

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2017 CHRT 26

Date: August 9, 2017

File No.: T1817/4712

Between:

Geevarughese Johnson Itty

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Border Services Agency

Respondent

Ruling

Member: Olga Luftig

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I. Background

[1] On December 16, 2013, the Tribunal issued Ruling 2013 CHRT 34 (the Confidentiality Order), ordering the confidentiality of certain documents, namely Port of Entry Recruitment Training program (POERT) assessor manuals and various POERT test results of the Complainant's classmates, in accordance with section 52 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the *Act*), and requiring the documents to be subject to certain terms, as set out in that Ruling (the Confidentiality Order).

II. Respondent's motion and request for confidentiality of additional documents

[2] The Complainant has recently requested disclosure of additional documents, specifically, the complete set of DII simulations which the Complainant was assessed on, including the correct simulation assessed by Kevin Phillips, and all the Recruit Assessment Reports - Determination Point I, for the other candidates in the Complainant's class.

[3] The Respondent submits that the Confidentiality Order ought to be extended to the additional pages of the POERT testing material because the simulation scenarios are of the same type as those already protected by the Confidentiality Order, and these documents are by their nature sensitive and confidential. The Respondent submits that the Tribunal's reasons and analysis in the Confidentiality Order also apply to these documents.

[4] The Respondent also seeks an order that paragraph 30 of the Confidentiality Order be extended to cover such additional documents.

III. The Complainant's position

[5] The Complainant has consented to the extension of the Confidentiality Order to the documents set out in paragraph 2 above.

IV. Conclusions in the Confidentiality Order

[6] In granting the Confidentiality Order, the Tribunal concluded the following:

[22] It is in the interests of Canada and those who live here that BSOs be properly trained, vetted and qualified for this significant work. The POERT program tries to accomplish this. Another rubric under which POERT functions is the requirement under the [*Public Service Employment Act of Canada*] that public service appointments be based on merit and be nonpartisan, and further, that these values be safeguarded. In order to do so, the integrity of the POERT documents listed in the Schedule “A” documents must be safeguarded; otherwise, there is a real risk that POERT’s testing materials and training and assessment scenarios could be disclosed, whether intentionally or inadvertently, and candidates without merit could pass them. This would compromise not only the merit principle and cause the Respondent undue hardship, but would also compromise the public’s safety.

[23] ...if the Schedule “A” Documents were made public during the inquiry or as a result of the inquiry being conducted in public, there is a real and substantial risk that matters involving public security would be disclosed, and that the disclosure of personal or other matters will cause undue hardship to the persons involved, particularly the Respondent, such that the need to prevent disclosure other than under the conditions set out in the Order below outweighs the societal interest that these documents be fully disclosed to the public.

V. Ruling

[7] Considering that the complete set of DII simulations which the Complainant was assessed on, including the correct simulation assessed by Kevin Phillips, form part of POERT assessments and are the same type of documents which the Confidentiality Order already covers, for the same reasons in the Confidentiality Order reproduced above, the Tribunal is satisfied that the Confidentiality Order ought to cover the documents at issue. In view of the foregoing, the Tribunal hereby orders that the Confidentiality Order is extended to and applies *mutatis mutandis* to the additional documents set out above.

VI. Order

[8] The Tribunal designates the following documents as confidential in accordance with section 52 of the *Act*:

- a. the complete set of DII simulations that the Complainant was assessed on, including the correct simulation assessed by Kevin Phillips (54 pages); and
- b. all the Recruit Assessment Reports – Determination Point I for the other candidates in the Complainant’s class.

[9] Terms (a) through (f) of paragraph 30 of the Confidentiality Order in 2013 CHRT 34, apply *mutatis mutandis* to the documents listed in paragraph 8 above.

Signed by

Olga Luftig
Tribunal Member

Ottawa, Ontario
August 9, 2017

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1817/4712

Style of Cause: Geevarughese Johnson Itty v. Canada Border Services Agency

Ruling of the Tribunal Dated: August 9, 2017

Motion dealt with in writing without appearance of parties

Written representations by:

Jean-Rodrigue Yoboua, counsel for the Complainant

Peter Nostbakken and David Aaron, for the Respondent