



Access to documents and information

Staff Guidance

Handbook on Transparency

EPRS | European Parliamentary Research Service

Transparency Unit

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STAFF GUIDANCE ON ACCESS TO DOCUMENTS AND INFORMATION

Introduction

The transparency principle

The first article of the Treaty on European Union (TEU) states that decisions are taken as openly as possible (i.e. with transparency) and as closely as possible to the citizens.

Under the principle of transparency every EU citizen has the right to ask the European administration for documents or information. The legal basis of this right of access is the Treaty on the Functioning of the European Union (TFEU):

- Article 15(3) for **documents**,*
- Article 24(4) for **information**, and in accordance with the principle of good administration as defined in Article 41 of the Charter of Fundamental Rights of the European Union and Article 298 of the TFEU.*

The European Parliament has also enshrined the principle of transparency in its rules of procedure, which state that:

- Parliament shall ensure that its activities are conducted with the utmost transparency,*
- its debates shall be public,*
- committees shall normally meet in public.*

Title I of this Guide sets out the rules governing the right of access to documents and information.

Title II deals with the procedures and practices used by the departments most directly involved, such as the Unit for Transparency Unit, the Citizens' Enquiries Unit, the Legal Service, the Central Financial Unit and other departments that deal with external requests from members of the public or with internal requests from MEPs or staff.

Title III deals with the handling of requests for documents and information in the context of inter-institutional cooperation.

This guidance has no legal value. It explains best practices and lessons drawn from case law of the Court of Justice in the field of access to documents and information. This staff guidance has been drafted by the Transparency unit in cooperation with the Legal Service, the Citizens' Enquiries Unit, Parliament Data Protection Officer, the Central Financial Unit and other departments to help Parliament services in handling requests for access to documents and information.

TITLE I

RULES ON ACCESS TO DOCUMENTS AND INFORMATION

Title I sets out the specific rules governing the right of access to documents and information, and other rules that have to be taken into account when handing such a request.

CHAPTER I

SPECIFIC RULES ON ACCESS TO DOCUMENTS AND INFORMATION

I.1 ACCESS TO DOCUMENTS

I.1.1 Regulation (EC) No 1049/2001

Regulation (EC) No 1049/2001¹ (referred to below as 'Regulation 1049/2001') sets out the framework and the restrictions on the right of access to the EU institutions' documents. It states: *Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this regulation.*

Regulation 1049/2001 makes a distinction between initial applications and confirmatory applications. The first request for application for a document is considered an '**initial application**' (Articles 6 and 7 of Regulation 1049/2001). In the event of a total or partial refusal, the applicant may submit a second request, a '**confirmatory application**' (Article 7(2) and Article 8 of Regulation 1049/2001). If access is again refused, the applicant can make a complaint to the Ombudsman or **institute proceedings before the Court of Justice**.

Under Regulation 1049/2001, **transparency** should be the guiding principle when dealing with any request for access to documents. If access is refused, solid arguments should be put forward to justify the refusal.

Arguments justifying a refusal should be made on a case-by-case basis, under those exceptions as set out in Article 4 of Regulation 1049/2001, with the aim of ensuring access to as much of the content of the document as possible. Apart from documents falling under the exceptions listed in Article 4 and the special arrangements for 'sensitive

¹ 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 (*OJ L 145, 31.5.2001, p. 43*).

documents' under Article 9 of Regulation 1049/2001², all of the institutions' documents ought, in principle, to be accessible to the public.

This is the **administrative procedure** derived from Regulation 1049/2001 (1049/2001 procedure).

1.1.2 The European Parliament's Rules of Procedure

Rules 115 and 116 of Parliament's Rules of Procedure set out provisions for **transparency of Parliament's activities** and the conditions for public access to documents. Rule 116 states that:

- the term 'Parliament documents' means any content within the meaning of Article 3(a) of Regulation 1049/2001, which has been drawn up or received by officers of Parliament, by Parliament's governing bodies, committees or interparliamentary delegations, or by Parliament's Secretariat,
- documents drawn up by individual Members or political groups are Parliament documents for the purposes of access to documents if they are tabled under the Rules of Procedure,
- Parliament shall establish a register of Parliament documents,
- categories of documents which are directly accessible shall be set out in a list adopted by the Bureau and published on Parliament's website.

1.1.3 Bureau decisions on public access to Parliament's documents

Alongside Parliament's internal rules, the Bureau has taken two decisions on public access to documents held by Parliament:

- The decision of 28 November 2001 on rules governing public access to Parliament documents³,
- The decision of 8 March 2010 on documents that are directly accessible and the electronic register of references (ERR)⁴.

The Bureau decision of 28 November 2001 covers access to existing documents, those drawn up by or received by Parliament.

It states that:

- *requests for information are to be dealt with on the basis of other provisions, (eighth recital),*

² Under this regulation, 'sensitive documents' are documents originating from the institutions or agencies established by them, the Member States, third countries or International Organisations, classified as 'TRÈS SECRET/TOP SECRET', 'SECRET' or 'CONFIDENTIEL' in certain areas.

