

Access to documents – internal guidelines

Disclaimer: *These guidelines are for internal use only and aim at guiding DG JUSTICE AND CONSUMERS staff in handling access to documents requests.*

1. Is there an obligation to deal with requests for documents?

Yes. The public has a right of access to documents. This is in line with the concept of openness enshrined in the Treaty which enables the citizen to participate more closely in the decision making process and also enhances the legitimacy of the administration.

2. How do I know whether the request should be treated as an access to documents request?

You have an obligation to deal with any request for information.

If the request concerns a published document you should send the request to the Publications Office or the DG responsible for the publication.

If the requestor is asking for information you should reply in accordance with the code of good administrative behaviour.

If the request concerns an unpublished document it qualifies as a genuine request for access to documents and the rules Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents apply. This Regulation lays down the general principles and limits on the right of public access to documents.

3. I received a request for a document – what do I do?

The first step is to examine the document as all analysis should be made on a case by case basis. Note that emails and other forms of electronic communications, including audiovisual recordings, are considered as "documents" and may be subject to requests for public access.

If the document requested has already been published or has been lawfully disclosed before, then the document is public and access should be given.

If not, you need to assess whether the document can be disclosed and you need to take into consideration the risks in disclosing it.

If it is clear that the document can be disclosed, access should be given.

If not, you need to check whether the anticipated problems linked with the disclosure fall under Article 4 of Regulation (EC) No 1049/2001. Access can only be refused on the

basis of one of the exceptions indicated in that article and those exceptions need to be strictly interpreted.

The exceptions are listed under question 5. If one of the exceptions is applicable and access to the document should be refused, you should nevertheless analyse the possibility of giving partial access. This is a way of respecting the general principle of access to documents by limiting the application of the exception to the parts of the documents that cannot be disclosed.

4. How do I send the document or refuse access to it?

If you have received the request directly, please inform immediately the mailbox JUST ACCES DOCUMENTS so that the request can be registered in the data base for access to documents called "GESTDEM". In this case you need to send an acknowledgement of receipt to the requestor (by e-mail if possible). Note that all requests have to be registered in GESTDEM and that the GESTDEM reference must be quoted in all correspondence with the requestor.

In most cases the request arrives directly at the GESTDEM database and is attributed to you by unit 01 (unit 01 attributes the requests to the units via email, either to a notification mailbox or to the Head of Unit). In this case an acknowledgement of receipt is already sent by the system and there is no need for you to send it.

If no exception applies, the document requested should be sent to the requestor by e-mail or by post (in the latter case accompanied by a letter signed by the Head of Unit). It is very important that a copy of the reply is sent to the mailbox JUST ACCES DOCUMENTS to allow unit 01 to close the application in the GESTDEM data base.

If an exception applies and you need to refuse access to a document or to parts of it, then the refusal letter to the requestor must be signed by the Director General. The reply should explain the reason for refusing to disclose the document, stating the exception which applies, and should inform the requestor of his right of appeal to the SG.

A copy of the reply (negative or positive) should be sent to the mailbox JUST ACCES DOCUMENTS, and unit 01 (Head of Unit) should be in the circulation list of the *signataire* for replies refusing access totally or partially.

The reply to any request for access to documents may be registered in ARES (in spite of the fact that this may cause duplication with the GESTDEM database).

5. What exceptions are there to refuse access?

Requests should be treated in accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Article 4 of the Regulation specifies the exceptions to the right of access. Access shall be refused only if:

- 1) disclosure of the document would undermine the protection of:

- the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State;
- privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data;

2) unless an overriding public interest warrants the disclosure of the document in question, access may be refused if disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property;
- court proceedings and legal advice;
- the purpose of inspections, investigations and audits;

3) unless an overriding public interest warrants the disclosure of the document in question, access may be refused if disclosure would seriously undermine the Commission's decision-making process. This applies to any document:

- drawn up or received by the Commission for internal use, which relates to a matter on which the Commission has not yet taken a decision;
- containing opinions for internal use as part of deliberations and preliminary consultations within the Commission, even after the decision has been taken.

A Member State may also ask an institution not to disclose a document originating from that Member State without its prior agreement.

A refusal to grant access must be based on one of the exceptions explicitly provided for in the Regulation. No other exceptions can be used. The reasons for the refusal must be properly stated and duly motivated.

6. Are there templates that I can use?

Yes.

Standard letters for acknowledgement of receipt, positive replies, refusal letters, holding reply letters, consultation of a Member State, request for more information in case of vague initial requests, on the spot consultation letters, are available at <https://myintracomm.ec.europa.eu/sg/docinter/Pages/letters.aspx> in different languages.

