

POLICY ON ACCESS TO CANADIAN HUMAN RIGHTS TRIBUNAL (CHRT) OFFICIAL RECORDS

1. Effective date of policy

1.1 This policy takes effect on May 1st, 2020.

2. Application

2.1 This policy applies to documents received or created by the CHRT in the context of the inquiries it is conducting. It does not apply to documents received or created in the context of mediations.

3. Objective

3.1 The objectives of this policy are:

- a) to set out the principles governing access to CHRT official records.
- b) to ensure the effective management of documents in the possession of the CHRT.

4. Context

4.1 Subsection 52 of the *Canadian Human Rights Act* (CHRA) provides that inquiries before the CHRT are to be conducted in public, but that the Panel may, on application, take measures to ensure the confidentiality of the inquiry in certain defined circumstances.

4.2 On the first reasonable occasion after the complaint is transferred to the CHRT by the Canadian Human Rights Commission, parties need to be informed that the inquiry is presumptively public.

4.3 Given the nature of some of the information and documents that are included in the CHRT's official record, and the risks and challenges related to the dissemination of information in the digital age, this policy strives to balance the requirement for the CHRT inquiry to be held in public alongside the privacy and security interests of the participants to an inquiry.

4.4 This policy is issued by the Chairperson of the CHRT pursuant to Rule 42(2) and (3) of the *Canadian Human Rights Tribunal Rules of Procedure, 2020*.

5. Definitions

5.1 For the purposes of this policy, the following terms have the following meanings:

“Access” means the ability to request, view or obtain a copy of a CHRT official record of an inquiry or certain documents on the record.

“Complainant” means a party who filed a complaint that has been referred before the Tribunal.

“Concluded inquiry” means an inquiry in respect of which there are no outstanding issues to be decided by the Panel.

“Document” means any information, regardless of its form, and includes, without limiting the generality of the foregoing, any correspondence, drawing, photograph, film, or sound recording.

“Exhibit” means a document introduced at the hearing and accepted as evidence by the Panel.

“Ongoing inquiry” means any inquiry that is not a concluded inquiry (e.g., inquiries that are at the mediation, case management, hearing or deliberation stages).

“Panel” means a single member, or a group of three members, assigned by the Chairperson of the CHRT under subsection 49(2) of the *Canadian Human Rights Act* to conduct any aspect of an inquiry.

“Party” means the Canadian Human Rights Commission, the complainant or the respondent and, for the purposes of this policy, includes any person recognized as an interested party in respect of an inquiry and any counsel or authorized agent representing a party.

“Personal Identification Information” means information about an identifiable individual that, when combined together or with the name of an individual, enables the direct identification of this individual so as to pose a serious threat to this individual’s personal security. This information includes:

- Date of birth;
- Addresses (e.g., civic, postal or email);
- Unique numbers (e.g., phone, social insurance, financial accounts); and,
- Biometric information, excluding voice recording (e.g., fingerprints, facial image).

Personal Identification Information **does not include** an individual's name if they are a party or witness in the inquiry, or the name and contact information of a lawyer or other representative who is acting as counsel or authorized agent for any party to an inquiry. Unless an individual’s name or the name and contact information of a lawyer or representative are anonymized by the consent of the panel upon request of a party, this information is made public.

“Registrar” means the employee of the Administrative Tribunals Support Service of Canada who is responsible for the provision of registry services to the CHRT, under the direction of the Chairperson of the CHRT, and who may be represented by registry officers.

“Respondent” in respect of a complaint referred before the Tribunal, means the party against whom the complaint is made.

6. CHRT Official Record

6.1 Subject to 6.2 the Registrar maintains an official record for each inquiry that includes the following categories of documents:

- a. Complaint form(s);
- b. Correspondence Request(s) for an inquiry from the Canadian Human Rights Commission;
- c. Correspondence between the Registrar and the parties (*e.g.* letters from the Registrar containing directions or orders from the Panel, or notifying the parties about the next stage of the inquiry process);
- d. Documents filed pursuant to the *Canadian Human Rights Tribunal Rules of Procedure, 2020* (*e.g.*, Statements of Particulars, Motion Materials, Expert Witness Reports, Books of Authorities, Responses and Replies to the foregoing);
- e. Summaries of case management conferences prepared by the Registrar;
- f. Documents filed by the parties during a hearing (*e.g.*, exhibits, written representations, summaries of argument);
- g. Rulings, decisions and orders issued by the Panel;
- h. Recordings of hearings, and any transcripts of those recordings; and
- i. Any other documents, as directed by the Panel.

6.2 Unless the Panel directs otherwise, the CHRT official record does not include the following documents:

- a) Any information that pertains to the logistical support and administrative coordination of a CHRT inquiry, communications regarding parties’ availability for case management conferences or hearings, or to financial transaction information related to travel or hearing facilities.

- b) Any note, memorandum, draft or similar document that is prepared by the Panel at its sole discretion, strictly for its personal use.
- c) Any documents pertaining to a voluntary mediation process engaged in by the parties outside of the CHRT's statutory inquiry, such as mediation briefs and any Settlement Agreement. This includes documents pertaining to the CHRT mediation process.

7. Access to CHRT Official Records

7.1 To access a CHRT official record, the requester shall fill in the form found in Schedule A and send it by e-mail at registrar-greffier@chrt-tcdp.gc.ca The requester must provide sufficient information to identify the official record in question and be as precise as possible in their request for documents.