³ Bureau decision of 28 November 2001 on *Rules governing public access to European Parliament documents*, amended by the Bureau on 22 June 2011 and published in the Official Journal of the European Union (OJ C 216, 22.7.2011, p.19).

⁴ Bureau decision of 8 March 2010, PE 432.279/BUR/Ann 1.

- the decision does not *govern interinstitutional access to and forwarding of documents, which are dealt with in interinstitutional agreements* (seventh recital),
- Members and staff of the institutions have special access rights, which they can exercise without referring to Regulation 1049/2001 (sixth recital).

The decision of 28 November 2001 also stipulates that Regulation 1049/2001 applies when any initial request for access to a document is made (see Article 7):

- by using the form made available in the electronic register of references (ERR) or
- by referring explicitly to the right of access to the documents, as defined under Regulation 1049/2001.

However, the 1049/2001 procedure does not apply to all requests for documents where a specific procedure provides for **privileged access**. This privileged access is set out in:

- Parliament's Rules of Procedure,
- the Staff Regulations,
- the Financial Regulation.

The Bureau decision of 8 March 2010 lists **Parliament** documents which are **directly accessible** to the public.

This list reflects the structure of the **electronic register of references** (ERR), organised by type of document, such as documents relating to parliamentary activity, Parliament general information documents, official documents forwarded by other institutions, third-party documents, budgetary procedures and documents already in the public domain disclosed in the framework of Regulation 1049/2001.

The ERR is the instrument providing public access to documents, created on Bureau decision to implement Article 11 of Regulation 1049/2001. The ERR contains document references; some of these documents are directly accessible and others are accessible on request.

1.1.4 Internal rules on administrative handling of confidential documents⁵

The internal rules on the administrative handling of confidential documents set out special arrangements for dealing with requests for public access to confidential documents, meaning documents containing 'classified information'⁶ or 'other confidential information'⁷. In so far as such a document can be disclosed to the public under Regulation 1049/2001, declassification and/or unmarking must take place before disclosure⁸.

⁵ Bureau decision of 15 April 2013: *Rules governing the treatment of confidential information by the European Parliament*, OJ C 96, 1.4.2014, p. 1; see also the future implementing measures (*Handling instructions*) to be adopted by the Secretary-General.

⁶ See Article 2(c) and (d) of the Bureau decision of 15 April 2013.

⁷ See Article 2(f) of the Bureau decision of 15 April 2013.

⁸ See in particular the Secretary-General's handling instructions nos 1 and 6, which are due to be adopted.

I.2 ACCESS TO INFORMATION

I.2.1 Guide to the obligations of officials and other servants of the European Parliament

In applying the transparency principle to requests for information, a distinction has to be made between 'document' and 'information'. This distinction has been defined by:

- the European Ombudsman in several opinions,
- the Court of Justice in its judgments.

The Bureau decision of 28 November 2001 states that 'requests for information are to be dealt with on the basis of other provisions' (eighth recital). This means that **Regulation 1049/2001 does not apply to requests for information.**

Requests for information, in whatever form, are thus dealt with under the **Guide to the obligations of officials and other servants of the European Parliament** or Code of Conduct adopted by the Bureau on 7 July 2008⁹ and the European Ombudsman's Code of Good Administrative Practice, although the latter has not been formally adopted by Parliament.

According to Chapter III of the Code of Conduct, dealing with relations with citizens:

- Parliament must be as transparent and open as possible and reply to requests for information in the most appropriate way,
- the administration must send a positive or negative reply to applicants as soon as possible after receiving any request by letter or e-mail,
- the administration must send an acknowledgement of receipt if a detailed reply cannot be provided promptly,
- the administration must also ask the applicant for further clarification if the question is unclear.

Parliament thus has an obligation to respond to applicants. This requirement is all the more important in that there is a legal obligation to provide information. This is established under Article 13 of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (referred to below as 'Regulation 45/2001')¹⁰, which gives applicants a special right of access to information concerning the processing of personal data relating to them.

Nevertheless, **Parliament is not obliged to answer communications containing inappropriate content** that is repetitive, abusive or pointless.

⁹ Bureau decision of 7 July 2008: *Guide to the obligations of officials and other servants of the European Parliament* (PE 422.596/BUR).

¹⁰ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (*OJ L 8, 12.1.2001*).

Parliament must refuse to transfer information where there are legal or administrative limitations or prohibitions on disclosure. Examples include cases where Parliament considers that the disclosure of information to the general public may breach confidentiality requirements associated with the information, such as the rights of third parties or **internal rules on the processing of confidential information**¹¹.

¹¹ Bureau decision of 15 April 2013: *Rules governing the treatment of confidential information by the European Parliament*, OJ C 96, 1.4.2014, p. 1; see also the implementing measures (Handling instructions) due to be adopted by the Secretary-General.

