



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/044/  
JAB/2008/087  
Order No.: 113 (NY/2010)  
Date: 23 April 2010  
Original: English

---

**Before:** Judge Adams  
**Registry:** New York  
**Registrar:** Hafida Lahiouel

WASSERSTROM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**

---

**Counsel for applicant:**

Mary Dorman

**Counsel for respondent:**

Susan Maddox, ALS/OHRM, UN Secretariat

## **Order**

1. On 17 March 2010 the respondent was ordered to produce to the applicant a redacted version of the notes made in the course of the investigation (the Notes), by 22 March 2010 (Order No. 52 (NY/2010)). This order was not complied with and subsequently I directed that if an unredacted version of the Notes was not provided to the applicant by 6 April 2010, I would redact them as best I was able and provide them to the applicant (Order No. 61 (NY/2010)). The respondent failed to produce a copy of the redacted Notes to the applicant by 6 April 2010.
2. At a directions hearing of 15 April 2010, I noted that I had provided the respondent with several opportunities to put its specific concerns of confidentiality in relation to the Notes (and the report which they accompanied) to the Tribunal, but that this opportunity had not been taken up. I advised counsel for the respondent that I had inferred from the fact I had received no response that the respondent took objection to the disclosure on the basis of general principles and did not have particular concerns about the confidentiality of any particular matter in the documentation in this specific case. The only ground identified as requiring confidentiality was that witnesses had been assured by the investigators that their identities would not be disclosed. This assurance should not have been given. The investigators were in no position to ensure compliance and certainly not to bind a Joint Appeals Board or a Joint Disciplinary Committee if the matter were to go so far, let alone the Tribunal. Since no suggestion of actual risk is proffered by the Administration, I infer that the only impediment to disclosure is the risk of personal embarrassment of the persons interviewed. This is not a sufficient reason to prevent access being given.
3. The applicant has again requested the production of documentation, including the Notes (or documents contained in the Notes) in its submission entitled "Document Demand" of 22 April 2010. The respondent has on 23 April 2010 agreed to provide these documents.

4. The Notes provided appear to number in excess of five hundred pages, with a significant additional volume of material not yet provided (see para 7, below)—I assume by oversight. Although in light of what has been said about the claim of confidentiality redaction no longer appears to be necessary, the nature of the applicant's case may well require the respondent to tender a significant volume of the documentary material in addition to that tendered by the applicant. It is not possible to sensibly predict, therefore, the actual number of documents which will ultimately go into evidence until, at least, after the applicant has indicated those which he relies on and the respondent has had the opportunity to consider what response he needs to make.
  
5. Having regard to the volume of documents and the necessarily uncertain scope of the extent to which reference will need to be made to them during and following the trial, I have reluctantly concluded that it is not practically open for me to do more than case manage this matter to that point and abandon the attempt to conduct a hearing on the merits before my impending departure from the Tribunal on 18 May 2010. The unfortunate consequence of my not being able to hear this matter is in large part due to the failure of the respondent to comply with my orders in a timely way, which required the Tribunal to provide extensions which should not have been necessary. Indeed, as pointed out, there are a significant number of documents which have not been produced, despite my order.

I make the following orders—

6. The directions given by me at the hearing of 15 April 2010 remain current and the documents which the respondent is required to produce by close of business 23 April 2010 should be taken to mean all documents not already provided.
  
7. The Notes, as provided by the respondent to the Tribunal, appear to be missing approximately eighteen interview notes (ROCs) and their annexes. These are to be provided to the Tribunal and the applicant by close of business 27 April 2010.

*(Signed)*

Judge Adams

Dated this 23<sup>rd</sup> day of April 2010