



# 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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*Disponible en français*



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## A. Application

These Instructions are issued by the Chairperson of the Immigration and Refugee Board of Canada (IRB) and are effective December 15, 2012.

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* and the *Instructions for Gathering and Disclosing Information for Refugee Protection Division Proceedings* dated August 29, 2008.

## B. Definitions

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

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

1. does not and could not identify the claimant as an individual with a claim for refugee protection in Canada; 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 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.

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

**“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;
- biometric information;
- 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, whose representative participates in those proceedings.

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

## C. Background and Overview

RPD members are responsible for identifying information needed for the adjudication of the claim and may gather the information which will be disclosed for the refugee protection hearing. However, the Research Directorate, which was specifically created to meet the information needs of the RPD, is primarily responsible for gathering information from domestic and foreign sources.

Information needs are generally identified by the RPD member, particularly where the information provided by the parties fails to resolve certain issues that are before the RPD.

## 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 assigned 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 assigned members will request claimant 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. Where the source of the information requires payment of a fee, the Research Directorate will inform the requesting member and the responsible member manager. The decision to pay any fee will be determined by the member manager in consultation with the assigned member. Funds (to be paid from the Division's Operations & Materials budget) 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, can be obtained in a timely manner, and is likely to result in obtaining new or conclusive information. Should the response to a specific information request not be received within the anticipated response time, the assigned member will reassess the value of the requested information, and inform the Research Directorate, if there is need for the information.

## **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, an assigned member:
  - i. 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. may instruct the RPD adjudicative support team 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 counsel is responsible for providing a copy of any document to be used in the proceeding no later than 10 days before the hearing and in conformity with RPD Rules.

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

- 2.1 **General rules.** Country documentation contained in the National Documentation Packages (NDPs) produced by the IRB Research Directorate may be disclosed by providing to the parties a list of those documents or directions to where those documents can be found on the IRB web site. If a member identifies country-of-origin information supplemental to that contained in the NDPs that is to be used in a refugee protection hearing, it will be disclosed to the parties by the RPD adjudicative support team in accordance with the RPD Rules.

- 2.2 **Additional relevant country-of-origin information.** The assigned member may decide to obtain additional general information other than that provided by the parties or included in the NDP. The assigned member will use an Information Request Form (IRF) when submitting requests for additional general information to the Research Directorate. In making such a request the member will take into consideration the likelihood of obtaining new or conclusive information and whether the information can be obtained in a timely manner.
- 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 **Request for specific information.** The assigned member makes the decision to obtain specific information to resolve an issue central to the case.
- 3.2 **Acquisition of Information Form (AIF).** Where specific information is required the assigned member will prepare an Acquisition of Information Form (AIF).

Where appropriate, the assigned member will seek the assistance of the Research Directorate in:

- i. estimating the time required for obtaining the information;
- ii. identifying potential sources and methods for gathering the information;
- iii. assessing the likelihood obtaining the information;
- iv. identifying any known cost for obtaining the information.

The assigned member will make sure that the draft AIF includes the following:

- i. a description of the information required;
- ii. the specific source(s) to approach for the information;
- iii. the purpose, and method for gathering the information;
- iv. the time required to obtain the information, and
- v. the estimated cost, where known.

- 3.3 **Factors to consider before deciding to gather information.** The assigned member 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 **Consulting the claimant and obtaining consent.** When the member decides to proceed with an AIF, the RPD adjudicative support team will be instructed to:
- 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 RPD Registry, with copies sent to any other parties, in writing within 5 working days of being provided with a copy of the AIF; and
  - ii. include with the AIF the consent form identifying the sources of information for which the claimant's consent in writing is required for the release of the requested information.
  - iii. **Nota Bene: the RPD is not requesting the claimant's permission to acquire the information.** Consent is being sought from the claimant to be on file 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.** Once the period for receiving comments has elapsed the assigned member will proceed with a final review of the AIF by:
- i. considering any comments from the parties, and revising the AIF if appropriate;
  - ii. reviewing the AIF to ensure that the factors under subsection 3.3 have been met, and note this on the form.
  - iii. instructing the RPD adjudicative support team to send by email the AIF to the Research Directorate for action and provide a copy of the AIF to the parties for their information.
- 3.6 **Cancelling an AIF after the claimant has been consulted.** If the assigned member 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 RPD adjudicative support team is instructed to provide a copy of the completed form to the parties without delay.
- 3.7 **Proceeding with an AIF notwithstanding the objections of the claimant or without a signed consent form.** An RPD member, after reviewing the claimant's objections to the acquisition of information, may alter the AIF according to the suggestions of the claimant or proceed without making any changes. The factors listed at 3.3, in particular the risk factors, must be taken into consideration when proceeding without making changes or the claimant has not signed the consent form.