CHAPTER II

OTHER APPLICABLE RULES ON ACCESS TO DOCUMENTS OR INFORMATION

II.1 REGULATION (EC) No 45/2001

II.1.1 *The framework*

The right of access to documents and information is limited by the **principle of protection of personal data** as set out in Regulation 45/2001.

Regulation 45/2001 lays down **the framework and limits for the processing of personal data and the free movement of such data**. It also provides for the transfer of personal data, depending on whether the recipient is:

- (a) a Community institution or body,
- (b) a recipient other than a Community institution or body, subject to the national law of a Member State adopted pursuant to Directive 95/46/CE¹²,
- (c) a recipient, other than a Community institution or body, that is not bound by Directive 95/46/EC.

Personal data transfers following requests for documents or information from other Community institutions or bodies and requests by Member State national authorities are dealt with under Title III of this guide.

Personal data transfers in response to requests from applicants other than Community institutions or bodies, for documents and information that are not covered by Directive 95/46/EC are subject to specific conditions set out in Article 9 of Regulation 45/2001.

When a request for access to a document or for information is received, **the department responsible** (the department which is author of the document or the department holding the document or information requested) is required to check whether the document or information requested contains personal data.

Checking is carried out:

- with the help, in particular, of Parliament's Data Protection Officer and, where appropriate, of the Legal Service,
- in accordance with Article 2(a) of Regulation 45/2001,
- taking account of Articles 5, 6, 8 and 9 of Regulation 45/2001 and, where necessary, Article 18 of Regulation 45/2001.

¹² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (*OJ L 281, 23.11.1995, p.31*).

II.1.2 The transfer of personal data to recipients subject to the national law of a Member State adopted pursuant to Directive 95/46/EC

The transfer of documents or information containing personal data concerning third parties must meet **the following conditions**:

(a) **Lawfulness of processing**, which must be justified by one of the following cases (Article 5 of Regulation 45/2001):

- processing is necessary for the performance of a task carried out in the public interest, or
- processing is necessary for compliance with a legal obligation, or
- processing is necessary for the performance of a contract, or
- the data subject has unambiguously given his or her consent, or
- processing is necessary in order to protect the vital interests of the data subject.

and,

(b) **The necessity of having data transferred** (Article 8(b) of Regulation 45/2001).

This must be established by the applicant who will receive the data and must not prejudice the **legitimate interests** of the person concerned.

To sum up, personal data concerning a third party can be transferred in response to a request for documents or information only if examination of the request proves that:

- the transfer is **lawful**,
- the **necessity for the transfer** has been proved by the applicant who will receive the data and,
- the transfer will not prejudice the **legitimate interests** of the person concerned.

Applicants who wish to receive documents or information containing personal data concerning a third party must demonstrate the necessity of the transfer of the data so that the administration can weigh this need against the legitimate interests of the person concerned.

When the person concerned has explicitly given advance consent to disclosure of data concerning him or her or if the data in question have already been lawfully disclosed, in principle a transfer of the data is no longer liable to prejudice the legitimate interests of the person concerned.

The transmission of personal data operates on an individual basis. Personal data are not publishable or accessible to the general public, thus transmission does not have an *erga omnes* effect.

Furthermore, when the data are transferred, the department responsible should inform the applicant who will receive the data that the data being transferred are subject to specific legal obligations laid down in national law, starting from the time of transfer.

II.1.3 The prohibition on processing certain categories of data

Article 10 of Regulation 45/2001 states that *the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, is **prohibited**.*

The ban on processing does not apply if one of the exceptions cited in Article 10 applies. These include, for example, express prior consent, proof that the transfer is necessary to protect vital interests or it can be demonstrated that the data have already been made public. If one of these exceptions is confirmed, the department responsible must handle the request for access taking into full consideration any demonstration of necessity of transfer.

II.2 THE FINANCIAL REGULATION AND ITS RULES OF APPLICATION

II.2.1 The framework

Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (Financial Regulation - FR)¹³, and Delegated Regulation (EU) No 1268/2012, on the rules of application of Regulation (EU, Euratom) No 966/2012 (rules of application - RAP)¹⁴ set out specific procedures for **privileged access** for non-selected candidates and tenderers to documents and information on **procurement and grant award procedures**.

II.2.2 Requests for access to documents and information on procurement procedures

The procedure for launching invitations to tender is laid down in Title V of the FR.

The contracting authority must publish general information on the outcome of the procedure, such as the name, place, amount, nature and subject of the contract. Under Article 113 of the FR and Article 161 of the RAP, the contracting authority is required to **inform** candidates and tenderers individually, as **interested parties**, of the decisions taken concerning the award.

The FR and the RAP recognise that non-selected candidates and tenderers have a **privileged right of access** implicit to the procedure, which should enable them to assess their position in relation to the successful tenderer.

