Main issues:

Following the (full or partial) refusal of access to documents, the applicant has the right to file a new request for access to the same document(s) at a later stage.

The request has to be treated as a new initial request, provided that there have been relevant changes in the legal and/or factual circumstances warranting wider access since the first (initial/confirmatory) decision was adopted.¹

General approach stemming from the case-law:

- In case an applicant submits a new request for the same documents by reference to new factual or legal circumstances, the institution has to examine whether the (full or partial) refusal of access remains justified in light of the prevailing legal or factual circumstances.² If the applicant has not invoked any relevant new circumstances the Commission still has to examine if there are any such new circumstances.

- In the absence of such relevant new circumstances, the institution should merely confirm its earlier (initial or confirmatory) decision with reference to the fact that the factual and legal circumstances have not changed. Only the latter assessment might be subject to means of review or redress³. The Court has also confirmed that it is not possible to challenge an institution's confirmation of its earlier decision, if the latter decision was not contested within the time-limit⁴.

Commission's administrative practice:

- In case of a new initial request, by the same applicant⁵, for the same documents, the institution needs to examine whether the legal or factual circumstances have changed since the adoption of its earlier decision, based on the justification provided by the applicant and/or the information available to the institution. It should include the outcome of that examination in its reply.

- In the absence of such relevant new circumstances, the DG/service should simply refer to its previous decision concerning the same documents/same requestor and state that there have not been any relevant legal or factual circumstances warranting a review of the earlier reply. When specifying the means of review or redress, it should clarify that these are limited only to the assessment that the legal/factual circumstances have not changed since the previous reply. The applicant could appeal this assessment at confirmatory stage and, if confirmed, in front of the EU Courts.

¹ Judgment of the Court of Justice of 26 January 2010 in case C-362/08, Internationaler Hilfsfonds v Commission, point 57.
² That obligation was limited by previous case law to examination whether ‘substantial new facts’ have occurred in the meantime. Cf Judgment of the General Court of 7 February 2001 in case T-186/98, Inpesca v Commission, point 48.
³ The applicant could contest in Court the institution’s assessment whether there has been indeed a change in the legal/factual circumstances of the case and the Court would then decide on its admissibility. General Court, 26 April 2005 in Joined Cases T-110/03, T-150/03 and T-405/03, Jose Maria Sison v Council of the European Union, paragraph 26.
⁴ Judgment of the Court of Justice of 17 July 2008 in case C-521/06, Athinaïki Techniki AE v Commission, point 42.
⁵ Cautiousness is required when assessing whether the request is formulated by the same applicant, where applicants are legal persons. See for example the Order of the General Court of 26 October 2016 in case T-611/15, Edeka-Handelsgesellschaft Hessenring mbH v. Commission.
➢ On the other hand, if there are [substantial] new facts justifying the re-assessment of the case, the DG/service concerned shall adopt a new initial decision.

➢ The aim is to avoid circumvention of the legal deadlines for filing a confirmatory application or an appeal before the EU Court. Indeed, if the applicant did not, within the legal deadlines, make use of the means of review or redress available at the time of his earlier (initial or confirmatory) request, dealing with a new request from the same applicant having the same content, in the absence of any new and relevant legal and/or factual circumstances, would come down to a circumvention of the legal deadlines established by Regulation 1049/2001.

Case-law:

Court of Justice, 26 January 2010, case C-362/08, Internationaler Hilfsfonds v Commission

General Court, 7 February 2001, case T-186/98, In pesca v Commission

Court of Justice, 17 July 2008, case C-521/06, Athinaïki Techniki AE v Commission

General Court, 26 April 2005, joined cases T-110/03, T-150/03 and T-405/03, Jose Maria Sison v Council of the European Union

General Court of 26 October 2016, case T-611/15, Edeka-Handelsgesellschaft Hessenring mbH v. Commission