

# Vital complaint provisions in the act

## Part III:

ON OCTOBER 17, we examined some of the vital provisions in the Equal Opportunity Act Chap 22:03 that govern how the commission handles complaints. Recall that according to section 33, the commission may issue a notice in writing requiring any person to furnish the information described in the notice and specify the time within which the required information is to be furnished. A question that arises frequently is:

Does the other party to the complaint have a right to be given a copy of the documents that the commission has received?

When a party furnishes documents to the commission, further to a section 33 notice, it does so because of the commission's statutory power to demand same. If the party fails or refuses to comply with this request, they can be prosecuted before the magistrates court for an offence under section 36. Put bluntly, they do so because they are compelled, and not because they want to.

This is different to if the complainant, that is, the person who has lodged the complaint, had retained an attorney and that attorney had written what is commonly called a "lawyer's letter." The recipient can respond if they so choose and how they so choose. They are under no obligation to answer any questions or provide any documents.

The commission's letter is different because it has teeth. However, when the commission writes to a person, it does not do so as the agent, representative or advocate of the complainant in the way that an attorney or a trade union functions. When the commission investigates a complaint that has been lodged, it does so as an independent public entity pursuing its statutory mandate.

In order to investigate a matter, a complaint must be lodged by a person, but when the commission investigates, it does so in the public interest, to inquire into whether a breach of the EOA has been committed. The investigation belongs



to the commission, and although instigated by the complainant's complaint, it is not on their behalf.

As such, information and documents furnished to the commission remain its property and it would be inappropriate for the complainant to ask that they be given a copy. The commission may allow one party to view some of the information provided by the other party to assist with the investigation.

A respondent can request an appointment to view the complaint form and other documents submitted by the complainant and vice versa. This helps to ensure that either party is endowed with the necessary information to adequately and appropriately respond to any allegations made against them. However,

they are not, as of right, entitled to ask the commission for a copy of the other party's information.

They may approach the other party and make this request directly to them; for example, if the respondent is a public entity, they may be able to request access under the Freedom of Information Act.

If the commission is unable to resolve the matter by conciliation, it can be referred to the Equal Opportunity Tribunal, which is a court of law, and its mandate is to hear and adjudicate on unresolved complaints. At the level of the tribunal, it may be possible for one party to access the other's documents through court processes known as disclosure and inspection.

Additionally, at sec-

tion 45 the tribunal has all of the powers of the High Court with respect to the production and inspection of documents, and it can issue what is commonly referred to as a subpoena, commanding any party, including even the commission, to produce documents or provide information.

The information and document that the commission receives from the parties will be used to generate its report. Before a matter is referred to the tribunal, the commission is required at section 39 to prepare and publish a report into its investigation of the complaint. The report will discuss the nature and allegations of the complaint, the issues investigated, the process of the investigation, and what information was received.

These reports are public documents and anyone is free to come into the commission's offices to read them, and can request copies under the Freedom of Information Act.

*(Documents sourced by the commission)*