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February 24, 2015

VIA FAX

Judicial Administrator
Federal Court of Appeal
Ottawa, ON K1A 0H9

Dear Madam or Sir:

**Re: Dr. Gábor Lukács v. Canadian Transportation Agency
Federal Court of Appeal File No.: A-218-14
Reply to the Agency's letter of February 23, 2015**

I am writing to reply to the Agency's letter of February 23, 2015. The Agency does not argue that it would be prejudiced by the two documents that I am seeking to file, but rather it erroneously claims that the documents are irrelevant to the issues in the present case.

As a matter of fact, both the present application and File No. T-1659-08 involve the interaction between the open court principle and the *Privacy Act*. In order to assist the Court in assessing the relevance of the documents, I am attaching a table comparing the Agency's submissions and evidence in File No. T-1659-08 with those in the present case.

Sincerely yours,

Dr. Gábor Lukács
Applicant

Enclosed: Table comparing past and present filings of the Agency

Cc: Mr. Allan Matte, counsel for the Canadian Transportation Agency
Ms. Jennifer Seligy, counsel for the Privacy Commissioner of Canada

| Agency's submissions in the present case | Agency's submissions/evidence in File No. T-1659-08 |
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| <p>46. Contrary to the Applicant's position, the personal information of each applicant is put in a personal information bank. Accordingly, the personal information provided by each applicant is not information that is publicly available.</p> <p>Memorandum of Fact and Law, Respondent's Record, Tab 2, p. 114</p> | <p>6. As a quasi-judicial tribunal, the Agency is bound by the constitutionally protected open court principle. This means that information filed with the Agency becomes part of a public record and is generally available to the public. [...]</p> <p>Affidavit of Ms. Catharine Murphy, p. 2</p> <p>16. All of the personal information about the parties, including their identities, can therefore be obtained by either attending the tribunal hearings, when and where they are held, or, alternatively, asking to review the tribunal's file. [...]</p> <p>Memorandum of Fact and Law of the Tribunal Interveners, p. 5</p> |
| <p>29. [...] It must be shown by the Applicant that without the desired access to the redacted personal information, meaningful public discussion and criticism on matters of public interest would be substantially impeded.</p> <p>Memorandum of Fact and Law, Respondent's Record, Tab 2, p. 108</p> | <p>12. [...] the Tribunal Interveners submit that the open court principle applies to the proceedings of quasi-judicial administrative tribunals and, as a result, there is a presumption that the public will have access to all aspects of those proceedings absent some form of restriction in their enabling legislation or an Order of the relevant tribunal prohibiting the same.</p> <p>Memorandum of Fact and Law of the Tribunal Interveners, p. 4</p> |

| Agency's submissions in the present case (continued) | Agency's submissions/evidence in File No. T-1659-08 (continued) |
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| <p>33. [...] The <i>Privacy Act</i> does not make any distinction between a government institution acting as a quasi-judicial tribunal and any other government institution. Therefore, even documents filed with a quasi-judicial tribunal such as the Agency are documents in government hands.</p> <p style="text-align: center;">Memorandum of Fact and Law, Respondent's Record, Tab 2, p. 109</p> | <p>Footnote: Sections 7 and 8 of the <i>Privacy Act</i> apply to tribunals in respect of their administrative functions - simply not their quasi-judicial functions. Any personal information obtained outside of a public proceeding, including employee records, would be subject to disclosure only in accordance with the <i>Privacy Act</i>.</p> <p style="text-align: center;">Memorandum of Fact and Law of the Tribunal Interveners, p. 6</p> |
| <p>48. If a quasi-judicial tribunal, such as the Agency, applying the open court principle had a right to disclose personal information collected in its adjudication cases, just because of the application of that principle, there would be a provision in the <i>Privacy Act</i> to that effect.</p> <p style="text-align: center;">Memorandum of Fact and Law, Respondent's Record, Tab 2, p. 114</p> | <p>26. [...] By virtue of the open court principle, tribunal proceedings are publicly accessible and therefore exempt from the prohibition in s.8 of the <i>Privacy Act</i> by virtue of s. 69(2) of the <i>Privacy Act</i>.</p> <p style="text-align: center;">Memorandum of Fact and Law of the Tribunal Interveners, p. 8</p> |