



Committee of the Regions

The Secretary General

Brussels, 21.03.16 00389
SoB/JCCA/ssch D 601/2016

Memo to the attention of Mr. James Panichi

By email: ask+request-2341-d177b283@asktheeu.org
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Subject: Access to information request – Correspondence relating to harassment allegations of CoR official Robert McCoy 2013-2014

Ref.: Your emails dated 15 March 2016

Dear Mr. Panichi,

We refer to your emails dated 15 March 2016 (10:13 & 10:16) in which you mention not to have received a response "about the internal review" concerning correspondence relating to harassment allegations of Mr. McCoy 2013-2014.

Having examined once again your requests, we have come to the conclusion that the initial refusal has to be confirmed for the reasons set out below:

As you already know, since your initial request dated October 6th, 2015, Mr. McCoy lodged a new case before the Civil Service Tribunal.

Article 4(2), second indent of Regulation 1049/2001 stipulates: *"The institutions shall refuse access to a document where disclosure would undermine the protection of: (...) court proceedings (...) unless there is an overriding public interest in disclosure"*.

The EU's Assembly of Regional and Local Representatives



The purpose of this exception to the Regulation's general rule of transparency is to guarantee the independence of the EU institutions in their dealings with the Court, and to ensure the proper administration of justice.

In this regard, the Court of Justice has stated in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P that the pleadings lodged before the Court of Justice in court proceedings are wholly specific since they are inherently more a part of the judicial activities of the Court and that these activities are as such excluded from the scope of the right of access to documents, without any distinction being drawn between the various procedural stages, in the light of the need to ensure that, throughout the court proceedings, the exchange of arguments by the parties and the deliberations of the Court in the case before it take place in an atmosphere of total serenity¹.

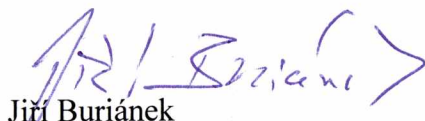
The Court has held that, for the purposes of interpreting the exception provided for under the second indent of Article 4(2) of Regulation No 1049/2001, account must be taken of the fact that neither the Statute of the Court of Justice nor its Rules of Procedure provide for any third-party right of access to pleadings submitted to the Court in court proceedings. Indeed, if third parties were able, on the basis of Regulation 1049/2001, to obtain access to those pleadings, the system of procedural rules governing the proceedings before the EU Courts would be called into question².

Moreover, the Court has also stated that this exception must be understood to cover not only the pleadings or other documents lodged, internal documents of the case before the court, but also correspondence concerning the case³.

In accordance to the exception of article 4(2) second indent of Regulation 1049/2001 the documents you seek to obtain fall under this ongoing court proceeding. This exception applies unless there is an overriding public interest in disclosure of the documents, and this is not the case here.

Therefore, we cannot disclose these documents and shall confirm our prior answer, dated October 27th, 2015.

Yours sincerely,



Jiří Buriánek

¹Judgment of the Court of 21 September 2010 in Joined Cases C-514/07P, C-528/07P and C-532/07P Sweden v API and Commission (paragraphs 77, 79 and 92).

²Ibid, at para. 99 and 100.

³Judgment of the Court of first Instance in case T-92/98, paragraph 41.