



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Robert Carducci v. Canada (Minister of Transport)*, 2023 TATCE 29 (Ruling)

TATC File No.: O-4583-64

Sector: Aviation

BETWEEN:

Robert Carducci, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard by: Videoconference on February 16, 2023

Before: Joelle Malette, Member

Rendered: June 16, 2023

RULING

Held: The applicant's motion to have additional documents disclosed by the respondent is partially granted. The Tribunal orders the Minister of Transport to provide the records, as set out in the ruling, to the applicant within 60 days of the date of this ruling.

The Tribunal Registry will reach out to the parties to coordinate a further case management conference, the date for which will be confirmed within 30 days of the ruling, for the purpose of discussing the hearing date and hearing logistics.

I. BACKGROUND

[1] On December 16, 2019, Transport Canada (TC) issued a Notice of Cancellation (Notice) to Mr. Carducci to cancel his Design Approval Representative Delegation of Authority Certificate (DAR Certificate). The Notice was issued pursuant to paragraph 7.1(1)(b) of the *Aeronautics Act* (Act).

[2] On January 13, 2020, the applicant filed a request for review by the Transportation Appeal Tribunal of Canada (Tribunal).

[3] The Tribunal scheduled a case management conference (CMC) for January 7, 2021. The CMC was adjourned on consent and rescheduled for July 7, 2021. At the CMC, the Tribunal scheduled hearing dates for the review hearing in January 2022. The applicant also identified that, although he had received a substantial disclosure package from the Minister of Transport (Minister) in September 2020, he had requested additional disclosure, and the parties were working to address this request.

[4] A second CMC was held, at the applicant's request, on December 8, 2021, about the outstanding disclosure request. The applicant identified that he was seeking an order from the Tribunal to require disclosure of certain records from the Minister.

[5] On January 11, 2022, the applicant brought a preliminary motion for disclosure. On April 22, 2022, Tribunal Member, Jennifer Webster, rendered a decision partially granting the applicant's motion to have additional documents disclosed by the respondent. She ordered disclosure of the following records:

- (a) Staff Instructions, Supplementary Staff Instructions and other departmental documents when performing work/tasks that applied to the engineering unit in the Ontario Regional Aircraft Certification Office as of August 31, 2018. (Some of the records described in **category 1** of the applicant's disclosure request.)
- (b) All internal TC correspondence related to the incidents when the applicant is alleged to have made unfounded allegations, as identified in grounds 2 and 7 in the appendix to the Notice of Cancellation. (Some of the records described in **category 5** of the applicant's disclosure request.)
- (c) All internal TC documents related to the reason for the transfer of Mr. Alex Pompei from Aircraft Certification to elsewhere at TC. (Some of the records described in **category 15** of the applicant's disclosure request.)

[6] A hearing was scheduled to take place from February 13 to February 17, 2023. On January 27, 2023, the applicant requested a postponement of the hearing following a dispute that arose from the additional disclosure provided by the respondent, pursuant to Member Webster's ruling.

[7] A hearing of the applicant's preliminary motion for further disclosure was held on February 16, 2023, with written submissions from the parties provided in advance of the hearing.

II. ISSUES

[8] The issue in this preliminary motion is whether additional documents should be disclosed by the respondent to the applicant.

III. ANALYSIS

[9] Member Webster provided a very detailed analysis and ruling in response to the applicant's original motion for disclosure. She concluded that procedural fairness in the review hearing required that the Minister provide further disclosure to the applicant based on the nature and importance of the decision to cancel the DAR Certificate.

[10] The validity of Member Webster's decision is not questioned by the parties, and I do not intend to repeat Member Webster's detailed analysis. This ruling should be read in conjunction with hers.

[11] It is the applicant's position that the respondent has not complied with Member Webster's ruling. The applicant submits that this motion is about compliance and not about the scope of the disclosure. The respondent disagrees with the applicant's position and generally qualifies the request for further disclosure as a fishing expedition. It is the Minister's position that the respondent complied with Member Webster's ruling and that no further disclosure ought to be ordered.

