



# Instructions for Gathering and Disclosing Information for Refugee Protection Division Proceedings

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**INSTRUCTIONS ISSUED BY THE CHAIRPERSON PURSUANT TO SECTION  
159(1)(a) OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT***

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Effective: August 29, 2008  
*Disponible en français*



# Table of Contents

<b>A. Application</b>	<b>1</b>
<b>B. Definitions</b>	<b>1</b>
<b>C. Background and Overview</b>	<b>2</b>
<b>D. General Principles</b>	<b>3</b>
<b>E. Gathering and Disclosing of Information</b>	<b>4</b>
1. Minister's Information .....	4
2. Country-of-Origin Information .....	4
3. Specific Information .....	5
4. Change of Procedure on Agreement of the Parties .....	7
5. Forensic Verification of Documents .....	7
<b>F. Enquiries</b>	<b>8</b>
<b>G. Approval</b>	<b>8</b>

## A. Application:

These Instructions are issued by the Chairperson of the Immigration and Refugee Board of Canada (IRB) and are effective August 29, 2008.

They describe how the Refugee Protection Division (RPD) of the IRB will gather and disclose information for its proceedings.

They replace all previous instructions on this topic, and, specifically, (Convention Refugee Determination Division Instructions: 96-01) entitled *Instructions for the Acquisition and Disclosure of Information for Proceedings in the Refugee Division*.

## B. Definitions:

**“Acquisition of Information Form”** (AIF) — the form used to record and disclose to the parties IRB initiatives to gather specific information.

**“Forensic Verification Form”** — the form used to request verification of a document by the Royal Canadian Mounted Police (RCMP) Forensic Laboratory Services.

**“Deciding authority”** — the assigned member, or where a member has not yet been assigned, the responsible Coordinating Member (CM) or Assistant Deputy Chairperson (ADC), as applicable.

**“Country-of-origin information”** (COI) — also referred to as “general information” — reliable, timely, and publicly available country information that:

1. does not and could not identify a claimant or any other person who is not a public figure, even if the information is given to another Canadian government department or an external agency; and
2. as publicly available information, would not lead to a serious possibility that the life, liberty or security of the claimant or any other person would be endangered.

Country-of-origin information/general information does not include information about individual claimants collected by officers of the Citizenship and Immigration Canada (CIC) or the Canada Border Services Agency (CBSA) under the *Immigration and Refugee Protection Act* and related laws (i.e. Minister’s information as defined below), or information gathered by the IRB that is specific to a particular claimant, as defined below.

**“Information Request Form”** (IRF) — the form used to request information on the conditions in a country of origin.

**“Minister’s information”** — information about individual claimants collected by officers of CIC or the CBSA under the *Immigration and Refugee Protection Act* and related laws. Examples of Minister’s information include:

- copies of the claimant’s identity and travel documents, travel information and any other relevant documents regarding the claimant;
- any forms completed by CIC, CBSA, or the claimant at the port-of-entry or the office in Canada that received the claim;
- information from Canadian visa offices regarding Canadian visa applications made by the claimant;
- results of RCMP identity and criminal screening, which may include criminal checks in other countries by the RCMP through INTERPOL;
- information gathered by CIC and CBSA for the purposes of the *Immigration and Refugee Protection Act*, the *Department of Citizenship and Immigration Act* or the *Canada Border Services Agency Act*;
- information gathered by CIC and CBSA to help determine whether the Minister should participate in a proceeding; and
- any information regarding a previous claim elsewhere.

**“Parties”** — the person who is the subject of RPD proceedings and the Minister of Public Safety, whose representative participates in those proceedings.

**“Specific information”** — claimant-specific information other than Minister’s information or general information.

**“Tribunal Officer”** — IRB officer responsible for assisting members through case analysis and identification of information needed to support RPD proceedings.

