

**161—3.7(216) Preservation of records.**

**3.7(1) *Employment records.*** When a complaint or notice of investigation has been served on an employer, labor organization or employment agency under the Act, the respondent shall preserve all records relevant to the investigation until the complaint or investigation is finally adjudicated. The term “relevant to the investigation” shall include, but not be limited to, personnel, employment or membership records relating to the complainant and to all other employees, applicants or members holding or seeking positions similar to that held or sought by the complainant, and application forms or test papers completed by any unsuccessful applicant and by all other applicants or candidates for the same position or membership as that for which the complainant applied and was not accepted, and any records which are relevant to the scope of the investigation as defined in the notice or complaint.

**3.7(2) *Other records.*** Any books, papers, documents, or records of any form which are relevant to the scope of any investigation as defined in the notice or complaint shall be preserved during the pendency of any proceedings by all parties to the proceedings unless the commission specifically orders otherwise.

**3.7(3) *Adverse inference.*** If after a public hearing the administrative law judge determines:

*a.* That a party or agent, employee, or person acting for the party has destroyed evidence in violation of subrule 3.7(1) or 3.7(2), and

*b.* That the destruction was done at a time when the party knew or should have known that the evidence destroyed was relevant to the investigation, and

*c.* There is no satisfactory explanation for the destruction of the evidence, then the administrative law judge may infer that the destroyed evidence was adverse to the party who destroyed the evidence or whose agent or employee destroyed the evidence or on behalf of whom any other person was acting when destroying the evidence.