[12] I partially agree with the applicant's position and will address my reasons by tackling the three disclosure categories referenced in Member Webster's Ruling: category 1 records, category 5 records, and category 15 records.

[13] In ordering partial additional disclosure, the Tribunal is mindful that Member Webster's ruling has resulted in over 1,400 pages of disclosure and that this ruling may result in significant pages of disclosure. The Tribunal will expect the parties to continue to cooperate to ensure that document briefs are well organized to ensure an efficient and effective hearing.

A. Category 1 records

[14] The records ordered under category 1 consist of Staff Instructions, Supplementary Staff Instructions and other departmental documents when performing work/tasks that applied to the engineering unit in the Ontario Regional Aircraft Certification Office as of August 31, 2018.

[15] Member Webster found that these category 1 records were relevant to the issues raised in grounds 2 and 7 of the Notice about unfounded allegations, particularly the applicant's claims about inconsistent technical decisions. Member Webster found that the instructions and documents that guide the engineers work are relevant to proving or disproving the applicant's allegation of inconsistency about the TC engineers.

[16] In response to the respondent's additional disclosure, the applicant specifically requested disclosure of an additional 15 documents which have been identified in paragraph 20 of this ruling.

[17] The applicant submits that the policies and documents requested in this motion are directly relevant to grounds 2 and 7 of the Notice and draws the Tribunal’s attention to paragraph 29 of Member Webster’s decision in which she stated:

[29] The issue of the unfounded allegations is particularly challenging in determining the relevance of the requested disclosure. The Minister will be required to prove that the allegations made by the applicant are unfounded, as set out in the Notice, and the applicant will be seeking to disprove this claim, or more specifically, to prove that his allegations of incompetence on the part of TC officials were founded. It is, therefore, necessary for the Tribunal to evaluate the relevance of the requested records in relation to the incidents in which the Minister has identified that the applicant made “unfounded allegations.” These incidents are found in grounds 2 and 7 and will be discussed in more detail below.

[18] The respondent, on the other hand, submits that Member Webster limited category 1 records to work related to technical decisions and relies on paragraph 39 of her ruling in support of its position:

[39] The Tribunal accepts that these documents are relevant to the issues raised in grounds 2 and 7 about unfounded allegations, particularly the applicant’s claims about inconsistent technical decisions. If the Minister had relied exclusively on the manner and tone of the applicant’s communication, these policies would not be relevant. However, the Minister states that the applicant made unfounded allegations about the lack of consistency in the engineers’ decision-making about technical standards. The instructions and documents that guide the engineers work are, therefore, relevant to proving or disproving the applicant’s allegation of inconsistency among the TC engineers. The Tribunal is, nonetheless, mindful of the cautions outlined in Mr. Turnbull’s email that there may be differences of opinion and that such differences may not reflect inconsistencies with TC policies and instructions.

[19] I do not accept the respondent’s position. Had Member Webster intended to limit the scope of disclosure of category 1 records solely to technical decisions, she would have clearly stated that. This is not to mean that any and all TC documents are to be disclosed; however, the scope is not solely limited to technical aspects of decision-making processes. Grounds 2 and 7 are anchored into “unfounded allegations about the competence of TC officials.” Documents that may prove or disprove these allegations may fall outside the umbrella of technical aspects of decision-making, yet still be relevant.