Thus the rules require the contracting authority, **following a written request**, to provide additional information to help the interested parties to understand why their request to participate (candidates) or their tender (tenderers) has not been accepted.

¹³ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (*OJ L 298, 26.10.2012, p.1*).

¹⁴ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (*OJ L 362, 31.12.2012, p.1*).

Unsuccessful tenderers who make a written request and whose tender complies with the specifications may also obtain information about the characteristics and relative merits of the tender that has been accepted, including the name of the tenderer.

The rules also require the information to be sent within **15 calendar days** of receipt of the request.

II.2.3 Requests for access to documents and information on grant award procedures

The procedure for awarding grants is described under Title VI of the FR.

Article 35 of the FR and Article 21 of the RAP require a certain amount of data concerning grants to be published annually on Parliament's website.

Article 133 of the FR states: *The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the institution concerned shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria.*

Article 205 of the RAP states that rejected applicants shall be informed as soon as possible *and in any case within 15 calendar days after information has been sent to the successful applicants.*

TITLE II

IN PRACTICE: HANDLING REQUESTS FOR DOCUMENTS AND INFORMATION

Title II deals with general procedures for dealing with requests for documents or information or both and provides examples of typical cases for which a specific practice has been established.

CHAPTER III

HANDLING EXTERNAL REQUESTS FOR DOCUMENTS

III.1 THE GENERAL FRAMEWORK

III.1.1 The transparency principle

Regulation 1049/2001 states that openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.

The aim is therefore is to enable **the fullest possible public access to documents**, particularly in relation to legislative procedures.

Consequently any refusal to grant access to documents has to be duly justified, on a case-by-case basis, on the basis of the exceptions provided under Article 4 of Regulation 1049/2001, which have to be strictly interpreted and applied.

III.1.2 The general procedure

Under Bureau decision of 28 November 2001, the **Transparency Unit** is the **competent department** for dealing with requests for access to documents.

Any request for access to documents which makes reference to Regulation 1049/2001 must be transferred to the Transparency Unit by the department which received the request, as soon as possible. The Transparency Unit must reply **within 15 working days** of receipt of the request.

To this end, the Transparency Unit, as the **competent department**, coordinates the reply with the **department responsible** (the department which is author or holder of the document requested). The department responsible has to provide the document(s) requested to the Transparency Unit and suggest a course of action to be taken **within five working days**, in accordance with Article 9 of the decision of 28 November 2001.

Compliance with the deadline is all the more important in cases where access is refused on the basis of the exceptions set out in Article 4 of Regulation 1049/2001.

The **service that holds the document** must therefore:

- **make the document available** to the Transparency Unit, which is responsible for preparing Parliament's reply, and
- **give advice on action to be taken**, particularly with regard to possible exceptions that would justify a refusal to disclose the document (full or partial).

If the response to an initial request is **positive**, the answer is sent to the applicant by the Transparency Unit under the authority of the Secretary-General.

In the event of a **refusal** of an initial application for access, **full or partial**, the decision is made by the Secretary-General, on proposal by the Transparency Unit (Article 12 of the decision of 28 November 2001). Following a refusal, full or partial, if the applicant makes a **confirmatory application**, the decision is made by the Vice-President responsible (Article 15 of the decision of 28 November 2001). The Legal Service may be asked for its opinion at any stage of the procedure.

In accordance with Article 9(c) of the Bureau's decision of 2 July 2012 on the *Rules on document management in the European Parliament*¹⁵, document management officers (DMOs) appointed in each directorate-general or equivalent administrative body are to be copied into any document request that the Transparency Unit sends to departments responsible and coordinate the reply within their directorate-general.

III.2 TYPICAL CASES OF EXTERNAL REQUESTS FOR DOCUMENTS

III.2.1 External requests for documents that are part of a legislative procedure

The principles of transparency and the fullest possible access are of prime importance, particularly when dealing with requests for documents that are part of legislative procedures, including internal or preparatory documents such as reports containing negotiating mandates, trialogue documents, reports drawn up after trialogues, compromise texts and amendments, etc.

According to the Turco case law, documents that are part of a legislative procedure must in principle be directly and fully accessible to the public.

The Transparency Unit deals with external requests for access to documents that are part of legislative procedures, in cooperation with the departments responsible. Any refusal to grant access to documents that are part of a legislative procedure has to be duly justified, on a case-by-case basis, on the basis of the exceptions provided in Article 4 of Regulation 1049/2001, which have to be strictly interpreted and applied.

By way of example, Article 4(3) of Regulation 1049/2001 provides for the possibility of refusing access to an internal or preparatory document if its disclosure would seriously

¹⁵ Bureau decision of 2 July 2012 on the *Rules on document management in the European Parliament* (PE422.611/BUR)

undermine Parliament's decision-making process, unless there is an overriding public interest in its disclosure.

