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National security and access to information

Reply to Recommendation¹: Recommendation 2024 (2013)

Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly [Recommendation 2024 \(2013\)](#) on “National security and access to information”, which it has transmitted to the relevant steering committees and expert bodies for comments.²

2. The Committee of Ministers underlines the importance of transparency of public authorities in a pluralistic, democratic society. As stated in the Council of Europe Convention on Access to Official Documents (CETS No. 205), the “exercise of a right to access to official documents provides a source of information for the public, helps the public to form an opinion on the state of society and on public authorities, and fosters the integrity, efficiency, effectiveness and accountability of public authorities, so helping affirm their legitimacy”.

3. The Committee of Ministers recalls that this convention, as highlighted in its Explanatory Report, “is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities [...], which finds its origins in the 1950 European Convention on Human Rights.” It encourages member States to consider ratifying the convention with priority.³

4. The right to receive information held by public authorities is also protected under Article 10 of the European Convention on Human Rights. The Committee of Ministers draws attention to a recent judgment of the Grand Chamber of the European Court of Human Rights reaffirming that “the right to receive and impart information explicitly forms part of the right to freedom of expression under Article 10” (Gillberg v. Sweden, Application No. 41723/06, judgment of 3 April 2012).

5. Referring to its Resolution Res(2001)6 on access to Council of Europe documents, the Committee of Ministers recalls that when adopting it, the Committee reaffirmed its wish to endow the Council of Europe with an active and consistent information policy, based on the principle that “transparency is the rule and confidentiality the exception”. The Committee also indicated that it was “convinced that the application by the Council of Europe of the principles and standards which it lays down for its member States is a fundamental element of the Organisation’s credibility and consistency”. The Committee of Ministers sees no need presently to review the policies it has thus laid down for the Council of Europe regarding access to information and classification of documents. However, it will inform the Parliamentary Assembly about any future developments in this respect.

6. The Committee of Ministers takes note of the adoption on 12 June 2013 of the Global Principles on National Security and the Right to Information, which aim to promote the principle of transparency, in particular access to official documents. It welcomes the fact that these Principles give guidance to legislators on reaching a balance between public interests both in national security and in access to information.

1. Adopted at the 1197th meeting of the Ministers’ Deputies (16 April 2014).

2. The Steering Committee for Human Rights (CDDH), the Steering Committee on Media and Information Society (CDMSI) and the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) (T-PD).

3. Ten ratifications are required, only six member States have ratified the Convention so far.



7. The Committee of Ministers recalls that the right to access to information and freedom of expression have to be reconciled with other human rights and fundamental freedoms, including the right to privacy and personal data protection, which are protected under Article 8 of the European Convention on Human Rights as well as under the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its Additional Protocol regarding supervisory authorities and transborder data flows (ETS No. 181). It notes that the above-mentioned Global Principles refer to the obligation of public authorities to balance between the right to access to documents and the right to privacy.

8. Beyond the above texts, the Committee of Ministers wishes to underline the obligation of member States to respect their undertakings under the European Convention on Human Rights and the relevant guidance that they may find in the case law of the European Court of Human Rights.

9. Finally, the Committee of Ministers informs the Parliamentary Assembly, with reference to the Assembly's [Resolution 1954 \(2013\)](#), paragraph 9.7, that it will soon be examining a draft Recommendation on protecting whistle blowers elaborated by the European Committee on Legal Co-operation (CDCJ), with a view to its adoption.