[20] The Tribunal orders further disclosure of category 1 records as follows:

Category 1 records	Findings
a. Transport Canada Civil Aviation (TCCA) Program Manual for the Civil Aviation Directorate	<p>Granted. The respondent submits that the manual is applicable to the whole of aviation, not only the engineering unit and questions its relevance to the case at hand.</p> <p>I do not accept this as a reason to deny the applicant’s request. If it applies to the whole of aviation, it also applies to the engineering unit. This is not to mean that the applicant can now request any document that applies to the</p>

Category 1 records	Findings
	whole of aviation. My findings are intended to be limited to this request only.
b. Civil Aviation Integrated Management System (IMS) Standard (TP 14693)	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.
c. Policy on the Use and Management of the TCCA Consolidated Record of Authorities and Official Credentials, Document No. CAD REG-009	Denied. The respondent has explained that this policy lists all provisions of the Act and pertains to who is allowed to exercise the function of doing an inspection at an airport, which civil servant within the department of TC is authorized to exercise this specific function.
d. Civil Aviation Service Standards Framework, CAD No. QUA-009	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.
e. Process and Procedures Associated with the TCCA Consolidated Record of Authorities and Official Credentials, Document No. SI REG-014	Denied. The respondent has explained that this document shadows the policy “c” above and described it as a process and procedure that gives someone a credential to enforce the Act (Picture Identification Card, list of authorities permitted to enforce, 1-800 number...).
f. Procedures for Developing and Implementing a Corrective Action Plan (CAP), Document No. SI QUA-020	Granted. Email correspondence dated September 29, 2017, references “Bob’s pending PVI Corrective Action file” sent under subject line NAPA 0-16-0260 which forms part of the Notice of Cancellation. Relevance is established.
g. Civil Aviation Procedure for the Conduct of an Integrated Management System (IMS) Self-Assessment, Document No. SI QUA-012	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.
h. Civil Aviation Service Standards Improvement Process, Document No. SI QUA-010	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.

Category 1 records	Findings
i. Processing an Access to Information and Privacy (ATIP) Request, Document No. SSI ADM-001	Denied. The applicant has failed to demonstrate that the requested record is relevant and logically connected to a matter that must be proved or disproved in his hearing.
j. Communications and Stakeholder Engagement, Document No. CAD ADM-001	Denied. The Tribunal was provided with insufficient information on the nature of this document and its relevance to grounds 2 and 7 about unfounded allegations. The applicant has failed to demonstrate that the requested record is relevant and logically connected to a matter that must be proved or disproved in his hearing.
k. Surveillance Policy, Document No. CAD SUR-008	Denied. The Tribunal was provided with insufficient information on the nature of this document and its relevance to grounds 2 and 7 about unfounded allegations. The applicant has failed to demonstrate that the requested record is relevant and logically connected to a matter that must be proved or disproved in his hearing.
l. Mandatory Training for Civil Aviation Employees Who Develop, Deliver and/or Support Oversight Activities, Document No. CAD ADM-005	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.
m. Aircraft Certification Level of Involvement, Document No. SI 500-003	Confirmed at the hearing (for motion) that the applicant has this document.
n. <i>TC Airworthiness Manual</i> , Chapter 505 – Delegation of Authority – <i>Canadian Aviation Regulations</i>	Granted , if the relevant version of Chapter 505 Delegation of Authority Aviation Regulations is not publicly accessible.
o. <i>TC Airworthiness Manual</i> , chapters 523, 525, 527, and 529 and the American equivalents being <i>Federal Aviation Regulations</i> parts 23, 25, 27, and 29	Granted , if the relevant version is not publicly accessible.

B. Category 5 records

[21] The records ordered by Member Webster under category 5 consist of all internal TC correspondence related to the incidents when the applicant is alleged to have made unfounded allegations, as identified in grounds 2 and 7 in the appendix to the Notice.

[22] Member Webster limited the scope of category 5 records to the extent that they relate to the specific incidents relied upon by the Minister in the decision to cancel the applicant's DAR Certificate related to claims of unfounded allegations.

[23] In response to the respondent's additional disclosure, the applicant specifically requested category 5 records stemming from nine emails, as listed below.