Nevertheless, as confirmed by the Court of Justice's case law¹⁶, access to an internal or preparatory document cannot be refused on the grounds that the decision has not yet been taken, as the fact that a document is at a preliminary stage does not provide sufficient justification alone for application of the exception. In order to refuse access to a document in a legislative process, it is also necessary to explain how access might **specifically and effectively** undermine a protected interest; the risks must be reasonably foreseeable and not purely hypothetical.

Consequently, in order to refuse access to a document in a legislative process, the department responsible must provide the Transparency Unit with the reasons why access to the document would **specifically and effectively** undermine Parliament's decision-making process, and establish that there is no **overriding public interest** in disclosing the document.

III.2.2 External requests for legal documents

The Transparency Unit handles external requests for documents relating to *ongoing proceedings* in cooperation with the Legal Service, subject to the conditions established by EU case law.

In the event of such requests, it should be checked whether disclosure of legal pleadings in ongoing proceedings is likely to undermine the protection of court proceedings. If this is the case, Parliament may envisage refusal of access as laid down in Article 4(2) of Regulation 1049/2001.

III.2.3 External requests for declarations of Members' financial interests (DFI)

The Transparency Unit handles requests for declarations of Members' financial interests in cooperation with the Members' Administration Unit.

Members are required to fill in and keep up-to-date a declaration of financial interests that is directly accessible on the Europarl website on each individual Member's page. The original versions of the declarations are deposited with the Members' Administration Unit and are accessible to the public on request.

The applicant can ask for a copy of the original version but if there are a considerable number of documents involved, the applicant is asked to consult the documents in person (Brussels or Luxembourg).

¹⁶ Judgment of 17 October 2013 in case C-280/11 P, Council v Access Info Europe.

III.2.4 External requests for lists of intergroups and their declarations of financial interests

The Transparency Unit handles external requests for documents relating to intergroups and their declarations of financial interests, in cooperation with the Members' Administration Unit.

The intergroups are comprised of MEPs from all political groups and parliamentary committees, for informal exchanges of views on particular themes and promote contacts between MEPs and civil society. Intergroups are not Parliament bodies.

The list of intergroups for the current parliamentary term, their membership and declarations of financial interests are directly accessible to the public on the intergroups' page on *Europarl*.

The lists of intergroups from previous parliamentary terms, their membership and declarations of financial interests are deposited with the Members' Administration Unit and are accessible to the public on request.

Applicants can ask for a copy of a list or a declaration of financial interests but if there are a considerable number of documents involved, the applicant is asked to consult the documents in person (Brussels or Luxembourg).

III.2.5 External requests for documents on financing political parties and European foundations

The Transparency Unit handles external requests for documents relating to the financing of political parties and European foundations, in cooperation with the Political Structures Financing Unit.

European political parties may receive annual financial support from Parliament in the form of an operating grant. The funding rules are set out in Regulation (EC) No 2004/2003 (currently being revised)¹⁷. The implementing procedures were adopted by decision of Parliament's Bureau of 26 March 2004¹⁸. The administrative aspects are dealt with by the Political Structures Financing Unit in Parliament's Directorate-General for Finance (DG FINS).

The public can find various financial statements and tables setting out the amounts allocated to political parties and foundations since 2004 on *Europarl*, under the heading *About Parliament – Grants to political parties and foundations*.

¹⁷ Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (*OJ L 297, 15.11.2003, p. 1*).

¹⁸ Bureau decision of 29 April 2004 laying down the procedures for implementing Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules governing their funding, consolidated version last modified by the Bureau decision of 13 January 2014.

CHAPTER IV

HANDLING EXTERNAL REQUESTS FOR INFORMATION

IV.1 THE GENERAL FRAMEWORK

IV.1.1 *The general procedure*

The Bureau decision of 28 November 2001 concerning public access to European Parliament documents states that *requests for information are to be dealt with on the basis of other provisions* (eighth recital). Thus **Regulation 1049/2001 does not apply to requests for information.**

Requests for information, in whatever form, are dealt with under Parliament's Code of Conduct, and the European Ombudsman's Code of Good Administrative Behaviour, even though the latter has not been formally adopted by Parliament.

In practice it is possible to identify typical cases of external requests for information, which come primarily from the general public, journalists or interested parties.

The most significant cases of external requests for information are described below.

IV.2 TYPICAL CASES OF EXTERNAL REQUESTS FOR INFORMATION

IV.2.1 *External requests for general information*

An **external request for general information** means a request from a member of the public for information about Parliament's activities, organisation and prerogatives, with the aim of obtaining a better understanding of Parliament and its activities.

External requests for general information are usually addressed to the Citizens' Enquiries Unit, which has the **primary responsibility** for handling such requests.

The Citizens' Enquiries Unit must respond **as soon as possible** after receipt of the request. According to the Code of Good Administrative Practice, it is good practice to send an acknowledgement of receipt if the department handling the request is not sure whether it is possible to send a substantive reply within two weeks.

