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Extract from Sandra Fredman et al., Public Access to Court Documents: Research Prepared for the Legal Resources Centre, South Africa (Oxford Pro Bono Publico Programme Paper, Jan. 2015) (peer reviewed) (draft), citing Tillman's Opinion Editorial on Access to Court Documents

Seth Barrett Tillman



## Public Access to Court Documents

*Research prepared for the Legal Resources Centre, South Africa*

January 2015

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## CONCLUSION

In conclusion it can be said that although the principles of openness and transparency are binding upon all European Union institutions, including the ECJ, and the EU Charter of Fundamental rights grants a corresponding right to the public access of information, access to the ECJ documents is subject to notable restrictions. The jurisprudence of the Court tends to give priority to the protection of the Court's ongoing proceedings, to which a disclosure of the Court's documents is regularly seen as obstructive. There must be an overriding public interest in favour of disclosure for the general presumption in favour of the protection of the Court's proceedings to be outweighed. Once the proceedings are closed, however, the general presumption no longer holds.

## II. IRELAND

### QUESTION 2: ACCESS TO COURT DOCUMENTS

*To what extent are members of the public or media permitted to access court documents in application proceedings (and particularly administrative reviews) prior to the matter being called in open court?*

#### Older Law

The starting point is s 65(3) of the Court Officers Act 1926: 'All proofs and all other documents and papers lodged in or handed in to any court in relation to or in the course of the hearing of any suit or matter shall be held by or at the order and disposal of the judge or the senior of the judges by or before whom such suit or matter is heard.'<sup>75</sup> This has been interpreted in *Minister for Justice Equality and Law Reform v Information Commissioner* to refer to a 'general prohibition on the disposal of documents but from which the Judge can dispense'.<sup>76</sup> With reference to the same statute, in *Mr X and the Department of Justice, Equality and Law Reform*, the Information Commissioner held that there was a 'long-standing practice which amounted to a prohibition' of disclosure of affidavits to the public.<sup>77</sup> Various commentators confirm that, before the 2013 and 2014 cases discussed below, there was no general right of public access to court documents.<sup>78</sup>

#### Recent Case Law

In *Minister for Justice Equality and Law Reform v Information Commissioner*, the High Court recognised that the 'prohibition' on disclosure of documents is 'general' in nature, and stems from the fact that 'the courts are entitled to regulate the conduct of court business'.<sup>79</sup> It follows that it was therefore, in principle, open to the superior courts to change its interpretation of s 65(3).

<sup>75</sup> No 27 of 1926

<sup>76</sup> *Minister for Justice Equality and Law Reform v Information Commissioner* [2001] 3 IR 43 (HC) 50

<sup>77</sup> Case 99021 *Mr X and the Department of Justice, Equality and Law Reform* (Information Commissioner, 17 May 2001)

<sup>78</sup> Seth Barrett Tillman, 'Time to open up courts and let justice be seen' (*Independent.ie*, 22 August 2012)

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Rossa McMahon, 'We can't all access the courts. We should at least have access to court documents.' (*A Clatter of the Law*, 23 August 2012) <<http://aclatterofthelaw.com/2012/08/23/we-cant-all-access-the-courts-we-should-at-least-have-access-to-court-documents/>>

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