7. Do I have a deadline to reply?

Yes.

Requests for access to documents must be treated within 15 working days from registration of the request. The deadline for reply is indicated in the attribution to your unit (it is automatically generated by the GESTDEM data base).

In exceptional cases, the initial deadline may be extended by 15 working days, provided that the requestor is notified in advance and that detailed reasons are given. Unit 01 must be informed by email about the extension of the deadline sent to the functional mailbox JUST ACCES DOCUMENTS.

Deadlines must be strictly respected. In case you do not reply within the deadline, it is considered that you refused access to the requested document and the requestor can file an appeal with SG.

8. Is there any preferential treatment for certain applications?

No.

Requests for access to documents should be treated equally, irrespective of who is asking for access. There is no preferential treatment for certain categories of requests (i.e. from journalists, MEPs).

Anybody may ask for a document, irrespective of whether he/she or the legal persons/organisation is residing within or outside EU.

The applicant is not obliged to state reasons for the request.

9. How should I treat imprecise or voluminous applications?

If an application is imprecise, you can invite the applicant to provide additional information in order to identify the documents requested. The deadline for reply shall run only from the moment when the service has received this additional information.

If documents are voluminous or difficult to handle, you can invite the applicant to consult the documents on the spot, i.e. the Commission's offices. The applicant can consult on the spot only those documents which are not protected by one of the exceptions contained in article 4 of the Regulation.

10. What if the document is old / classified?

Access to documents older than 30 years is governed by the Regulation 354/83 concerning the opening to the public of the historical archives as modified by Regulation 1700/2003.

Requests for documents older than 30 years shall be treated by the Historical archives.

In case you receive such a request, you should refer the requestor to the website of the Historical Archives (http://ec.europa.eu/historical_archives/) or send the request to the Historical Archives (functional mailbox OIB ARCHIS BASE).

Requests for access to sensitive documents or to documents classified under the Commission's security rules shall be handled by officials entitled to deal with such documents.

The decision to grant or to refuse access to all or part of the classified document must be made on the basis of Regulation 1049/2001 and on the exceptions listed in its Article 4.

If a classified document is to be disclosed you need to ensure that it is declassified before sending it to the requestor.

The fact that a document is classified is not, as such, a justification to refuse access to it.

11. What can I do when the document requested concerns an infringement procedure?

The underlying principle is that, during the investigations which might lead to an infringement procedure, Member States expect confidentiality to ensure a climate of mutual trust between them and the Commission throughout the different stages of the procedure until the case has been definitively closed.

Consequently, as long as investigations are under way, exchanges with Member States (i.e. letters of formal notice, reasoned opinions and replies of Member States) are covered by the exception of article 4(2), third indent of this Regulation "*the purpose of inspections, investigations and audits*".

Once the case has been closed, there is a presumption of accessibility and in principle access must be granted. However, in exceptional situations, access may still be refused even after the case is closed (i.e. if the closed case is linked with a pending one and disclosure would affect this pending case).

The requirement of confidentiality remains valid during the court proceedings and up to the delivery of the judgment by the Court of Justice¹, to allow for a trustful dialogue between the Commission and Member States.

EU Pilot documents are also covered by the "investigation" exception as long as the file is open.

You can find more information on treating requests related to infringements in the document "Guidelines on handling requests for access to documents related to infringements" ([SEC\(2003\)260/3](#)).

12. What about documents related to procurement and grant award procedures?

The exceptions which may be applicable in case of requests for such documents are:

- "*commercial interests, including intellectual property*": where the documents requested contain information of a commercial nature or relating to the intellectual property of a particular company or organisation or to a particular expert or other individual;
- "*privacy and the integrity of the individual*": where the document requested contains names of individuals;

¹ Case Petri T-191/99, confirmed more recently in the Technische Glaswerke Ilmenau, C-139/07, where the Court of Justice has emphasized the bilateral nature of an administrative procedure between the Commission and the concerned Member State stating that: "*the interested parties, except for the Member State responsible for granting the aid, do not have a right under the procedure for reviewing State aid to consult the documents on the Commission's administrative file. Account must be taken of that fact for the purposes of interpreting the exception laid down by Article 4(2), third indent, of Regulation No 1049/2001. If those interested parties were able to obtain access, on the basis of Regulation No 1049/2001, to the documents in the Commission's administrative file, the system for the review of State aid would be called into question.*" (para. 58)

- “*decision-making process*”: document for internal use, where the Commission has not yet taken a decision (i.e. a proposal for the award of a contract).