However, external requests for general information may also come to other departments in Parliament. In that case the department that receives the request can contact the Citizens' Enquiries Unit to see how the request should be handled and whether it should be reassigned.

IV.2.2 External requests for specific information

An **external request for specific information** means any request from a member of the public for information that is not in the public domain and that concerns the activities, organisation and specific tasks of a Parliament department. The **department responsible for handling the request** is the department that is author or holder of the information.

The department responsible must respond **as soon as possible** after receipt of the request. According to the Code of Good Administrative Practice, it is good practice to send an acknowledgement of receipt if the department handling the request thinks it is not possible to send a substantive reply within a period of two weeks.

Any request for specific information that has a bearing on the particular responsibilities of another department must be reassigned as soon as possible by the department concerned to the department responsible, which will thus be made responsible for handling the request. The department that received the request originally must inform the applicant that the request has been transferred to the department responsible. It is also possible that external requests for specific information will be sent to the Citizens' Enquiries Unit, which should contact the department responsible with a view to reassigning the request for information and its processing.

IV.2.3 External requests for specific information involving several departments

Any external request for specific information that concerns the activities, organisation or tasks of **several departments** in Parliament must be reassigned as soon as possible by the department that receives the request to the Citizens' Enquiries Unit, which is **responsible for coordinating and sending the reply**.

The Citizens' Enquiries Unit has to provide the answer **as soon as possible** after receipt of the request.

To this end, the departments responsible should send it the information requested **as soon as possible** after receipt of the request.

IV.2.4 Requests for information from journalists

Parliament's Directorate-General for Communication (DG COMM) is responsible for handling requests for information from journalists. DG COMM has prepared information packs that can be used to answer journalists' specific requests.

If necessary, DG COMM will assess on a case-by-case basis whether certain requests by journalists should be handled in cooperation with the Citizens' Enquiries Unit, the Transparency Unit and/or the Data Protection Officer, in the light of Regulation 1049/2001 or Regulation 45/2001.

CHAPTER V

HANDLING EXTERNAL REQUESTS FOR DOCUMENTS AND INFORMATION: SPECIFIC CASES

V.1 EXTERNAL REQUESTS FOR DOCUMENTS AND INFORMATION RELATING TO PETITIONS

V.1.1 Requests for documents and information by a petitioner

The 1049/2001 procedure does not apply to requests for documents for which there is a special privileged access procedure.

Consequently, any request by a petitioner, to the Transparency Unit or the Citizens' Enquiries Unit, for documents or information that will provide additional information concerning his or her own petition, is considered in the framework of **a petitioner's privileged right of access** to his or her own file. The request is thus automatically reassigned to the secretariat of the Petitions Committee, as the department responsible.

V.1.2 Requests for documents by third parties introduced under Regulation 1049/2001

Any member of the public or third party can request access to documents relating to a petition file, by citing Regulation 1049/2001. If the applicant is not an interested party, the 1049/2001 procedure applies. In that case, the Transparency Unit deals with requests for documents in cooperation with the department responsible, in the light of the exceptions set out in Article 4 of Regulation 1049/2001.

The **department responsible** is required to transmit the document(s) requested to the Transparency Unit and suggest a course of action to be taken **within five working days**, in accordance with Article 9 of the decision of 28 November 2001. Any refusal of disclosure must be justified on the basis of the exceptions listed in Regulation 1049/2001.

The Rules of Procedure provides for certain conditions under which the name of the petitioner and the content of the petition may not be disclosed to the public.

V.2. EXTERNAL REQUESTS FOR DOCUMENTS AND INFORMATION CONCERNING PUBLIC PROCUREMENT OR GRANT AWARD PROCEDURES

V.2.1 *External requests for documents and information relating to procurement contracts*

The 1049/2001 procedure does not apply in the first instance to requests for documents for which there is a special privileged access procedure.

Consequently, **any request for access to documents** concerning a **procurement procedure** that comes from a **tenderer** who is identified as an **interested party** is dealt with by the **department responsible for the public procurement procedure** in accordance with the "interested parties" procedure. In such cases, the department responsible should assess the request in accordance with Article 113 of the FR and Article 161 of the RAP.

If an unsuccessful tenderer requests access to documents on the grounds of Parliament's duty of transparency, the department should deal with the tenderer's request under the "interested parties" procedure in accordance with the FR. If the tenderer insists on application of Regulation 1049/2001, the department responsible should refer the request to the department that takes responsibility, which is the Transparency Unit.

A member of the public or any third party can request access to documents concerning an invitation to tender by citing Regulation 1049/2001. If the applicant is not an interested party, the 1049/2001 procedure applies. In that case, the Transparency Unit deals with requests for documents in cooperation with the department responsible, in the light of the provisions of the FR and the exceptions set out in Article 4 of Regulation 1049/2001.

The **department responsible** is required to transmit the document(s) requested to the Transparency Unit and suggest a course of action to be taken **within five working days**, in accordance with Article 9 of the decision of 28 November 2001. Any refusal of disclosure must be justified on the basis of the exceptions provided in Regulation 1049/2001.

