

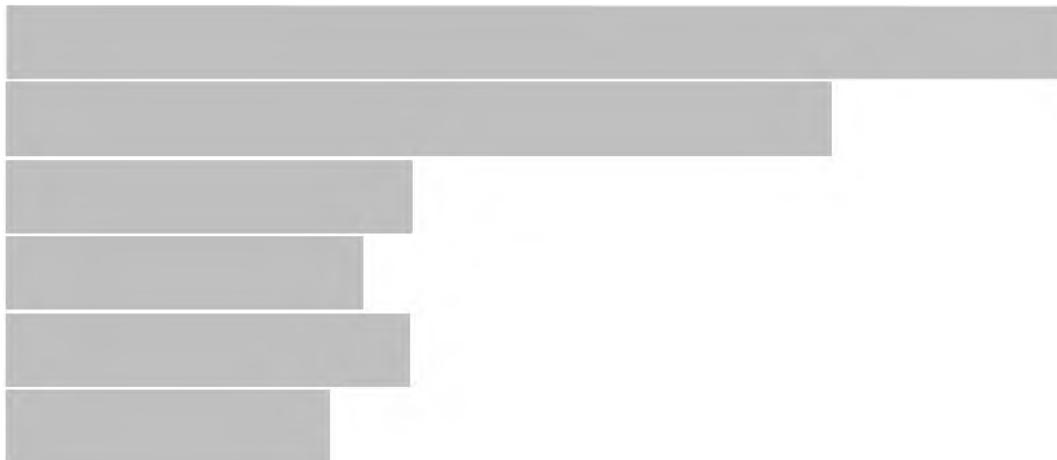


Handling of requests for public access to documents

Horizon 2020 General Training

Who we are

The Common Legal Support Service (CLSS) of DG RTD
(Sector Work Program, Evaluation, Transparency and Ombudsman)



Programme

- 1. Regulation 1049/2001**
- 2. Frequently requested documents and the established practices**
- 3. Role of the CLSS**
- 4. Handling of the requests in DG RTD**
- 5. Questions & Answers**



1. Regulation 1049/2001

- 1.1 General principles and scope
- 1.2 Access to documents vs Access to information
- 1.3 Exceptions to the right of access
- 1.4 Problematic requests

1.1 General principles and scope (1/3)

- **Access is the rule:** refusals only if motivated on the basis of exceptions
- **Concrete examination**
- **No exempt categories of documents**, not even classified or confidential documents
- **Partial release **only** if the document is not entirely covered by the exceptions**
- **Public access = no privileged right of access** (ex: MEPs have the same right as members of the public)
- ***Erga omnes* effect** of the disclosure
- **Requests to be handled within 15 working days** + possible extension with 15 more if justified

1.1 General principles and scope (2/3)

Wide scope of the beneficiaries

- **Any natural or legal person** has a right of access to documents of all EU institutions, bodies, offices and agencies
- **No obligation to give reasons** for the request for access
- **Member States** national (or subnational) authorities - **principle of sincere cooperation** laid down in Article 4(3) TEU

1.1 General principles and scope (3/3)

Wide material scope

- **All documents** drawn up or received in all areas of activities
- Document: **any content whatever its medium** (incl. emails and electronic databases)
- **Existing documents in an existing version and format** (no obligation to create a new document or to translate)

(See E-Domec rules of the Sec Gen on document management)

1.2 Access to documents vs access to information?

Requests for access to documents are dealt with under Regulation 1049/2001

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Request for access to information are dealt with under the European Code of Good Administrative Behaviour

If the requested information is not contained in any existing document(s), or if replying would involve compiling information from a number of different documents => **request for information**

1.3 Exceptions to the right of access (1/5)

- Exceptions apply **as long as protection is justified**, up to 30 years
- **Categories of exceptions:**
 - ✓ **Absolute exceptions** (ex. public interest; privacy and the integrity of the individual)
 - ✓ **Relative exceptions** (ex. commercial interests; court proceedings and audits; decision-making process). **To be balanced against an overriding public interest in disclosure**

Restrictive interpretation of all the exceptions: the risk of undermining a protected interest must be reasonably foreseeable and not purely hypothetical!

1.3 Exceptions to the right of access (2/5)

Protection of the privacy and the integrity of the individual Art. 4(1)(b) of Regulation 1049/2001

When the document requested contains personal data,
Regulation 45/2001 becomes applicable

Personal data = all information relating to an identified or identifiable natural person (ex. name, email, address, telephone, signature, opinion, etc.)

Personal data of all Commission staff (with the exception of senior management) is systematically redacted!

1.3 Exceptions to the right of access (3/5)

Protection of the commercial interests Art. 4(2)(1) of Regulation 1049/2001

Access refused if harmful to the competitive position of the company / its reputation / its intellectual property rights (ex. financial information, description of work and know-how, IPR, audit findings etc.)

1.3 Exceptions to the right of access (4/5)

Protection of the inspections, investigations and audits Article 4(2)(3) of Regulation 1049/2001

Access is refused if disclosure would undermine the **purpose of inspections, investigations or audits** (*ex. on-going investigations and audits, audit manuals and handbooks*)

1.3 Exceptions to the right of access (5/5)

Protection of the decision-making process Article 4(3) of Regulation 1049/2001

Access refused if disclosure would **seriously undermine the decision-making process**

- ✓ 1st paragraph: documents drawn up for internal use or received **before the decision has been taken**
- ✓ 2nd paragraph: documents containing **opinions for internal use** even **after the decision has been taken**

1.4 Problematic requests

- **Wide scope requests** (ex. all communications exchanged between the Commission and external parties for a duration of several years)
 - **Request for a fair solution**
- **Unclear requests**
 - **Request for a clarification**
- **Abusive requests** (wide scope requests or repetitive requests for which no fair solution has been reached).