[24] The Tribunal makes the following order with respect to category 5 records:

Category 5 records	Requests	Findings
1. Email dated April 21, 2016, from Camer to Pompei	To provide any communications referenced between Camer and Phil Lamont and Don Stephen.	Granted. The email correspondence references a conversation held with Phil Lamont and Don Stephen to aid in responding to the applicant. It pertains to the project which is at issue in the Notice of Cancellation.
2. Email dated April 22, 2016, from Camer to Pompei	To produce notes (if they exist) from the meeting referenced in the email correspondence.	Denied. The respondent stated that it does not take notes in meetings. The respondent advised that had notes been taken, they would have been produced.
3. Email dated May 29, 2016, from Pompei to McCallum, Cale, Camer, Teclemariam and Mawji	To produce issue paper referenced in email correspondence	Granted. Respondent advised at hearing (for the motion) that issue paper will be produced.
4. Email dated October 20, 2016, from Camer to Pompei	To produce the email correspondence of Bob Ferguson dated April 11, 2016, referenced in the email from Camer to Pompei. Email states: "This is in line with the perception the PNR Winnipeg office has on Bob: I have found Mr. Carducci's	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.

Category 5 records	Requests	Findings
	conduct to be ad hoc and mission-focused with insufficient priority or thought given to safety of person or property (as stated by Bob Ferguson in his email dated April 11, 2016, 3:54 pm).”	
5. Email dated September 29, 2017, from Camer to Pompei, Teclemariam and Engineering Ontario	To produce the Program Validation Inspection (PVI) Corrective Action file referenced in the email correspondence.	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.
6. Email dated December 29, 2017, from Pompei to Dhaliwal, Cousineau, Stephen, Ngassam, Camer and Teclemariam	To advise whether Dhaliwal, Cousineau, Stephen, Ngassam, Camer and Teclemariam responded to the email correspondence. If so, to produce the response.	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.
7. Email dated May 23, 2018, from Camer to Pompei and Teclemariam	To produce the email that generated the responding email of Camer.	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.
8. Email dated August 14, 2018, from Mariotti to Waljee, Teclemariam, Camer, Ngassam, Dhaliwal and Cousineau	To produce the draft position referenced in the email correspondence.	Produced during the course of the hearing (for motion).
9. Email dated May 22, 2019, from Camer to Genevieve David with August 11, 2016, email from Camer to Holmes and Pompei	To produce the email from Jennifer Holmes that generated Camer’s responding email.	Granted. The requested document is relevant for proving or disproving the claims of unfounded allegations.

[25] Member Webster found that the TC internal correspondence related to the incidents when the applicant is alleged to have made unfounded allegations (as identified in the Notice) is relevant to prove or disprove the grounds relied on by the Minister. The further disclosure sought

from the applicant directly stems from emails generated from TC related to the incidents and is relevant for proving or disproving the claims of unfounded allegations.

C. Category 15 records

[26] The records initially ordered under category 15 consist of all internal TC documents related to the reason for the transfer of Mr. Alex Pompei from Aircraft Certification to elsewhere at TC.

[27] In her ruling, Member Webster noted that the issue of the reasons for Mr. Pompei's transfer was identified by the Minister as one of the applicant's unfounded allegations. As such, Member Webster was persuaded that the records related to the reasons for Mr. Pompei's transfer are relevant to prove or disprove the applicant's claim that TC transferred Mr. Pompei due to service issues in the Ontario Region.

[28] In response to the respondent's further disclosure, the applicant specifically requested category 15 records stemming from 10 categories.