Any request for access to documents concerning a **procurement procedure** entered by a **tenderer** who is identified as an **interested party** is dealt with by the **department responsible for the public procurement procedure**. In that case, the department responsible should assess the request in accordance with Article 113 of the FR and Article 161 of the RAP.

Nevertheless, the Citizens' Enquiries Unit remains the department responsible for handling any requests for general information that it receives concerning public procurement procedures. If requests for general information are sent to another Parliament department, the department that received the request must contact the Citizens' Enquiries Unit to see how the request should be handled and whether it should be reassigned.

V.2.2 External requests for documents and information relating to grants

In the absence of a specific procedure in the FR that gives interested parties or third parties access to documents relating to grants, the 1049/2001 procedure applies, provided specific reference is made to it in the request. In that case, the Transparency Unit deals with request for documents in cooperation with the department responsible, in accordance with the provisions of the FR and the exceptions set out in Article 4 of Regulation 1049/2001.

The **department responsible** is required to transmit the document(s) requested to the Transparency Unit and suggest a course of action to be taken **within five working days**, in accordance with Article 9 of the decision of 28 November 2001. Any refusal of disclosure must be justified on the basis of the exceptions provided in Regulation 1049/2001.

In the absence of a specific procedure in the FR that gives interested parties or third parties access to specific information on grant award procedures, these requests are dealt with by the department responsible in accordance with general procedures for dealing with requests for information.

CHAPTER VI

HANDLING INTERNAL REQUESTS FOR DOCUMENTS AND INFORMATION

VI.1 INTERNAL REQUESTS FOR DOCUMENTS

VI.1.1 Internal requests for documents: general procedure between departments

MEPs and Parliament staff sometimes cite Regulation 1049/2001 when they request documents.

Any request by MEPs, their assistants or a member of staff that refers to Regulation 1049/2001 when requesting an internal document is reassigned to the **department responsible for that document, which is thus responsible for responding to the request**.

Use of the 1049/2001 procedure could potentially lead to a **pre-litigation procedure** between Parliament and the MEP or official concerned, which is why the Transparency Unit channels such requests through **specific internal administrative procedures**, in accordance with Rule 5(4) and Rule 160 of Parliament's Rules of Procedure and the Bureau decision of 28 November 2001. The Transparency Unit should inform such applicants that they have a privileged right of access.

VI.1.2 MEPs requests for documents: consultation procedure

Members who request access under Regulation 1049/2001 should be informed that they have a **privileged right of access** as laid down in Rule 5(4) of the Rules of Procedure, whereby Members are entitled to inspect any files held by Parliament.

Nevertheless, the **right of inspection** set out in the Rules of Procedure is limited:

- **to the inspection of personal accounting documents and files;**
- in accordance with the exceptions laid down in Rule 5:
 - i. the right to protection of personal data or the protection of the commercial interests of a third party,
 - ii. the right to protection of the institution's internal operation, such as exceptions providing for protection of legal advice or protection of the internal decision-making process,
 - iii. the right to complete confidentiality of documents relating to judicial proceedings while the proceedings are going on, so the Legal Service is able to defend Parliament effectively.

Taking these restrictions into account, the department responsible can offer Members to consult the files in the offices of the directorate-general concerned. As this is only a right of inspection, Members are not in principle able to remove the documents from the directorate-general's offices.

Account must also be taken of the stage of procedure reached for a specific file that a Member wishes to consult. If the content of the file is not available for wider public disclosure, consultation by a Member must be subject to an undertaking on his or her honour not to disclose the information without Parliament's prior agreement.

Where **confidential information** is concerned, the rules and procedures set out in the Bureau decision concerning the rules governing the treatment of confidential information¹⁹ and the implementing rules apply.

VI.1.3 MEPs requests for information products

The Members' Research Services Directorate in the Directorate-General for Parliamentary Research Services (DG EPRS) is the **department responsible** for handling **Members' requests for information products**.

The Members' Research Services Directorate consists of specialised thematic units; it provides a dedicated research capacity for individual Members and generates a wide range of accessible briefing materials for all Members, across the various EU policy fields.

It also offers personal briefing sessions for individual Members as part of its normal range of services.

More specifically the Members' Research Services Directorate can provide:

- tailored, on-demand, analysis and research to individual Members, in response to their requests in respect of policies, issues and legislation in any field of European Union competence; and
- general briefing material of a clear, readable and content-rich kind, which is made available pro-actively and collectively to all Members, in any field of European Union competence.

Any request from Members for an information product in the **European Union's various areas of activity** should be assigned to the Members' Research Services Directorate as the department responsible for handling it, where appropriate in cooperation with the On-site and Online Library Services Unit in DG EPRS's Directorate for the Library.

¹⁹ Bureau decision of 15 April 2013 concerning the rules governing the treatment of confidential information by the European Parliament.