2. Frequently requested documents & established practice

2.1 Horizon 2020 Grant application and Grant agreement

2.2 Horizon 2020 Experts

2.3 Horizon 2020 Audits

2.4 Horizon 2020 documents to be fully disclosed

2.1 Horizon 2020 Grant application and Grant agreement

- **Grant application**
 - personal data
 - commercial interests
- **Grant agreement**
 - personal data
 - commercial interests

2.2 Horizon 2020 Experts

- **List of Experts per call/project**
 - protection of privacy and integrity and personal data
 - decision-making process
- **List of Experts per area of expertise**
 - Art. 40.5 of the H2020 RfP

2.3 Horizon 2020 Audits

- **H2020 Audit documents**
 - personal data
 - purpose of audit
 - decision-making process
 - commercial interests
 - EU financial policy

2.4 Horizon 2020 documents to be fully disclosed

- **All documents already published** (on the PP, CORDIS, other EU websites or other trustful website)
- **All templates of documents**
- **All documents for which none of the exceptions applies**



3. Role of the CLSS

3.1 Commission Decision on the CSC

3.2 Working arrangements with the Research Family



3.1 Commission Decision on the establishment of the Common Support Center

Commission Decision C(2013) 8751 lays down one of the tasks of the Common legal support service (CLSS)

"ensuring a common approach to requests for access to documents [...] for Horizon 2020 by providing legal advice if requested by the research DGs, Executive Agencies or Joint Undertakings".

3.2 Working arrangements with the Research Family

Working arrangements in access to documents for the Research Family:

- **a register** of Horizon 2020 and FP7 access to documents cases (on GoFund)
- **guidelines** for disclosure of documents under Horizon 2020 and FP7
- an access to documents **communication channel** (exchange of best practices, provision of legal advice, dissemination of information, meetings)

Each member of the Research family remains fully accountable for the handling of its requests for access to documents.

4. Handling of access to documents requests in DG RTD

- 4.1 Submission of initial applications
- 4.2 Treatment of initial applications
- 4.3 Confirmatory applications
- 4.4 Remedies
- 4.5 Useful links

4.1 Submission of initial applications

- Access to documents requests should be **in writing**
- **No specific form** for submitting a request is required (via the EC online electronic form or directly to any staff of DG RTD)
- The applicant must provide **a postal address** (*otherwise no registration!*)
- Each request is registered in the Gest Dem system

4.2 Treatment of initial applications (1/4)

Centralised management of the A2D requests in DG RTD

Step 1 The A2D team receives the requests and identifies their scope

Step 2 If requests are

- **not precise**: ask for a clarification
- **wide scope**: ask for a fair solution

4.2 Treatment of initial applications (2/4)

Step 3 The RTD A2D team contacts the relevant RTD services

Step 4 Requested contribution

- Identify the documents within the scope of the request
- Assess the content of the documents and provide opinion about their public disclosure
- Provide the original version of the documents and the redacted version (if partial disclosure)

Time limit for providing the contribution: 5 working days

4.2 Treatment of initial applications (3/4)

Consultation of third parties:

- **Documents of other EU institutions**

consult them according to the Memorandum of Understanding

- **Member States' documents**

consult the national authorities concerned

- **Third-party documents**

consult the author of the document

*Refusal to grant access should **only** be justified only on the basis of the exceptions!*

4.2 Treatment of initial applications (4/4)

Step 5 the A2D team assesses the documents and drafts the replies

Four types of reply:

- **Positive reply** (full disclosure, reply by the [REDACTED] CLSS)
- **Partial reply** (partial disclosure, if only personal data redacted: reply by the [REDACTED] CLSS – otherwise: reply by the DG of DG RTD)

Partial access is granted only if it is meaningful!

- **Negative reply** (no disclosure, reply by the DG of DG RTD)
- **Devoid of purpose** (document requested does not exist, reply by the DG of DG RTD)

4.3 Confirmatory applications

- The applicant has the **right to request a review** of the initial position of DG RTD
- Confirmatory requests are handled by the **Sec Gen**
- Time limit: **15 working days + 15 working day** extension
- **Legal Service approval** required
- Secretary-General **decides by delegation for the Commission**
 - **Confirmation of the initial decision**
 - **Wider access to the documents**

4.4 Remedies

Art. 8(3) of Regulation 1049/2001

- **General Court of the EU**
 - 2 months
- **European Ombudsman**
 - 2 years

4.5 Useful links

Access to Documents on GoFund:

<https://webgate.ec.europa.eu/fpfis/wikis/display/iknowplus/Access+to+documents>

Access to Documents on My Intracomm:

<https://myintracomm.ec.europa.eu/sg/docinter/Pages/index.aspx>

E-Domec rules of the Sec Gen on document management:
(Ares(2015)182108)

EU Open Data Portal (statistics on FP7 and H2020 projects):

<https://data.europa.eu/euodp/data/publisher/publ>

5. Questions & Answers



Thank you !

**Our functional mailbox:
RTD-ACCESS-DOCUMENTS@ec.europa.eu**