

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2021 CHRT 22

Date: July 20, 2021

File No.: T2491/4820

Between:

Eveda Nosistel

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service of Canada

Respondent

Ruling

Member: Marie Langlois

After reviewing the record and the parties' submissions, the Canadian Human Rights Tribunal renders the following ruling:

[1] WHEREAS on June 12, 2015, Ms. Eveda Nosistel, the Complainant, filed a complaint with the Canadian Human Rights Commission, the Commission, which was then referred to the Canadian Human Rights Tribunal, the Tribunal;

[2] WHEREAS according to the written complaint, the case involves allegations of discrimination based on employment (section 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, the Act) and harassment (section 14 of the Act) because of the complainant's colour and disability;

[3] WHEREAS on April 21, 2021, the Complainant presented a motion for confidentiality regarding certain documents and the redaction of certain information;

[4] WHEREAS the Complainant formulates her motion of April 21, 2021, in her Reply to the Respondent's Statement of Particulars, as follows: [TRANSLATION] "First, the Complainant is asking the Tribunal to not reveal in the public records the data or documents that were disclosed by the CSC [Correctional Service of Canada, the Respondent] without her consent and without precautions to maintain the confidentiality of her personal data in accordance with the law, namely: the Complainant's medical certificates and email addresses. The CSC/Respondent cannot deny having noted that the Complainant attempted to conceal this information in her Statement of Particulars. The Complainant is requiring the withdrawal of that portion of the 2013 internal harassment complaint and any other personal document or data";

[5] WHEREAS on May 27, 2021, the Tribunal sent a letter to the Complainant asking for clarifications about the documents she wanted to remain confidential and the information to redact;

[6] WHEREAS a case management conference was held with the parties on June 11, 2021, which the Commission did not attend;

[7] WHEREAS the Complainant stated during this case management conference that her motion involves all the medical certificates in the record as well as all the information

about the 2013 internal harassment complaint, on the ground that they are documents of a personal nature;

[8] WHEREAS during this case management conference, the Complainant stated that her personal email address that appears in all the documents should be redacted because it is personal information that must remain confidential;

[9] WHEREAS in her June 17, 2021, letter, the Respondent does not object to the Complainant's motion for confidentiality as long as the parties retain access and can make reference to the information at the hearing;

[10] WHEREAS in her June 17, 2021, letter, the Respondent does not refer to the Complainant's request for redaction;

[11] WHEREAS in its July 7, 2021, email, the Commission does not object to keeping the medical certificates on record confidential;

[12] WHEREAS in its July 7, 2021, email, the Commission makes no reference to the Complainant's motion for the confidentiality of documents regarding the 2013 internal harassment complaint;

[13] WHEREAS in its July 7, 2021, email, the Commission states it takes no position on the request to redact the Complainant's email address;

[14] CONSIDERING that subsection 1 of section 52 of the Act states the general principle of open courts;

[15] CONSIDERING that this same provision also provides an exception to the open court principle by allowing a member or panel, on application, to take any measure or make any order necessary to ensure the confidentiality of the inquiry, in certain situations;

[16] CONSIDERING that to do so, this same provision sets out the situations in which the member or panel must be satisfied that:

(a) there is a real and substantial risk that matters involving public security will be disclosed;

(b) there is a real and substantial risk to the fairness of the inquiry such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public;

(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; or

(d) there is a serious possibility that the life, liberty or security of a person will be endangered.

(emphasis added)

[17] CONSIDERING that the Act provides an exhaustive list of the exceptions to the open court principle;

[18] CONSIDERING that any of the exceptions listed in subsection 1 of section 52 of the Act must be proven on a balance of probabilities;

[19] CONSIDERING that a mere allegation of the personal nature of the information referred to in the motion is not sufficient to demonstrate any of the exceptions set out in subsection 1 of section 52 of the Act;

[20] CONSIDERING that no substantial risk of disclosure of any personal matters of any type has been entered in evidence, or even alleged;

[21] CONSIDERING that, in the absence of evidence of a substantial risk of disclosure of personal information, the balancing exercise between the need for confidentiality and society's interest in an open court cannot be conducted such that the binding analytical criteria of section 52 of the Act are not being met;

[22] CONSIDERING that, in accordance with the case law, in particular *White v. Canadian Nuclear Laboratories*, 2020 CHRT 5, the consent of the parties to the motion for confidentiality is not a determinative factor in the ruling the Tribunal is to make;

[23] CONSIDERING that the Complainant requires her email address to be redacted in the documents in which it appears;

[24] CONSIDERING that an order to redact may be issued for a portion of a document containing information that is not potentially useful to the resolution of the issue in question (*Walden et al. v. Attorney General of Canada*, 2018 CHRT 20);

[25] AND CONSIDERING that no evidence establishes that the Complainant's email address is potentially useful to the resolution of the issue in question as described in the complaint.

FOR THESE REASONS, THE CANADIAN HUMAN RIGHTS TRIBUNAL

ALLOWS in part the motion for confidentiality and redaction brought by Ms. Eveda Nosistel;

ORDERS that Ms. Eveda Nosistel's email address be redacted everywhere it appears in the record.

Signed by

Marie Langlois
Tribunal Member

Ottawa, Ontario
July 20, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2491/4820

Style of Cause: Eveda Nosistel v. Correctional Service of Canada

Ruling of the Tribunal Dated: July 20, 2021

Motion dealt with in writing without appearance of parties

Written representations by:

Eveda Nosistel, for the Complainant

Ikram Warsame, for the Canadian Human Rights Commission

Chantal Labonté, for the Respondent