Main issues

The Commission regularly receives requests for access to documents related to (an) identified natural person(s). The handling of such requests (for example, the search for documents, the identification of documents, etc.) constitutes processing of personal data. The identification, or not, of documents in the Commission reply reveals information about a natural person to the applicant.

In accordance with current administrative practice, the Commission, in principle, handles such requests, and individually identifies documents, if the natural persons concerned by the requests are Members of the Commission, Commission staff forming part of senior management or a public figure acting in a public capacity. Their names and functions are usually disclosed in documents requested for the purpose of transparency, based on a presumption of openness, in the absence of specific circumstances warranting protection of these personal data.

Likewise, the Commission handles such requests and discloses personal data if the conditions of Article 9(1)(b) of Regulation (EU) 2018/1725 for the transmission of personal data to the applicant are fulfilled (positive Article 9(1)(b) test).

Article 9(1)(b) mandates that personal data shall be transmitted only if the recipient establishes that:

- it is necessary to have the data transmitted for a specific purpose in the public interest and
- the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.

Negative Article 9(1)(b) test

However, requests formulated in relation to identified or identifiable natural persons that are not part of senior management of the Commission or public figures acting in a public capacity, and where the conditions of Article 9(1)(b) of Regulation (EU) 2018/1725 are not fulfilled, require a detailed case-by-case assessment as to whether these requests can actually be handled and documents be identified/disclosed, based on data protection grounds. The administrative practice set out below shall facilitate the handling of such requests, taking due account of the interests of the applicant, the interest of transparency and data protection obligations.

Recommended administrative practice

For the handling of requests formulated in relation to identified or identifiable natural persons that are not part of senior management of the Commission or public figures acting in a public capacity, and where the conditions of Article 9(1)(b) of Regulation (EU) 2018/1725 are not fulfilled, the transparency unit of the Secretariat-General (the corporate operational controller) recommends the following administrative practice and assessments to conduct:

1. **Conferring with the applicant to construe the request as relating to an entity (legal person) rather than to the natural person representing the entity on data protection grounds**

   If the request relates to an identified or identifiable natural person in his/her quality as representative of an entity, it is possible to seek clarification with the applicant, at the initial stage, if the scope of the request can be construed as referring to the entity (legal person) rather than the natural person himself/herself, notwithstanding that the request is sufficiently precise. This approach aims to avoid complex data protection assessments which may otherwise be necessary (see below) and may increase the applicant’s chances to obtain (wide partial) access to the documents requested;
2. **Case-by-case data protection assessment (additional to the assessment/test under Article 9(1)(b) of Regulation (EU) 2018/1725)**

If the request related to an identified or identifiable natural person is intentionally maintained by the applicant, or cannot be construed as relating to a legal person, DGs have to perform a case-by-case assessment whether the request can be handled and documents identified/disclosed, based on data protection grounds, taking into account, among others, the following considerations:

− Has the Commission already lawfully published information about the natural person in relation to the meeting or contacts concerned by the request, or on the documents falling under the scope of the request, if necessary based on specific data protection measures?  

− The case-by-case assessment has to be done at the level of the natural person concerned but also document-per-document. This document-per-document assessment may lead to the conclusion that a request is handled in relation to some documents (for example, on which the Commission has lawfully published information in relation to the natural person concerned) and not on others;

− The EDPS does not exclude that there may be a need for transparency regarding specific individuals acting in the private sector. The 2011 EDPS opinion states that ‘there are also situations in which the balance favours openness. Generally speaking, such could be the case with personal data contained in documents relating to a public figure acting in his or her public capacity or relating solely to the professional activities of the person concerned’. In the absence of any further, updated guidance by the EDPS and/or case law on the publication of names relating solely to the professional activities of the person concerned, it is recommended to limit the use of this criterion to the highest/main representatives of an entity, taking also into account the availability of already published information, in relation to the natural person, on the subject matter or contacts with the Commission concerned by the request.

3. **Depending on the outcome of the above-mentioned specific data protection assessment, DGs and services shall proceed as follows:**

− If the outcome of the data protection assessment warrants a handling of the request and following an assessment of the exceptions under Regulation 1049/2001 (a) document(s) shall be disclosed, the initial decision or confirmatory decision cannot lead the Commission to provide privileged information to the applicant (aware of the name of the natural person to which the request relates) compared to what the public (unaware of the wording of the request) will receive through the document(s) being published. In this situation the name/function of the natural person to which the request relates shall not be redacted in the document(s) disclosed;

− If the outcome of the specific data protection assessment is negative (apart from the assessment already conducted under Article 9(1)(b) of Regulation (EU) 2018/1725), the Commission shall refuse to confirm the existence of documents, based on data protection grounds, and thus not identify any documents. The reasoning should be based on Regulation (EU) 2018/1725 (see standard letter ‘Request on natural person – negative reply’).

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**Requests related to Commission staff not forming part of senior management**

In accordance with the recommended administrative practice set out above, for requests that are formulated in relation to Commission staff not forming part of senior management, namely staff below the rank of director, the Commission shall refuse to confirm the existence of documents, based on data protection grounds, and not identify any documents in the (negative) reply to the applicant.

**Reference documents/links:**

- **Fiche 9 Third-parties’ personal data, Guidance note on access to names and functions of Commission staff** of 16 December 2019 and **Fiche 22 ‘Personal data breach in access to documents’**
- **Standard letters**

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<sup>4 For example, publication of names of natural persons on Europa based on their consent, automatic information of meeting participants of the publication of their names in calendars of Members of the Commission/on Europa, advance information of stakeholders about publication of certain information for reasons of transparency, etc.).</sup>