



Employment and  
Social Development Canada

Access to Information and  
Privacy Operations Division  
140 Promenade du Portage  
Phase IV, Level 12, Mail stop 1203  
Gatineau, Québec K1A 0J9

Emploi et  
Développement social Canada

Opérations de l'accès à l'information et de la  
protection des renseignements personnels  
140, promenade du Portage  
Phase IV, niveau 12, arrêt postal 1203  
Gatineau (Québec) K1A 0J9

*Your file - Votre référence*

*Our file - Notre référence*

A-2013-00690 / HJK

March 31, 2015

Mr. Jacobus Kriek  
C/O Matrixvisa Inc.  
362 - 10816 MacLeod Trail South  
Unit 440  
Calgary, Alberta T2J 5N8

Dear Mr. Kriek:

This is further to your complaint to the Office of the Information Commissioner dated March 10, 2014. Their file number is 3213-01980.

Your original request reads as follows:

***"Please provide copies of Section 3.5.5.2.7.2 and Section 3.5.5.2.13.1 of the Temporary Foreign Worker Manual."***

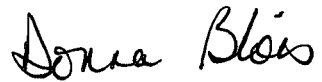
Please be advised that Employment and Social Development Canada has reviewed the exemptions and are providing you with an updated copy of the documents. You will note that some pages qualified for partial exemption pursuant to paragraph 16(2) of the *Act*. A copy of the provision is enclosed.

You are entitled to complain to the Information Commissioner concerning the processing of your request within 60 days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to: Office of the Information Commissioner of Canada, 30 Victoria Street, 7<sup>th</sup> Floor, Gatineau, Quebec K1A 1H3.

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This completes the processing of your request. Should you have any questions, do not hesitate to contact Jane Kaddie at 819-654-6982, or by email at [jane.kaddie@hrsdc-rhdcc.gc.ca](mailto:jane.kaddie@hrsdc-rhdcc.gc.ca).

Yours sincerely,

A handwritten signature in cursive script that reads "Donna Blois".

Donna Blois  
Director  
Access to Information and Privacy Operations

cc: Jason Trudeau, Investigator  
Office of the Information Commissioner of Canada

Encl.

## Access to Information Act

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### 16(2) SECURITY

16.(2) The head of a government institution may refuse to disclose any record requested under this Act that contains information that could reasonably be expected to facilitate the commission of an offence, including, without restricting the generality of the foregoing, any such information ...

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## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.7.2 - Working Conditions

Service Canada officers are to request documentation to satisfy that working conditions were STS as per the LMO Confirmation Letter and associated Annex. A comprehensive list of working conditions to be assessed and documentation to be requested is found in section 3.5.5.2.13.1.

An employer should not alter working conditions as prescribed by legislation or regulations. However, changes to working conditions identified on the LMO Confirmation Letter and associated Annex that are not prescribed by law may be permitted if the employer can justify the change.

s.16(2)

[REDACTED]

[REDACTED] In this case, the employer would be asked to submit documentation to substantiate their claims regarding the change in hours, for example, a copy of the work sharing agreement or possibly a letter explaining the continuing need for the TFW. The employer must be asked to provide justification/compensation even if the reduced hours are above the 30 hours/week guideline set by the TFWP as the general standard for full time employment.

The employer may not substitute any condition of employment required either by the TFWP or relevant legislation and regulations for another form of compensation. For instance, the substitution of worker transportation costs paid by the employer for free accommodation is not permitted. Comparison of the LMO Confirmation Letter and associated Annex to documentation submitted by the employer, as well as to the employer/employee contract, can provide valuable insight as to whether there were any substitutions of the terms of employment. Any such instances of substitution will be considered as non-compliance despite the value of the substitution or employer and employee consent.