7.2 CHRT official records might either relate to an ongoing inquiry, or to a concluded inquiry. The state of the inquiry determines how a request will be dealt with:

- a) When the inquiry is ongoing, the official record is considered to be open. The official record generally remains open until: (i) all issues have been decided by the Panel; (ii) the parties arrive at a settlement, and when required, the terms of the settlement have been approved by the Commission; (iii) the complaint is deemed withdrawn or abandoned, or (iv) a Court prohibits the inquiry from proceeding.
- b) When the official record is open, access to the official record is provided in accordance with the Panel's directions or orders.
- c) When the inquiry is concluded, the official record is considered closed. At the conclusion of the inquiry, the Panel should have addressed by way of direction or order any issues that may exist regarding public access to the official record.
- d) When the official record is closed, and no order or direction has been made governing public access to the official record, the Registrar must seek direction from the Chairperson regarding the request for access.
- e) When no Panel has yet been assigned to inquire into the complaint, the Registrar must seek direction from the Chairperson regarding the request for access.
- f) When no Panel has yet been assigned to inquire into the complaint, and when the Registrar has not yet received the coordinates of the parties involved, the Registrar does not provide access to the official record. The Registrar can only confirm that the Complaint has been referred to the Tribunal by the Commission.

7.3 When dealing with a request to access a CHRT official record, where the Panel has not previously addressed the issue of public access to the Official Record with the parties, the Registrar must take **reasonable steps** to consult the parties to obtain their views on the request. The parties are not entitled to learn the identity of the requester in order to avoid creating a chilling effect for requesters; *i.e.*, compelling requesters to forego their privacy in order to access the official record could discourage them from making such requests.

8. General Principles to be Applied in Providing Access to CHRT Official Records

8.1 In providing access to CHRT official records, the following general principles apply:

- a) Access may be sought for all documents found in a CHRT official record. The documents can be in any form, including documents that are filed, created, stored or made available on paper or in digital format.
- b) The documents are normally provided in the format in which they are maintained by the Registrar. Persons who are unable to access a document in its original format may request the document in an alternative format.
- c) Documents are provided in the language in which they were received from, or sent to, a party.
- d) Nothing in this policy limits access to a CHRT official record by a Panel, the Registrar, or the CHRT secretariat staff.
- e) Nothing in this policy prevents the parties to an inquiry from accessing the CHRT official record in that inquiry.

9. General Limitations on access to CHRT Official Records

9.1 Access to a document from a CHRT official record is subject to the following restrictions or limitations:

- a) Any confidentiality orders or measures taken by the Panel pursuant to section 52 of the CHRA;
- b) Any applicable statutory or common law provision or practice, rule or direction that limits the right of access to documents from CHRT official records; and
- c) The guiding principle that no access will be provided to any Personal Identification Information appearing in the document.

9.2 Where a document is subject to a limitation or restriction on access, the Registrar must refuse to share the document, or must only share a redacted version of the document, depending on directions received from the Panel or the Chairperson.

10. Special Limitations on Access to CHRT Official Records in respect of Settled Complaints

10.1 Parties can settle a complaint at any time. The stage of the Inquiry at which the settlement occurs will determine whether access is provided to any documents that may have been placed on the official record prior to the settlement:

- a) If the complaint is settled through the Tribunal's mediation process, no access will be provided to the official record;
- b) If the complaint is settled before the commencement of the hearing process, no access will be provided to the official record;
- c) If the complaint is settled after the beginning of the hearing process, or after the issuance of a public ruling or decision, public access will be provided to the official record, subject to the other provisions in this policy.

11. Information Management – Retention and Disposition

11.1 Once the inquiry is concluded (including any re-determination ordered under the *Federal Courts Act*) and all avenues of judicial review and/or appeal have been exhausted or are time-barred, the Registrar must:

- a) Return any exhibits to the respective parties that introduced them. If exhibits are not returnable to a party, the Registrar must retain the exhibits for 10 years.
- b) Retain any recordings of the inquiry and any transcripts of those recordings for 10 years. After 10 years, the Registrar must destroy any recordings of the inquiry and any transcripts of those recordings.
- c) Retain any rulings or decisions indefinitely.
- d) Subject to the retention and disposition terms above, retain the remaining documents comprising the CHRT official record for 10 years. After 10 years, the Registrar must destroy the remaining documents.
- e) A Panel may, by order, vary the retention and disposition rules set out in (a), (b) or (d).

11.2 The intent of the retention and disposition schedule is to balance the archival value of the various documents in the Official Record against the cost of their retention, and the impact of their retention on any individuals identified therein.

12. Regular Update

12.1 This policy will be reviewed and updated minimally every three years. If necessary, it can be reviewed more frequently.

13. Contact

13.1 For questions related to this policy or to request access to a CHRT official record, please contact the Registrar by e-mail at registrar-greffier@chrt-tcdp.gc.ca or by Phone : (613) 995-1707; Toll-free: 1-844-899-3604; TTY: (613) 947-1070.

Issued at Ottawa on May 1st, 2020

Original signed by David Thomas

David L. Thomas
Chairperson, Canadian Human Rights Tribunal

SCHEDULE A

REQUEST TO ACCESS A CHRT OFFICIAL RECORD

1. I AM:
 - a) a complainant in the file I am requesting information about;
 - b) a respondent in the file I am requesting information about;
 - c) an interested party in the file I am requesting information about;
 - d) a complainant in another file;
 - e) a respondent in another file;
 - f) an interested party in another file;
 - g) not involved in any file with the Tribunal
 - h) more details: _____
2. NAME OF REQUESTER
3. CONTACT INFORMATION
 - a. Address
 - b. E-mail
 - c. Phone number
4. NAME OF THE FILE (NAME OF COMPLAINANT/RESPONDENT)
5. FILE NUMBER (IF KNOWN)
6. DESCRIPTION OF DOCUMENTS REQUESTED
7. ADDITIONAL DETAILS AND INFORMATION