## C. Background and Overview:

Tribunal Officers are responsible for assisting members in gathering information. However, the Research Directorate, which was specifically created to meet the information needs of the RPD, is primarily responsible for gathering information from national and international sources.

Information needs are generally identified by the IRB, particularly where the information provided by the parties fails to resolve certain issues that are before the RPD. However, information needs can also be identified by the parties, although this should be done as early in the proceedings as possible, and whenever possible, prior to the commencement of a hearing. When identifying information needs, the parties can communicate any concerns about whether and how the information should be gathered.

Communications between members and IRB employees about the gathering of information are governed by the [\*Instructions Governing Communication in the Absence of Parties\*](#)

*Between Members of the Refugee Protection Division and Refugee Protection Officers<sup>1</sup> and Between Members of the Refugee Protection Division and Other Employees of the Board* (effective June 18, 2004).

## **D. General Principles:**

**The following principles apply to all requests for information other than information provided by the parties:**

1. Responsibility to present supporting evidence rests with the parties. This responsibility remains even when the RPD decides to obtain information other than that provided by the parties.
2. To ensure a fair determination of a refugee claim, the member requires all the relevant evidence whether such evidence may be favourable or prejudicial to any party.
3. The RPD will gather information through a transparent and standard process to ensure fairness in decision-making.
4. The deciding authority will request specific information and use such information only where they complete a risk assessment and are satisfied that there is no serious possibility that gathering the information would endanger the life, liberty or security of the claimant or any other person.
5. Specific information will be requested and gathered where it is determined that it is appropriate and justified to invest funds and/or resources for this purpose. This determination of financial considerations is made by the responsible CM or ADC as applicable, in consultation with the deciding authority. The evaluation of funds and/or resources will be evaluated in light of the timeliness of the request, the anticipated response time and cost, and the likelihood of obtaining new or conclusive information.
6. The information will be sought by the RPD only in instances where the information is deemed relevant to a determinative issue in the claim. Should the response to specific information request not be received within the anticipated response time, the deciding authority will reassess the value of the requested information and the CM or ADC will, in consultation with the deciding authority, reassess financial considerations.

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<sup>1</sup> Effective April 2007, Refugee Protection Officer positions were replaced by adjudicative support officer positions entitled Tribunal Officers in recognition of the integrated adjudicative support required for all IRB Divisions.

## E. Gathering and Disclosing of Information:

### 1. Minister's Information:

- 1.1. CIC and CBSA officers routinely provide Minister's information to the RPD.
- 1.2. If there is Minister's information that has not been provided to the RPD, but the RPD believes that it may be required to resolve the claim:
  - i. a Tribunal Officer at the triage stage may request the information under the procedures agreed upon between the IRB and CIC or CBSA (e.g. information from Canadian visa offices regarding Canadian visa applications made by the claimant); or
  - ii. the deciding authority may direct the Tribunal Officer to obtain the information under the procedures agreed upon between the IRB and CIC or CBSA.
- 1.3. Where the Minister is a party, the Minister's representative is responsible for providing a copy of any document they wish to use in the proceeding no later than 20 days<sup>2</sup> before the hearing. Where the Minister is not a party, it is the RPD that is responsible for providing to the claimant all of the documents the RPD wishes to use at the hearing no later than 20 days before the hearing or five days before the hearing if the document is provided to respond to another document provided by the claimant.<sup>3</sup>

### 2. Country-of-origin information:

- 2.1. **General rules.** A Tribunal Officer will gather and provide all relevant, general and publicly accessible information to the member and the parties in accordance with the [Refugee Protection Division Rules](#).

When relevant general information can be found in a COI package issued by the Research Directorate, the Tribunal Officer will provide the claimant with the table of contents of the package.

- 2.2. **Additional relevant country-of-origin information.** A Tribunal Officer or assigned member may decide to obtain general information in addition to the information provided by the parties. In such cases, the Tribunal Officer will gather the additional relevant country-of-origin information and will use an IRF when submitting requests for additional general information to the Research Directorate.

