



EUROPEAN COMMISSION

Secretariat-General
Unit B4 - Transparency

Brussels,

ACCESS TO NAMES AND FUNCTIONS OF COMMISSION STAFF

GUIDANCE NOTE

1. BACKGROUND

Commission services receive a large number of requests each year under Regulation 1049/2001, for access to documents (e.g. e-mails¹, copies of correspondence, meeting minutes) which include the names and functions of Commission staff.

This note sets out the approach to follow in such cases.

It aims to strike a fair balance between the right of access to documents² and the right to personal data protection³. It also takes into account the fact that, in most cases, requestors are interested in the substance of the documents rather than in the personal data appearing therein.

This approach consists of granting, in principle, access to the names and functions of Commissioners and their cabinet members and staff in senior management positions⁴. This access is exceptionally extended to the names and functions of staff not occupying any senior management position, if the need thereto has been clearly substantiated and there are no reasons to assume that the legitimate rights of the individuals concerned might be prejudiced⁵.

¹ These are only considered documents to the extent that they are registered or should have been registered in Ares in accordance with the document management rules.

² As defined in Article 15(3) of the Treaty on the Functioning of the European Union (TFEU) and Regulation 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

³ As defined in Article 16(1) of the TFEU and Regulation 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The Court of Justice confirmed that *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life"*: judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, paragraph 73.

⁴ Secretary-General, Directors-General, Directors.

⁵ As required by Article 8(b) of Regulation 45/2001.

2. BASIC PRINCIPLE: REFUSAL FOR STAFF NOT OCCUPYING ANY SENIOR MANAGEMENT POSITION

Both at the initial and at confirmatory stage, no access should, in principle, be granted to the names and functions⁶ of staff which do not form part of senior management, unless a clear **need** thereto is established and there are no reasons to assume that the **legitimate rights** of the individuals concerned might be prejudiced.

2.1. How to assess the need for the data transfer

The need to obtain the personal data must be clearly demonstrated by the applicant. It should be distinguished from a mere interest in obtaining these data⁷.

For instance, some applicants request access to the names of members of a tender or project evaluation committee to verify whether there have been any conflicts of interests. However, it can be questioned whether this constitutes a “need” to obtain the personal data concerned, given that the Financial Regulation and its Rules of Application already establish the necessary procedural guarantees to avoid such conflicts of interests.

The necessity of the data transfer must be demonstrated by express and legitimate justifications or convincing arguments⁸, and there must be no less invasive measures, taking into account the principle of proportionality⁹.

2.2. How to assess the absence of any risks to the data subjects’ rights

As regards the possible risks to the legitimate rights of the data subjects concerned, and hence to the privacy and integrity of these individuals in the meaning of Article 4(1)(b) of Regulation 1049/2001, these can in a limited number of cases be established without a need to consult the staff members concerned, in particular:

- for members of tender or project evaluation committees, for whom there is a real and non-hypothetical risk of being the subject of unsolicited contacts by unsuccessful, current or future tenderers or project promoters;
- for staff members tasked with investigative functions (e.g. investigative staff working on antidumping or competition files, auditors, OLAF investigators, etc.).
- for staff members forming part of an administrative entity which has been the subject of targeted physical or verbal attacks or defamatory actions by outside parties.

⁶ To the extent that they enable the individual staff members to be identified. If this is not the case, these functions are not to be considered “personal data”, and access can in principle be granted if no other exceptions of Article 4 of Regulation 1049/2001 are applicable.

⁷ E.g. for the purpose of verifying the absence of any conflicts of interest, a balanced composition of recruitment and evaluation committees etc. The applicable rules and regulations normally provide sufficient guarantees to ensure that Commission procedures are implemented under the fairest and most equitable conditions possible. It will therefore be difficult to substantiate a need to publicly release the personal data concerned for that purpose. Cf also the judgment of the General Court in case T-6/10, *Sviluppo v European Commission*, paragraph 88.

⁸ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd*, European Court reports 2010, paragraphs 77-78.

⁹ Judgment of the General Court of 23 November 2011 in case T-82/09, *Gert-Jan Dennekamp v European Parliament*, paragraphs 30-34.

In those cases, access should normally be denied.

In all other cases, the risks to the privacy and the integrity of the individuals can normally only be identified with the requisite degree of certainty by the data subjects themselves. Therefore, **if** it appears that there is a need to disclose the names and functions of staff not forming part of senior management, those staff members should normally be consulted before disclosure takes place, unless this is practically impossible.

2.3. Practical implications

Unless it is clearly evident, based on the assessment described above, that the two conditions of Article 8(b) of Regulation 45/2001 are fulfilled, services are invited to redact the names and functions¹⁰ appearing in the documents to which (full or partial) access is granted, with reference to Article 4(1)(b) of Regulation 1049/2001.

The detailed reasoning should indicate that, based on the information available, the necessity of disclosing the personal data has not been established and it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. The applicant should be invited, if he/she wishes to receive these personal data, to demonstrate the need for having these personal data transferred and the absence of any adverse effects to the legitimate rights of the individuals concerned in the meaning of Article 8(b) of Regulation 45/2001.¹¹

As the possible release of Commission staff names and functions is conditional upon the prior indication, by the applicant, of a need thereto, the number of cases where a specific risk assessment has to be made, and hence the resulting administrative burden and the risk of errors, is expected to remain limited.

¹⁰ To the extent that these enable the individuals concerned to be identified.

¹¹ Cf standard letter "Personal data expunged", available on the dedicated website: <https://myintracomm.ec.europa.eu/corp/sg/en/docinter/Pages/lettres.aspx>. This letter also provides for the possibility to introduce a confirmatory request if the applicant contests the qualification of the redacted data as "personal data".