**WHAT SHOULD I DO WHEN I RECEIVE AN APPLICATION FOR ACCESS TO DOCUMENTS**


Under Article 7 of the Regulation, in the event of a total or partial refusal, or in the absence of a response, the applicant can make a confirmatory application to the Secretary general, who will then take a final decision on behalf of the Commission. The applicant can then challenge this decision either by filling a complaint to the Ombudsman or by appeal to the Tribunal.

1. **CHECK IF IT REALLY IS A REQUEST FOR ACCESS TO DOCUMENTS**

The Regulation applies only to requests for access to existing documents, i.e. “any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility” (Article 3 of Regulation (EC) No 1049/2001).

- If the request relates to information which is not contained in documents, and if replying would involve compiling information from a number of different documents, it should be considered as a request for information to be processed in accordance with the Code of Good Behaviour: https://myintracomm.ec.europa.eu/hr_admin/en/code/Pages/conduct.aspx.
- A document that is 30 years old or more can be accessed under the rules on the opening to the public of the historical archives. Contact the Historical Archives (e-mail: OIB ARCHIS BASE).
- Some documents are already in the public domain and can be released: check in the Register of Commission documents and Eur-Lex.

2. **REGISTER THE APPLICATION FOR ACCESS TO DOCUMENTS**

A copy of the application must be sent, as soon as possible, to the team in charge of access to documents in your DG, which will register the request in GESTDEM (shared database for applications for access to documents) and send an acknowledgement of receipt to the applicant. This team will also inform you of the administrative rules in force on access to documents in your DG.

3. **PREPARE A REPLY TO THE APPLICANT (if you are the person who should reply)**

A reply must be sent to the applicant, in writing and in the language in which the application was submitted, within 15 working days from the date on which the application was registered by your DG’s ‘access to documents’ team.

**HOW SHOULD I ASSESS A REQUEST?**

Under the principle of transparency, citizens are entitled to the widest possible access to Commission documents (Article 1 of Regulation (EC) No 1049/2001)

You should **draw up a full list of the documents** to which the application refers and closely examine the content of each document in order to determine whether disclosure would undermine one or more of the interests protected by Article 4 of Regulation No 1049/2001.

The list must be attached to your reply, except in cases where the Commission may dispense with an individual examination of each document (check with the coordinator in your DG).

In principle, no document is spared the detailed examination of its contents, even if it is ‘classified’. If this examination indicates that a classified document must be disclosed, it will first have to be declassified. See: https://myintracomm.ec.europa.eu/corp/security/EN/Pages/index.aspx

- **If you are unable to identify the document(s) asked for**: You should ask the applicant to provide you with additional information which will enable you to identify the document or to narrow down the request. In that case, the 15-working day deadline for reply will apply only from the date by which you receive this information.
• **If you think the request is disproportionate**: inform the applicant in writing, referring to Article 6(3) of Regulation (EC) No 1049/2001, and confer with a view to finding a fair solution.

In the case of a vague or voluminous request, the statutory deadline of 15 working days may be replaced by a timetable agreed with the applicant under Article 6(3) of Regulation (EC) No 1049/2001. If a fair solution cannot be found, you may refer to the proportionality principle to justify a refusal to process the application on the grounds that to do so would involve a disproportionate amount of work.

**WHAT IF I HAVE TO REFUSE AN APPLICATION (TOTAL OR PARTIAL REFUSAL)?**

The answer must:

• clearly indicate the grounds for the refusal based on one of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 and set out specific and detailed arguments justifying the refusal;

• inform the applicant of his or her right to appeal to the Secretary General in relation to the application.

If only part of the document requested is covered by one or more of the exceptions listed in the Regulation, you must release the remaining parts (partial access) and give reasons for the partial refusal as above. Except where the refusal is based on the exceptions in Article 4(1), the potential harm caused by disclosure must be weighed against the public interest in disclosure.

**WHAT IF THE DOCUMENT REQUESTED CONTAINS PERSONAL DATA?**

The disclosure to third parties of personal data is covered by Regulation 45/2001. The consent of the person in question or a need to disclose such data is required.


**WHAT ABOUT DOCUMENTS RECEIVED FROM THIRD PARTIES/MEMBER STATES?**

Consult the third party, including Member States, to obtain their opinion (or their agreement in the case of a MS) on whether the document may be disclosed, unless it is clear that the document may – or must not – be released.

If the third party objects to disclosure, you must refuse access to the document or the parts of the document concerned, reproducing the argument used by the third party, even if their objections are not of a nature to justify refusal. The Commission can decide to disregard the opposition of a third party only at the stage of the confirmatory application.

**WHAT IF I AM UNABLE TO REPLY WITHIN THE 15-DAY DEADLINE?**

Send the applicant a letter, before the expiry of the 15-day deadline, notifying him or her of the extension of the deadline and giving reasons for the new deadline.

Failure to reply within the prescribed time limit constitutes a tacit refusal and entitles the applicant to make a confirmatory application.

**WHO SHOULD SIGN THE REPLY TO AN INITIAL APPLICATION?**

• **Positive replies** can be signed by any official to whom the director general has delegated this power.

• **Negative replies** (total or partial) must be signed by your director general (see attached Note from Ms Day and Mr Romero Requena (21.1.2010): [https://myintracomm.ec.europa.eu/corp/sa/fr/docinter/Pages/links.aspx](https://myintracomm.ec.europa.eu/corp/sa/fr/docinter/Pages/links.aspx)).

**WHAT SHOULD I DO BEFORE SUBMITTING THE REPLY FOR SIGNATURE?**

It is compulsory to use the check-list in the attached note from Ms Day and Mr Romero Requena, mentioned above, in order to be sure that your reply meets the requirements imposed by Regulation (EC) No 45/2001. The check-list must be included with your draft negative answer in the signataire sent to the director general, but must not be attached to the reply to the applicant.