The Tribunal Officer and assigned member must follow the IRB's [Policy on Country-of-Origin Information Packages](#) as it relates to the supplementary gathering and disclosure of additional general information. As reflected in the general principles of that policy, additional country-of-origin information must be

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<sup>2</sup> As per the *Interpretation Act* days should be considered calendar days, unless otherwise stated.

<sup>3</sup> Section 29 of the *Refugee Protection Division Rules*.

relevant to the claim at hand, not include information already contained in the relevant COI package and should not be added permanently to the existing COI package.

- 2.3. **Proviso.** If it is not clear whether the information to be obtained is country-of-origin information or specific information, the procedures set out in section 3 below shall apply.

### 3. Specific Information:

- 3.1 **Specific Information Request.** A need for specific information to resolve an issue central to the case may be identified by the Tribunal Officer, but the decision-in-principle to obtain it is to be made by the assigned member. If a member has not been assigned to the case, the responsible CM or the ADC, as applicable, makes the decision.

- 3.2 **Acquisition of Information Form (AIF).** Where specific information is determined to be required, the Tribunal Officer will prepare an AIF.

Where appropriate, the Tribunal Officer will seek the assistance of the Research Directorate in:

- i. identifying potential sources and methods for gathering the information;
- ii. assessing the likelihood of being able to obtain it;
- iii. estimating any cost if the amount is greater than the usual cost set by the Research Directorate; and
- iv. estimating the time required for obtaining the information.

The Tribunal Officer will make sure that the draft AIF includes the following:

- i. a description of the information required;
- ii. the purpose, sources and method for gathering the information; and
- iii. where known, the estimated cost and time required to obtain the information.

Once completed, the AIF is forwarded by the Tribunal Officer to the deciding authority for approval.

- 3.3 **Factors for consideration in advance of a decision-in-principle to gather information.** Before making the decision-in-principle to gather any specific information, the deciding authority must consider whether:
- i. the information is needed to resolve an issue central to the case;
  - ii. it is likely that the information can be acquired;
  - iii. obtaining the information will not unreasonably delay the proceedings;
  - iv. there is no serious possibility that the life, liberty or security of the claimant or any other person would be endangered through the gathering of the information (i.e. “risk assessment”); and
  - v. the method for gathering the information complies with the *Privacy Act*.

- 3.4 **Review and approval of AIF by CM/ADC.** Before an AIF is approved, the responsible CM or ADC, as applicable, in consultation with the deciding authority, must review the AIF to determine whether funds and resources should be invested to gather the information. Where a member has been assigned, they consult with the responsible CM or ADC in this regard.

Where it is decided that funds and/or resources shall not be invested, having regard to the factors in section D(5) of these Instructions, the responsible CM or ADC, as applicable, will note this on the AIF and the process to gather specific information ends. However, the Tribunal Officer must provide a copy of the completed AIF to the parties without delay.

Where it is decided that funds and resources should be invested, the Tribunal Officer must:

- i. immediately provide a copy of the AIF to the parties and invite them to comment on it. Comments on the AIF must be received by the IRB Registry, with copies sent to any other parties, in writing within 10 working days of being provided with a copy of the AIF; and
  - ii. obtain the claimant's consent in writing and without delay where the source of the information requires the claimant's written consent to release the information. This is done by completing the appropriate section on the AIF.
- 3.5 **Final Review of AIF following Comments and Observations.** The deciding authority will:
- i. consider any comments from the parties;
  - ii. consider any Tribunal Officer observations on the parties' comments; and
  - iii. if satisfied that the conditions under subsection 3.3 have been met, confirm the AIF and note this on the form. If changes are to be made, the deciding authority will direct the Tribunal Officer to revise the AIF accordingly.

The Tribunal Officer will send the AIF to the Research Directorate for action (by email, unless otherwise able to do so in the Integrated Case Management System) and provide a copy of the AIF to the parties for their information.

