Main issues:

Documents disclosed based on Regulation (EC) No 1049/2001 are disclosed publicly in a lawful manner. An accidental disclosure of (parts of) a document when handling a request for access is not a lawful public disclosure. It can happen due to human error and/or lack of appropriate control procedures and it must be corrected as soon as the Commission services become aware of it to reduce the risks for the interests of the parties concerned and to avoid Commission liability for damages.

The unlawfully disclosed (parts of the) documents can be:

- **Personal data**, for example, names, contact details or signatures of natural persons (for further information, see under links);
- **Sensitive information originating from a third party**, for example, commercially sensitive information of a company or sensitive information originating from a Member State, another EU institution or an international organisation;
- **Sensitive information originating from the Commission**, for example, information included in documents pertaining to an ongoing audit, which the Commission did not intend to disclose.

The steps to follow to correct the unlawful disclosure depend on:

- the nature of the information disclosed. Unlawful disclosure of personal data constitutes a **personal data breach**, which has to be handled according to Regulation (EU) 2018/1725 (see under links);
- whether the documents originate from third parties or not;
- whether the unlawfully disclosed documents are annexed to a Commission decision or not; and
- whether they were widely disseminated upon their release, for example, through an information platform as AskTheEU.

Current administrative practice:

a) **Unlawful disclosure of personal data (personal data breach)**

As soon as you become aware of a possible personal data breach, you need to:

- inform the unit/organisational entity responsible for the request for access to documents (‘de facto’ data controller), the Data Protection Coordinator of your Directorate-General, SG.C1 (horizontal data controller) and, if necessary, your hierarchy;
- immediately undertake all necessary measures to contain the breach and mitigate or eliminate the consequences of the personal data breach;
- establish the factual circumstances of the breach and conduct a risk assessment, in line with a template provided by SG.C1.

You are responsible for all relevant mitigating and follow-up measures, including communication with data subjects if necessary. Correspondence with the Commission Data Protection Officer and the European Data Protection Supervisor (if necessary) is done by the horizontal controller unit (SG.C1) on the basis of draft notifications provided by you, unless otherwise decided by the horizontal controller unit. Details about the procedure to follow are available here: [Guidance on Personal Data Breach Notifications](#).

- In addition to the actions above which are based on the Data Protection Regulation, you also need to undertake the actions described below.

b) **Unlawful disclosure of (parts of the) documents other than personal data**

As soon as you become aware of an unlawful disclosure of (parts of the) documents originating from third parties, you must:

- Request their removal from the public domain, in case the unlawfully disclosed (parts of the) documents were already widely disseminated, for example, through and information platform, like AskTheEU. A standard letter for this purpose is available;
- Inform the applicant that (parts of the) documents, originating from third parties, were not disclosed lawfully to him and request that he does not use or disseminate them. You can also request that the applicant signs a
declaration to this effect. A standard letter and a standard declaration are available;
✓ Inform the third party of the unlawful disclosure and the mitigating measures you have taken. A standard letter for this purpose is available;
✓ Issue a new decision replying to the applicant’s request, in case the unauthorised disclosure materialised through an incorrect decision or annexes. This new decision must annul and replace the previous decision;
✓ Document the unlawful disclosure by a note to the file which you register in ARES and upload in GESTDEM; and
✓ Assess with your hierarchy why this unlawful disclosure happened and draw the necessary conclusions for your operations.

c) Inform the Secretariat General of any unauthorised disclosure in the context of a request for access to documents

The legal coordinator on access to documents of the Directorate-General concerned by the unauthorised disclosure shall inform the policy and legal officer in charge of his Directorate-General for helpdesk questions and, if needed, request additional guidance.

Reference documents/links:

- Standard letters are available on the Commission’s access-to-documents webpages on My Intracomm1;
- The full text of judgments of the EU Courts can be consulted on the website of the ECJ: www.curia.eu;
- Fiche 22 on a personal data breach on access to documents;
- Guidance on Personal Data Breach Notifications.

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