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Public Access to Court Documents
CONCLUSION

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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.' 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.' 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. Various commentators confirm that, before the 2013 and 2014 cases discussed below, there was no general right of public access to court documents.

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.' It follows that it was therefore, in principle, open to the superior courts to change its interpretation of s 65(3).

71 No 27 of 1926
72 Minister for Justice Equality and Law Reform v Information Commissioner [2001] 3 IR 43 (HC) 50
73 Case 99021 Mr X and the Department of Justice, Equality and Law Reform (Information Commissioner, 17 May 2001)
74 Serth Barrett Tillman, 'Time to open up courts and let justice be seen' (Independent.ie, 22 August 2012) <http://www.independent.ie/opinion/opinion/armth-barrett-tillman-time-to-open-up-courts-and-let-justice-be-seen-26089857.html>
75 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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31 No 27 of 1926
36 Minister for Justice Equality and Law Reform v Information Commissioner [2001] 3 IR 43 (HC) 50
37 Case 99/02 Mr X and the Department of Justice, Equality and Law Reform (Information Commissioner, 17 May 2001)
38 Seth Barrett Tillman, 'Time to open up courts and let justice be seen' (Independent, 22 August 2012)
Rossa McMahon, 'We can’t all access the courts. We should at least have access to court documents.' (A Clatter of the Law, 25 August 2012) <http://aclatterofthelaw.com/2012/08/25/we-cant-all-access-the-courts-we-should-at-least-have-access-to-court-documents/>
Paul MacMahon, 'Public Access to Irish Court Documents' (Ex Tempore, 25 August 2012)
39 Minister for Justice Equality and Law Reform v Information Commissioner [2001] 3 IR 43 (HC) 50