

北京市第二中级人民法院 行政裁定书

(2013)二中行初字第 00872 号

起诉人史洪莘，女，1955 年 10 月 12 日出生，汉族，住北京市顺义区光明东街小东庄 240 号。

起诉人史洪莘因对中华人民共和国外交部（国际司）2013 年 1 月 16 日国函[2013]20 号《关于申请政府信息公开的复函》（以下简称《复函》）不服，向本院提起行政诉讼，请求撤销《复函》，向其公开申请的信息。

本院经审查认为，起诉人提起行政诉讼，应当符合法律规定的起诉条件。根据《中华人民共和国行政诉讼法》、最高人民法院《关于执行〈中华人民共和国行政诉讼法〉若干问题的解释》的有关规定，人民法院不受理公民对国防、外交等国家行为提起的诉讼。中华人民共和国外交部代表中国政府接受联合国人权理事会普遍定期审议时，向联合国提交《国家人权报告》系外交行为。起诉人申请外交部公开涉《国家人权报告》的信息，不属于行政诉讼受案范围，依法不具有可诉性。故对起诉人的起诉，依法应当不予受理。依照《中华人民共和国行政诉讼法》第四十一条第（四）项、最高人民法院《关于执行〈中华人民共和国行政诉讼法〉若干问题的解释》第四十四条第一款第（一）项的规定，裁定如下：

对史洪莘的起诉，本院不予受理。

如不服本裁定，可于本裁定书送达之日起 10 日内，向本院递交上诉状，上诉于北京市高级人民法院。

(此页无正文)

审 判 长 张昆仑

代理审判员 李汉一

代理审判员 刘 伟

二〇一三年八月二十三日

本件与原件核对无误

书 记 员 孙玉宁

**Beijing Municipality Second Intermediate People’s Court
Administrative Ruling**

(2013) Second Intermediate Administrative Initial Ruling No. 00872

Plaintiff Shi Hongping, female, born on October 12, 1955, Han ethnicity, lives at 240 Xiaodongzhuang Guangmingdong Street, Shunyi District, Beijing Municipality.

Plaintiff Shi Hongping refused to accept “Reply to Government Information Regarding Disclosure Request” (hereafter “Reply”) issued by the Ministry of Foreign Affairs of the People’s Republic of China (International Division) on January 16, 2013, state document (2013) No. 20, and hence filed administrative litigation at the Court requesting revocation of the “Reply” and disclosure of the information requested.

Upon review, it is the view of this Court that the Plaintiff filing for administrative litigation must satisfy the litigation conditions stipulated by the law. According to the “Administrative Procedure Law of the People’s Republic of China,” and relevant regulations of the Supreme People’s Court’s “Interpretation of Several Issues Regarding Implementing the ‘Administrative Procedure Law of the People’s Republic of China,’” the Court cannot accept litigation brought by citizens against state actors [in areas] such as national defense and foreign affairs. When the Ministry of Foreign Affairs of the People’s Republic of China represents the Chinese government in receiving Universal Periodic Review by the United Nation’s Human Rights Council, submitting a “National Human Rights Report” is a diplomatic action. The Plaintiff’s request that the Ministry of Foreign Affairs disclose information in the “National Human Rights Report” does not fall within the scope of acceptable administrative litigation, and thus it is not suable according to law. Therefore, the Plaintiff’s litigation should be accordingly rejected. In accordance with regulations in Part Four of Article 41 of the “Administrative Procedure Law of the People’s Republic of China,” and Part One of the first paragraph of Article 44 of the Supreme People’s Court’s “Interpretation of Several Issues Regarding Implementing ‘Administrative Procedure Law of the People’s Republic of China,’” the ruling is as follows:

The Court rejects Shi Hongping’s application to file litigation.

If this ruling is not accepted, an appeal may be submitted to the Beijing Municipal Superior People’s Court within 10 days of receiving the ruling.

Presiding Judge	Zhang Kunlun
Deputy Judicial Officer	Li Hanyi
Deputy Judicial Officer	Liu Wei

August 23, 2013

Court Clerk	Sun Yuning
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