



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL COMMUNICATION

Director-General

Brussels  
COMM

## NOTE FOR THE ATTENTION OF HEADS OF REPRESENTATION AND HEADS OF UNIT

**Subject: Access to documents**

I am writing to you by way of reminder of the **procedures to be followed** when we receive a request for access to documents.

According to the provisions laid down in Article 15(3) of the Treaty on the Functioning of the European Union, any citizen has a right of access to documents of the EU's institutions, bodies, offices and agencies. These provisions are further detailed in Regulation (EC) No 1049/2001<sup>1</sup> regarding public access to European Parliament, Council and Commission documents.

Against this legal background, any request for information involving access to a Commission or a third-party document should be dealt with according to the following procedure:

- The above 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, it should be considered as a mere request for information to be processed in accordance with the provisions laid down in the Code of Good Administrative Behaviour.<sup>2</sup>

Please note that a request for information may also contain a demand for access to a specific document related to the information in question, to be treated separately.

Should a parliamentary question contain a request for access to documents the procedure is twofold: the parliamentary question should be processed by the competent service in DG COMM, which should inform C.1 of the request for documents. This request should be registered in GESTDEM and answered separately.

<sup>1</sup> <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:145:0043:0048:EN:PDF>

<sup>2</sup> [https://myintracomm.ec.europa.eu/hr\\_admin/en/code/Pages/conduct.aspx](https://myintracomm.ec.europa.eu/hr_admin/en/code/Pages/conduct.aspx)

- A copy of the request for access to documents should be sent, as soon as possible, to the team in charge of access to documents in DG COMM, which will register the request in GESTDEM (shared database for applications for access to documents) and will send an acknowledgement of receipt to the applicant (COMM ACCESS DOCUMENTS mailbox).

Unit C.1 is the service in DG COMM responsible for managing all the requests for access to documents (**contact person:** [REDACTED]). They will see with you how best to proceed with each specific request. In fact it may well be the case that in view of the technical nature of the issue at stake, a Representation itself would be best placed to provide a reply, but always in full coordination with C1.

- Under the principle of transparency, citizens are entitled to the widest possible access to Commission documents (Article 1 of Regulation (EC) No 1049/2001)
  - **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 the access to documents team.
  - Should additional time be needed to deal with the request, you should send the applicant a message, before the expiry of the 15-day deadline, notifying them of the extension 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.
  - 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 the request. In that case, the 15-working day deadline for reply will apply only from the date by which you receive this new 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 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.<sup>3</sup>
  - 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.
- In the event of 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/her right to appeal to the Secretary-General of the Commission (article 7 of Regulation (EC) No 1049/2001: confirmatory application), who will then take a final decision on behalf of the Commission.

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<sup>3</sup> <https://myintracomm.ec.europa.eu/corp/security/EN/Pages/index.aspx>

The applicant can then challenge this decision either by filling a complaint to the Ombudsman or by appeal to the Tribunal.

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.

- When **documents from third parties** or Member States are involved they should be consulted to obtain their opinion (or their agreement in the case of a MS) on whether the document may be disclosed. Third party objection to disclosure is tantamount to refusal for access to the document or the parts of the document concerned. The Commission can decide to disregard the opposition of a third party only at the stage of the confirmatory 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 the Director-General** [REDACTED]

[REDACTED] :

<https://myintracomm.ec.europa.eu/corp/sg/fr/docinter/Pages/links.aspx>.

In view of the above, I would appreciate that **you appoint** an official in each Representation and Unit who would act as the **contact point** for any request for access to documents and who could, in turn, liaise with Unit C.1 at the headquarters. Please provide the name of your contact person to [REDACTED]

[REDACTED]

(e-signed)  
Gregory Paulger

Copy: J.-P. Vandersteen, S. Bouygues, Y. Tiveus G. Zupko, [REDACTED]