[29] The Tribunal orders further disclosure of the following category 15 records:

Category 15 records	Requests	Findings
a. Email dated February 13, 2018, at 2:16 p.m. entitled "Possible Assignment in Surface"	Email correspondence references a follow-up from "last week" and encrypted notes attached to the email. The applicant seeks disclosure with respect to the communication from "last week" referenced in the email as well as the encrypted notes.	Granted. The requested document is relevant to the transfer of Mr. Pompei from Aircraft Certification to elsewhere at TC.
b. Related to email of February 13, 2018	Notes, comments or communications relating to prior discussion of the new assignment referenced in the email. Disclosure of Imi Waljee's comments and why this assignment was being considered.	Granted , provided that the records exist. The requested document is relevant to the transfer of Mr. Pompei from Aircraft Certification to elsewhere at TC.
c. Related to email of February 13, 2018	Communications, documents, notes pertaining to the RMC meeting that was to take place the upcoming Monday	Granted , provided that the records exist.

Category 15 records	Requests	Findings
	between Brian Jeans and Imi Waljee.	The requested document is relevant to the transfer of Mr. Pompei from Aircraft Certification to elsewhere at TC.
d. Email dated May 31, 2018, from Yusra Khota	Disclosure on why Alex Pompei is taking the assignment or any information leading to the involvement of Yusra Khota, Administrative Assistant, Surface.	Denied. The email correspondence attaches Mr. Pompei's Internal Assignment Agreement only. No information or evidence was provided to show that it is anything more than purely administrative.
e. Email dated May 14, 2018, at 10:52 a.m. from Michael McNeely to Alex Pompei and Yusra Khota	Disclosure of communications, notes, recordings, etc., of either of these TC officials.	Denied. There is no information or evidence provided to show that the email correspondence is anything more than purely administrative and solely references assignment start date and end date.
f. Email dated February 13, 2018, from Alex Pompei to Brian Jeans and Imi Waljee	In the email correspondence, Alex Pompei notes that he will "try and sit with Michael McNeely" to get some advice/feedback from him. The applicant seeks disclosure pertaining to this meeting.	Denied. There is no information or evidence provided to demonstrate any relevance to the reason for transfer of Mr. Pompei from Aircraft Certification to elsewhere at TC.
g. Email dated May 16, 2018, from Alex Pompei to Michael Lozada	Disclosure from Michael Lozada.	Denied. There is no information or evidence provided to demonstrate any relevance to the reason for transfer of Mr. Pompei from Aircraft Certification to elsewhere at TC.
h. Email dated June 7, 2018, from Theresa Tam to Tasnim Chowdhury	Disclosure from Tasnim Chowdhury.	Denied. There is no information or evidence provided to demonstrate any relevance to the reason for

Category 15 records	Requests	Findings
		transfer of Mr. Pompei from Aircraft Certification to elsewhere at TC.
i. Records detailing why Alex Pompei was re-assigned	All communications, or notes in lieu, as to what was stated at those meetings, communications, telephone calls, etc., and why the assignment was being considered.	Granted. The Minister has stated that there are no documents demonstrating that Alex Pompei was removed for reason of competency stating that if such a document existed, it would have been disclosed. Member Webster’s ruling does not limit the disclosure to issues of competency but states “all internal TC documents related to the reason for the transfer of Mr. Alex Pompei [...]”.
j. Records regarding the re-assignment of Alex Pompei	Documents, communications, notes not disclosed. The applicant notes there is nothing prior to February 13, 2018, stating the process would have begun prior to that time.	Denied. This request is too broad and redundant. The respondent has already been ordered to produce all internal TC documents related to the reason for the transfer of Mr. Alex Pompei from Aircraft Certification to elsewhere at TC.

[30] The Tribunal finds that the applicant’s request for further records under this category is warranted in four instances as listed above.

IV. RULING

[31] The applicant’s motion to have additional documents disclosed by the respondent is partially granted. The Tribunal orders the Minister of Transport to provide the records, as set out in the ruling, to the applicant within 60 days of the date of this ruling.

[32] The Tribunal Registry will reach out to the parties to coordinate a further case management conference, the date for which will be confirmed within 30 days of the ruling, for the purpose of discussing the hearing date and hearing logistics.

June 16, 2023

(Original signed)

Joelle Malette

Member

Representations

For the Minister: Eric Villemure

For the Applicant: David Lees