

REQUESTS FOR ACCESS TO DOCUMENTS A SHORT PRACTICAL GUIDE TO REGULATION 1049/2001¹

Scope of the Regulation

The Regulation applies to **all documents** held by the institution, *i.e.* that it has produced or received from a third party (including the Member States, other Community or non-Community institutions and bodies and third countries). It also includes documents in the archives if not older than 30 years.

Definition of a document

A document is defined as **any content whatever its medium** (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.

The general principle

Members of the public have a right to request **access to any document** held by the EU institutions, bodies, offices and agencies, subject only to a limited number of exceptions. Access can only be refused if disclosure would harm a specific public or private interest, such as public security, privacy, commercial interests, legal proceedings and investigations².

The refusal should be based on a **concrete analysis** of the documents to which access is requested. Any decision refusing all or partial access has to give the concrete reasons for refusal based on one of the exceptions provided for in the Regulation. Any refusal, even a partial one, has to also inform the applicant of his/her right to submit a confirmatory application to the Secretary-General of the Commission.

Exceptions to the general principle

The Regulation explicitly provides for the **exceptions** to the right of access, as follows:

1) Unconditional exceptions

Access shall be refused if disclosure of the document would undermine the protection of:

- the public interest as regards public security, defence and military matters, international relations, financial, monetary or economic policy;
- privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data ([Regulation 45/2001](#));

2) Conditional exceptions

Unless an overriding public interest warrants the disclosure of the document in question, access shall be refused:

- If disclosure would undermine the protection of:
 - commercial interests of a natural or legal person, including intellectual property³;
 - court proceedings and legal advice⁴;
 - the purpose of inspections, investigations and audits⁵;

¹ http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf; [Commission Decision 2001/937](#) lays down the procedures for the handling of requests for access to documents by the Commission

² In a significant number of judgments, the General Court and the Court of Justice of the EU have established that when access is denied, the harm to a protected interest must be reasonably foreseeable and may not be purely hypothetical.

³ "e.g. information on costs and tenders (including other commercial and industrial secrets) provided by tenderers in connection with an invitation to tender.

⁴ e.g. opinions given by the Legal Service on a draft legislative proposal; defence pleas in a pending court case.

⁵ e.g. documents drawn up by the Commission or received from a Member State as part of an ongoing investigation into a possible failure to comply with EU law such as those concerning ongoing infringement-related documents.

- If disclosure would seriously undermine the Commission's decision-making process⁶:
 - documents drawn up by the Commission for internal use or received by it, which relate to a matter on which it has not yet made a decision;
 - documents containing opinions for internal use as part of deliberations and preliminary consultations within the Commission, even after the decision has been taken.

Partial disclosure

If only part of the document requested is covered by one or more of the exceptions provided for in the Regulation, the other parts of the document shall be disclosed. Granting partial access will mean concealing or deleting the words, sentences or paragraphs to which an exception applies.

Particular cases

a) Genuinely imprecise requests

If an initial application is worded in imprecise terms which do not enable the documents falling under the scope of the application to be sufficiently easily identified, the applicant may be asked to further clarify his/her request (the time-limit for replying to the application will be suspended from the time of the request of the clarification and will be resumed from the receipt of such clarification).

b) Wide-scope requests

In the case of an initial request with a clear but too wide scope, an extension of the time-limit by 15 working days may be considered, notifying the applicant in advance and providing detailed reasons for that extension. Account should also be taken of the possibility of applying a general presumption based on the applicable legislative framework or a general presumption which applies to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents with the same characteristics. If these possibilities do not apply, the service dealing with the initial application may confer with the applicant informally, as soon as possible after the application has been registered, to try to find a fair solution⁷.

c) Document originating from a third party

If the **document originates from a third party**, the Commission needs to consult the originator on disclosure. Consultation is not necessary if: (a) the document requested had already been disclosed either by its author or under the Regulation or similar provisions; (b) the disclosure, or partial disclosure, of its contents would not obviously affect one of the interests referred to in Article 4 of Regulation 1049/2001. A deadline of at least 5 working days is given the originator of the document, in accordance with the rules for the application of Regulation 1049/2001⁸. In the absence of an answer within the given period, a decision is taken in accordance with the rules on exceptions in Article 4 of Regulation 1049/2001, taking into account the legitimate interests of the third party on the basis of the available information. If after consulting the third party the decision is to disclose against its opinion, the third party has to be informed of this decision and a ten working days deadline is given informing them of the remedies available to oppose disclosure.

Potential confirmatory application

In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the reply, send a "confirmatory application" to the Secretary-General, asking the Commission to reconsider its position. The confirmatory application can also be made in the absence of a reply.

The life of an access to documents application

⁶ e.g. successive versions of a draft legislative proposal and the various contributions from third parties, until final adoption.

⁷ A Guidance Note on wide-scope initial requests for access to documents is available at https://myintracomm.ec.europa.eu/sq/docinter/Documents/ATD_Info_22_EN_wide-scope.pdf

⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001D0937>.

Registration

"CNECT CAD" registers all requests in the designated work tool - Gestdem.

Analysis

Each request has to be treated separately and examined thoroughly, **case by case**, by the relevant service. Each application has to be examined on its merits and no document is excluded ***per se*** from the right of access. The application of an exception to a type or category of documents is therefore never automatic.

Drafting of the reply

A written reply has to be given no later than **15 working days** after the registration of the request. Failure to reply is equivalent to refusing access. In exceptional circumstances, the prescribed time limit may be extended by 15 working days. The applicant will then be notified, before expiry, of the time-limit extension through a "holding reply".

Signature

Positive responses are signed off and sent out at the Directorate/unit level. Negative responses need to be signed off by the Director General (upon validation and Visa in Ares by CNECT/R4). Partial refusal where only the names of natural persons are redacted ***and*** where the applicant has not explicitly expressed an interest in obtaining access to those names can be signed at HoU/Directorate level. However, if the applicant expresses a specific interest in the names contained in the documents requested, the reply will continue to be signed at Director-General level, independently of the question whether names will be released or not.