VI.1.4 Staff requests for documents for professional purposes

The processing of requests for documents by members of staff for **professional purposes** is based on the **need-to-know principle**. Members of staff who need a document for their work should contact the department responsible, which will consider the conditions in which the document may be consulted.

Members of staff are bound by the duty of discretion laid down in the Staff Regulations.

The electronic register of references (ERR) contains references for Parliament documents since 2001 and is a useful search tool. If a document cannot be found in the ERR database, **the member of staff should contact the department responsible**, which is the department that should deal with the request.

VI.2 INTERNAL REQUESTS FOR INFORMATION

VI.2.1 MEPs' requests for information: general procedure

When carrying out their duties, MEPs may at any time ask the administration to provide information on a particular subject.

Any department that is asked for information by a Member should first check that it is indeed the department responsible for handling the request. If it is not, it should assign the request to the department responsible and inform the Member that another department will be dealing with the request.

VI.2.2 MEPs requests sent to the Members' Hotline

The Members' Research Services Directorate in DG EPRS has set up a Members' Hotline that provides Members with a priority service; the Member should be contacted **within three hours** of receipt of the request.

Procedures for accessing the Members' Hotline are set out on DG EPRS's website.

VI.2.3 MEPs' requests for practical information: One-Stop Shop

The One-Stop Shop for Members takes the form of a front desk offering priority treatment to Members by liaising directly with the specialised directorates-general whenever the service needed is not directly within the competence of the One-Stop Shop itself.

Requests from Members should receive a **first reply within two hours**, followed by a **full reply within 24 hours**.

Members also have the option of contacting departments directly.

For requests relating to political work or advice on the statutory rights and obligations of parliamentary assistants, the One-Stop Shop for Members provides information on whom to contact in the department concerned.

Information on how to access the One-Stop Shop for Members can be found on the Intranet.

VI.2.4 Staff requests for information for professional purposes

The processing of requests for information by staff **for professional purposes** is based on the **need-to-know principle**. Staff who need information for their work should contact the department responsible, which will consider the conditions in which the information may be provided.

Members of staff are bound by the duty of discretion laid down in the Staff Regulations.

TITLE III INTERINSTITUTIONAL COOPERATION

Under Rule 140(1) of the Rules of Procedure, Parliament may enter into agreements with other institutions in the context of the application of the Treaties or in order to improve or clarify procedures. *Moreover, Article 4 of the Treaty on European Union lays down the principle of sincere cooperation between the European Union and the Member States.*

CHAPTER VII

COOPERATION WITH OTHER EU INSTITUTIONS

VII.1 HANDLING REQUESTS FOR DOCUMENTS AND INFORMATION BETWEEN INSTITUTIONS

Regulation 1049/2001 does not cover access to and the transmission of documents between the institutions. These are subject to specific interinstitutional agreements, as set out in:

- the Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC;
- the Framework Agreement on relations between the European Parliament and the European Commission;
- the Joint Declaration of the European Parliament, the Council and the Commission of 13 June 2007 on practical arrangements for the codecision procedure (Article 251 of the EC Treaty);
- the Interinstitutional Agreement on better law-making;
- the political declaration signed by the European Parliament, the Council and the Commission entitled 'Communicating Europe in Partnership';
- the Code of conduct for negotiating in the context of the ordinary legislative procedures;
- the Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism.

The framework agreements that govern the transmission of confidential information between the institutions, particularly the agreements signed between Parliament, the Commission and the Council, apply in the cases specifically covered by these agreements.

The regulatory texts and the Bureau decision on confidential information apply. The same applies in relation to Regulation 45/2001 if a transfer of personal data is involved.

CHAPTER VIII

COOPERATION WITH MEMBER STATES

VII.2 HANDLING REQUESTS FOR DOCUMENTS AND INFORMATION FROM MEMBER STATES' AUTHORITIES

The Member States' judicial authorities occasionally ask Parliament for documents and/or information for use in national investigations, for example in relation to payments made to an undertaking that has provided services to Parliament.

These requests do not fall within the remit of Regulation 1049/2001, as the documents and information provided to the national authorities are not for disclosure to the general public (disclosure with *erga omnes* effect). These requests are dealt with under Article 4 of the Treaty on European Union (TEU), which forms the legal basis for the **principle of sincere cooperation between the European Union and the Member States**.

If these requests involve personal data, the provisions of Regulation 45/2001 apply.

The authority responsible for replying to requests by the Member States' authorities is the President of Parliament, who is assisted by the department which is the author or which holds the documents or information requested, if necessary in cooperation with the Legal Service.

It should be noted that Article 15 of the Protocol on the Privileges and Immunities of the European Union requires the institutions to communicate to Member State governments the names, grades and addresses of officials and other servants likely to benefit from the conditions set out in the Protocol.

The identification of the beneficiaries of the conditions set out in the Protocol constitutes in itself a specific category of requests for documents.

