referral related to emails dated November 5, 2019, between Ling Jiang and Christina Yee, including any documents related to the criminal investigation review.

[24] Mr. Rustad says the documents he is asking for will show what the auditor and Team Leader were considering on two fronts: 1) their reasons for proposing adjustments to his taxes and 2) the facts that led to the referral to the CID and the CID's response or decision on the referral. He believes this information will confirm the validity of his complaint and corroborate his position that he was treated differently by the auditors who worked on his Income Tax and GST audits because of his protected characteristics.

[25] The CRA takes the position that Mr. Rustad's complaint and Statement of Particulars in this proceeding makes no reference to the referral to the CID. Because of this, it says there is no rational connection between these two documents and the facts and issues raised in the complaint. The CRA argues that this motion is being used "to inappropriately use the respondent's disclosure obligations and the Tribunal process to formulate his complaint and seek unrelated document disclosure from the respondent".

[26] The Tribunal has a duty to ensure the proceeding is focused on the issues raised in the complaint. I agree with the CRA that the Statement of Particulars makes no mention of the CID referral. However, in this complaint, I am asked to decide whether Mr. Rustad's protected characteristics were a factor in how he was treated by the CRA in audits that span from 2010 to 2021. Requests 7 and 8 are for documents about the work that was done by the same auditor who conducted the audits which are the subject of Mr. Rustad's complaint. Since the CID referral was done by the same auditor and falls within the timeframe of the audits in this complaint, there is a rational connection between his request and the main issue in dispute (*Brickner* at para 6). As Mr. Rustad argued in his submissions, the documents could include information about the CRA's policies and how those policies were applied to Mr. Rustad in the context of the Income Tax and GST audits.

[27] The CID itself is not part of the scope of Mr. Rustad's complaint, and Mr. Rustad is not claiming that it is in this motion. However, the probative value of the documents that were produced by the auditors which led to the CID referral are arguably relevant. The ultimate decision of the CID is also relevant inasmuch as it confirms or negates Mr. Rustad's theory about "what the auditor and Team Leader were considering and the reasons" for making the referral to the CID. Ordering disclosure of the documents in Requests 7 and 8 outweighs the prejudicial effects of denying it because the documents could contribute to advancing the debate and could assist the Tribunal in deciding whether the auditors discriminated against Mr. Rustad (*Turner* at para 44; *Brickner* at para 8). Based on the submissions, the Respondent has these documents in its possession and did not argue that producing them would cause a delay in this proceeding. Erring on the side of more disclosure in this case is in keeping with the principle set out in *Philips* at para 10 which will



allow Mr. Rustad to prepare for the hearing by finalizing his list of documents and completing his disclosure.

[28] Mr. Rustad has met the threshold required to show the documents could be arguably relevant, and the CRA must disclose the documents in Requests 7 and 8, subject to any privilege claimed.

[29] However, just because the CRA is ordered to produce these documents does not mean they will be used as evidence at the hearing. Both parties will have the opportunity to call the auditor(s) as a witness at the hearing and can ask them questions about the audits. If they are proposed as evidence, the parties will be able to make submissions on admissibility and weight to be given to them (*Brickner* at para 9).

## **VI. IMPLIED UNDERTAKING**

[30] This Tribunal has decided that documents exchanged in its disclosure process leading up to a hearing are protected by an implied undertaking of confidentiality (*Miller v. ILA*, 2022 CHRT 43 at para 65). The same implied undertaking applies to this case. This means that Mr. Rustad is not to use the documents that are disclosed to him as part of this proceeding for any purpose other than this complaint (*Constantinescu v. Correctional Service of Canada*, 2020 CHRT 4 at para 138).

## **VII. ORDER**

[31] Mr. Rustad's motion is allowed. The CRA must disclose the documents in Requests 5, 7 and 8. All documents need to be produced in unredacted form, subject to any privilege being claimed, within 15 days after this order is communicated to the parties.

[32] Mr. Rustad must not share or disclose any information obtained through the disclosure process outside of this proceeding as part of the implied undertaking of confidentiality.

*Signed by*

Ashley Bressette-Martinez  
Tribunal Member

Ottawa, Ontario  
May 30, 2025

# **Canadian Human Rights Tribunal**

## **Parties of Record**

**File No.:** HR-DP-3038-24

**Style of Cause:** Brad Rustad v. Canada Revenue Agency

**Ruling of the Tribunal Dated:** May 30, 2025

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Dewey Lotoski, for the Complainant

Kirat Khalsa, Jonathan Cooper and Steven Stechly, for the Respondent