**Temporary Foreign Worker Program Manual**

**Section 3.5.5.2.13.1 - STS ECR Elements and Compensation**

	<b>Elements Assessed</b>	<b>Documentation Assessed</b>	<b>Compensation</b>
	<p>The elements itemized below are meant to provide the reviewing officer with guidance on conducting an assessment that an employer provided substantially the same wages, working conditions, and occupation on previous offers of employment. An officer will utilize their discretion as to the depth and breadth of the assessment based on risk criteria.</p>	<p>The principal documents against which an assessment of substantially the same will be reviewed are the opinion confirmation letter and annex and any applicable employer/employee contract. These documents may also be verified against the documents detailed below.</p>	<p>In any instance where an officer is not satisfied that an employer has provided substantially the same terms and conditions on previous offers of employment and where the employer does not present suitable justification or compensation the reviewing officer may elect to refuse the opinion and/or refer the matter to the correct provincial/territorial authority where an LOU is in place and/or revoke any unused portions of previous opinions. The officer may also make recommendation to their regional consultant that the employer be made ineligible to access the program. These options are available in addition to courses of compensation detailed below.</p>
<p><b>Wages</b></p>	<p><i>Substantially the same wages</i></p> <ul style="list-style-type: none"> <li>Any discrepancy between wages committed to and wages paid?</li> </ul> <p><i>Deductions</i></p> <ul style="list-style-type: none"> <li>All deductions identified on LMO confirmation/annex, employer/employee contract, or job offer appear to be in place?</li> <li>For NOC C and D, has the wage rate for the position increased for TFW who has been employed for over 12 consecutive months? If not,</li> </ul>	<ul style="list-style-type: none"> <li>Attestation on application.</li> <li>Copies of payroll statements for each selected TFW.</li> <li>Copies of any other documents substantiating payments to TFWs for work performed.</li> <li>Timesheets that correspond to the payroll statements provided if applicable.</li> <li>Copy of collective bargaining agreement if applicable.</li> </ul>	

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	why not?	<ul style="list-style-type: none"><li>• TFW record of employment.</li><li>• Copy of the work permit.</li><li>• Letter of job offer to TFW.</li><li>• Work sharing agreement</li></ul>	
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3.5.216.1

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		s.16(2)	
<b>Working Conditions</b>	<p>Substantially the same working conditions.</p> <p><i>Overtime/Hours of Work</i></p> <ul style="list-style-type: none"> <li>• Overtime paid in accordance with employer/employee contract, LMO confirmation/annex, or collective agreement?</li> <li>• Do hours fall-under or exceed hours on LMO confirmation/annex or employer/employee contract?</li> </ul>	<ul style="list-style-type: none"> <li>• Attestation on application.</li> <li>• Copies of at least three consecutive payroll statements for each selected TFW.</li> <li>• Timesheets that correspond to the payroll statements provided if applicable.</li> <li>• Work sharing agreement.</li> </ul>	