If the member proceeds with an AIF without receiving the claimant's consent to release personal information, the Research Directorate can only process the AIF if the identified source has not previously informed the Research Directorate that claimant consent is required to release personal information.

For example, signed consent forms are required for verifying the immigration status of a claimant in any country. Furthermore, many government institutions, agencies and some non-governmental organizations, require consent before releasing

personal information. If the signed consent form is not provided, the member will be informed that consent is required before the AIF can be processed. If no consent is received within 20 days, the AIF will be closed by the Research Directorate and the member will be informed of this action.

**3.8 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 assigned member 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.

**3.9 Receipt of the AIF results.** Once the specific information is received, the RPD adjudicative support team will provide a copy of it to the parties without delay, and invite them to provide any written comments on the information, either before the hearing date or by a date set by the assigned member. Each party will provide a copy of their comments to any other party.

If there are indications that the specific information received might, if released to the parties, lead to the life, liberty or security of any person being endangered, the assigned member will review the information and decide if it can be released to the parties.

**3.10 Anticipated response time.** Should the response to the specific information request not be received within the anticipated response time, the assigned member will reassess the value of the requested information, in consultation with the responsible member manager, if applicable. Following instructions by the assigned member, if applicable, the RPD adjudicative support team informs the parties and the Research Directorate of any decision to end the specific information request.

## **4. Change in the Process on Agreement among the Parties**

**4.1** The process set out in section 3 may be changed upon agreement among the parties, except that:

- i. in all cases the factors set out in subsection 3.3 with respect to the gathering of specific information must be satisfied.



## 5. Forensic Verification of Documents

- 5.1 Where, after consulting with the responsible member manager, the assigned member forms the opinion that forensic verification is necessary, they may direct the RPD adjudicative support team to send the document to the RCMP Forensic Laboratory Services for verification.
- 5.2 Where the IRB has the original of a document to be verified, the RPD adjudicative support team will send it to the RCMP Forensic Laboratory Services. Where CIC or CBSA has the original of a document to be verified, the RPD adjudicative support team will request a verification of the original document in writing to CIC or CBSA as appropriate. The RPD adjudicative support team 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 RPD adjudicative support team will request the claimant to provide the original to the RPD. Once received, the RPD adjudicative support team will send it to the RCMP Forensic Laboratory Services.

The RPD adjudicative support team 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.

## 6. Biometric Information

- 6.1 Biometric information is the use of biological data such as fingerprints, photographs or iris scans that identify a person. Biometric identification is the automated identification of individuals through the matching of one or more of these unique features with a previously obtained sample of the same data. For the purpose of the IRB, biometrics is the result of the biometric identification process. It does not include the biological data *per se* such as the actual fingerprints, but rather the results of the information matches, if any. CIC or other government agencies may from time to time enter into agreements with specific foreign countries regarding the sharing of biometric information.
- 6.2 The IRB is not involved in selecting cases for biometric processing or the processing of fingerprints or sharing biometric data with foreign countries. When the Minister shares with the IRB biometric information received pursuant to these agreements, it is sent to the IRB Research Directorate for processing.
- 6.3 The Research Directorate provides biometric information received from CIC to the relevant RPD registry which in turn discloses the information to the claimant in conformity with the RPD Rules.

## F. Enquiries

For information contact:

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