If the deciding authority determines that the factors under subsection 3.3 are not met, or decides for some other reason not to gather the information, this decision is noted on the AIF and the Tribunal Officer is directed to provide a copy of the completed form to the parties without delay.

- 3.6 **Agreement regarding the exchange of information with another organization.** If the IRB has entered into a written agreement regarding the disclosure and exchange of information for use in determining claims with a federal or provincial department or agency, foreign government, or international governmental or non-governmental agency, the deciding authority may, in the absence of evidence to the contrary, presume that:
- i. it is likely that the information can be obtained; and

- ii. there is no serious possibility that the life, liberty or security of any person would be endangered through the gathering of the information.

- 3.7 **Receipt of the AIF results.** Once the specific information is received, the Tribunal Officer will provide a copy of it to the parties without delay, and invite them to provide the IRB Registry with any written comments on the information, either before the hearing date or by a date set by the deciding authority. Each party will provide a copy of their comments to any other party.

If the specific information received might, if released to the parties, lead to the life, liberty or security of any person being endangered, the Tribunal Officer shall forward that information to the ADC or CM, as applicable, for a decision on its use, before that information can be released to the parties.

- 3.8 **Anticipated response time.** Should the response to the specific information request not be received within the anticipated response time, the procedures set out in Sections 3.3 and 3.4 will be repeated. The deciding authority will reassess the value of the requested information and the CM or ADC, in consultation with the deciding authority, will reassess the investment of funds and resources. The Tribunal Officer informs the parties and the Research Directorate of any decision to end the specific information request.

## 4. Change of Procedure on Agreement of the Parties:

- 4.1 The procedure set out in section 3 may be changed upon agreement among the parties, except that:
- i. in all cases the conditions set out in subsection 3.3 with respect to the gathering of specific information must be satisfied; and
  - ii. in all cases the assigned member will consult with the responsible CM or ADC, as applicable, to ensure that funds and resources will be allocated to proceed with the AIF.

## 5. Forensic Verification of Documents:

- 5.1 Where a Tribunal Officer recommends the forensic verification of a document, the officer will complete a Forensic Verification Form and forward it to the deciding authority for approval.
- 5.2 Where, after consulting with the responsible CM or ADC, the assigned member forms the opinion that forensic verification is necessary, they may direct the Tribunal Officer to send the document to the RCMP Forensic Laboratory Services for verification. Where a member has not yet been assigned to the case, it is the responsible CM or ADC, as applicable, who may direct the Tribunal Officer to send the document to the RCMP for verification.

- 5.3 Where the IRB has the original of a document to be verified, the Tribunal Officer will send it to the RCMP Forensic Laboratory Services. Where CIC or CBSA has the original of a document to be verified, the Tribunal Officer will request CIC or CBSA, in writing, to send the document to the RCMP Forensic Laboratory Services. The Tribunal Officer will provide a copy of the request for verification to the parties without delay. Where the claimant has the original of the document to be verified, the Tribunal Officer will request the claimant to provide the original to the RPD.<sup>4</sup> Once received, the Tribunal Officer will send it to the RCMP Forensic Laboratory Services.
- 5.4 The Tribunal Officer will provide a copy of the report received from the RCMP Forensic Laboratory Services to the parties without delay, and invite them to make comments on the report in writing to the IRB Registry before the hearing or by a date set by the deciding authority. Each party will provide a copy of their comments to any other party.

## F. Enquiries:

For information contact:

Director, Policy and Procedures Directorate  
Operations Branch  
Immigration and Refugee Board of Canada  
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Ottawa, Ontario K1A 0K1  
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Available in English and French on the IRB's internet site: [www.irb-cisr.gc.ca](http://www.irb-cisr.gc.ca)

## G. Approval:

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Brian Goodman  
Chairperson

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Date

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<sup>4</sup> That requirement is set out in section 36 of the [Refugee Protection Division Rules](#).