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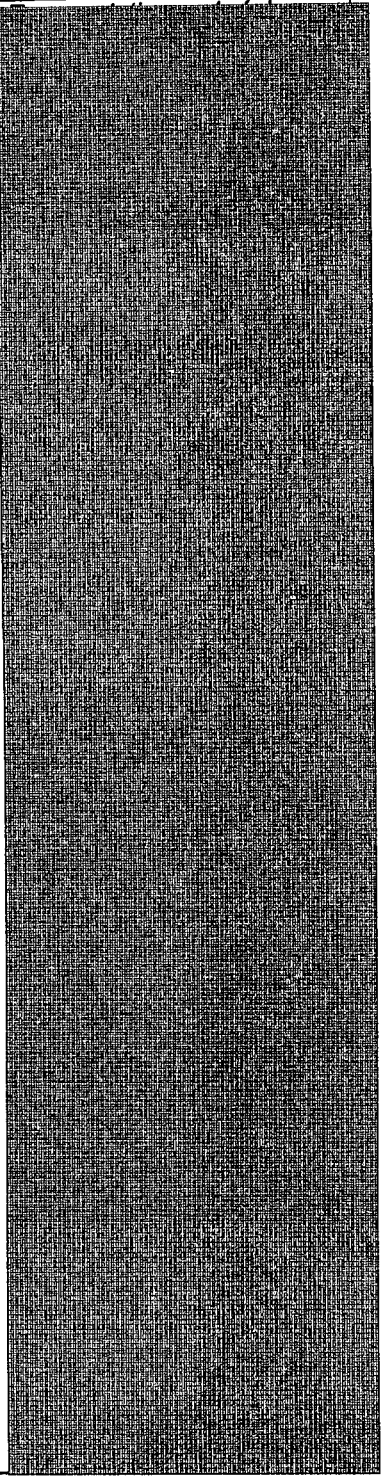
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	<p><i>Transportation costs (where applicable)</i></p> <ul style="list-style-type: none"><li>• Employer paid necessary transportation costs?</li><li>• Does the proof of payment (approximately) match travel dates for TFW?</li><li>• Is the work permit start date (approximately) consistent with travel dates?</li><li>• Does the payroll indicate any deductions for transportation costs?</li></ul>	<p><i>Transportation costs (where applicable)</i></p> <ul style="list-style-type: none"><li>• Copies of at least three consecutive payroll statements for each selected TFW.</li><li>• Copies of credit card statement or cashed cheques for payment of transportation to and/or from Canada.</li><li>• Invoice with travel itinerary or flight details for TFW.</li></ul>	
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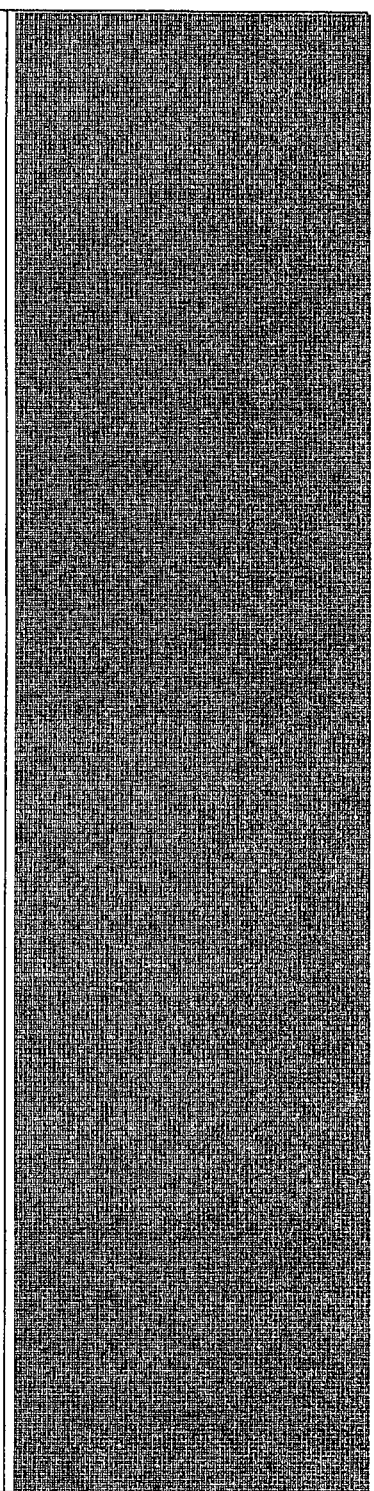
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	<p><i>Accommodation (where applicable)</i></p> <ul style="list-style-type: none"> <li>• An explanation from the employer on how they ensured the availability of suitable and affordable accommodation.</li> <li>• What is the rental situation, i.e. cost and availability?</li> <li>• Employer providing accommodation?</li> <li>• Rent deducted from pay?</li> <li>• Deductions match those on employer/employee contract?</li> </ul> <p>In the case of SAWP, does the employer appear to have maintained adequate housing?</p> <p><i>Insurance NB</i></p> <ul style="list-style-type: none"> <li>• Employer registered and paid for workplace safety?</li> <li>• Employer registered and paid for any required health insurance for TFW?</li> </ul>	<p><i>Accommodation</i></p> <ul style="list-style-type: none"> <li>• Cost for accommodations for the TFW is compared to the average cost for reasonable accommodation as per CMHC:</li> </ul> <p><a href="http://dsp-psd.pwgsc.gc.ca/Collection/C/MHC/RMH/index-e.html">http://dsp-psd.pwgsc.gc.ca/Collection/C/MHC/RMH/index-e.html</a></p> <ul style="list-style-type: none"> <li>• If employer is providing accommodations, the signed rental agreement between the employer and TFW indicating the amount of rent to be paid and the frequency and method of payment.</li> <li>• Seasonal Housing Approval</li> </ul> <p><i>Insurance</i></p> <ul style="list-style-type: none"> <li>• Confirmation of coverage letter from insurer.</li> <li>• Copy of insurance policy.</li> <li>• Proof of payment by employer.(credit card statements, cancelled cheques, bank statements)</li> <li>• Workplace insurance clearance letters from respective workplace</li> </ul>	
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<p><b>Occupation</b></p>	<p><i>Substantially the same occupation</i></p> <ul style="list-style-type: none"><li>• TFW working in occupation stipulated on LMO confirmation?(same job description/NOC code)</li><li>• TFW working in location stipulated on LMO confirmation?</li><li>• LCP, any change in recipient of care?</li></ul>	<ul style="list-style-type: none"><li>• Job description on LMO confirmation.</li><li>• Copy of TFW work permit.</li><li>• Employer/employee contract if applicable.</li></ul>	
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