You can find more information on treating requests related to procurement and grant award procedures in the document "Guidelines on access to documents concerning procurement and grant award procedures" ([SEC\(2006\)485](#)).

13. What if the document requested originates from a third party?

In principle, you must consult the third parties before disclosing documents originating from them unless it is clear that the documents shall or shall not be disclosed.

If after examination of the exceptions of Article 4 of the [Regulation \(EC\) No 1049/2001](#), you consider that access must be refused, a negative reply shall be sent to the requestor without consultation of the third-party author. Likewise, you can give access without consulting the third-party where the document has already been disclosed and it is lawfully in the public domain or where disclosure or partial disclosure would not obviously affect one of the interests referred to in article 4 of the Regulation.

Be aware that [Member States](#) must always be consulted on disclosure of their documents, even if it is clear that the documents can be disclosed. However, Member States do not have to be consulted if it is clear that the document cannot be disclosed.

Member States must also be consulted when parts of their replies are quoted in reasoned opinions.

When Member States object to disclosure, they are obliged to state reasons duly explaining their position with reference to the exceptions listed in article 4 of the [Regulation \(EC\) No 1049/2001](#)². In any case, if a Member State refuses to give access to a document originating from it, access shall be refused by the DG. It is for the SG, at a later stage, to decide whether the motivation of the MS to refuse access is adequate or not.

14. What if the requestor is not satisfied with the reply?

In case of partial or total refusal of access to a document or if no reply is sent within the deadline, the requestor may appeal to the SG within 15 working days of receiving the reply or in case of absence of reply within 15 working days from the date the reply was due.

The handling of appeals is the responsibility of the SG. DG JUSTICE must give evidence on how it handled the request and send a contribution within the deadline indicated by the SG.

² "The institution cannot accept a Member State's objection to disclosure of a document originating from that State if the objection gives no reasons at all or if the reasons are not put forward in terms of the exceptions listed in Article 4(1) to (3) of Regulation No 1049/2001. Where, despite an express request by the institution to the Member State to that effect, the State still fails to provide the institution with such reasons, the institution must, if for its part it considers that none of those exceptions applies, give access to the document that has been asked for." (para. 88 - 89 of Case Sweden v Commission C-64/05).

The SG may uphold the assessment of the DG or overrule it, in which case it may grant access to documents. The reply of the SG will specify the means of redress to the complainant: the possibility to bring proceedings before the General Court or file a complaint with the European Ombudsman.

15. What if the documents requested belong to another EU institution?

According to the Memorandum of Understanding between the services of the European Parliament, the Council and the Commission on the application of article 4(4) of Regulation 1049/2001, if the requestor asks for a document belonging to other EU institutions, you should deal with her/his request, if the document is in your service's possession, and should not refer the requestor to the other institution.

You should nevertheless consult the institution from which the document originates and ask whether the document can be disclosed or not. This institution has five working days to reply to such consultation. According to the reply given you then decide to disclose the document or not.

For consulting the Council: access@consilium.europa.eu

For consulting the EP: register@europarl.europa.eu

16. Where can I find the rules governing access to documents?

1) Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents:

Access to documents requests should be treated in accordance with Regulation (EC) No 1049/2001 on regarding public access to European Parliament, Council and Commission documents.

The purpose of this Regulation is to give effect to the right of public access to documents and to set out the general principles and limits on such right. The Regulation contains the rules governing access to documents, including the definition of a document, the beneficiaries of the right of access to documents, the exceptions that may be invoked to refuse access and the procedure to be followed for processing applications.

Detailed rules for the application of Regulation (EC) No 1049/2001 are set out in the Internal rules (Commission Decision 2001/937).

2) *Regulation 354/83 concerning the opening to the public of the historical archives*

Access to documents older than 30 years is governed by the Regulation 354/83 concerning the opening to the public of the historical archives as modified by Regulation 1700/2003.

3) *Framework Agreement with the European Parliament*

The Framework Agreement on relations between the European Parliament and the Commission and Practical Guide to the Framework Agreement SEC(2010)1568 which entered into force on 26 May 2005, aims at strengthening the constructive dialogue and

political cooperation between the two institutions and to improve the information flow between them.

This Framework agreement, in its annex II, covers the transmission of confidential information to the EP when the request is made by the EP as an institution. Requests received from MEPs are not covered by the Framework Agreement and should be treated like any other request.

4) *Guidelines on handling requests for access to documents related to infringements*
SEC(2003)260/3.

5) *Guidelines on access to documents concerning procurement and grant award*
procedures SEC(2006)105.