

FICHE N°1
ACCESS TO DOCUMENTS

Any citizen has a right of access to documents of the EU institutions, bodies, offices and agencies. The rules governing the exercise of this right are laid down in **Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereafter "The Regulation")**.

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1410512987716&uri=CELEX:32001R1049>

Here are the three steps that you must follow:

1. CHECK IF IT REALLY IS A REQUEST FOR ACCESS TO A "DOCUMENT"

The 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).

If the request relates to **information** which is not contained in 'documents', or if replying would involve assembling information from a number of different documents, it should be considered as a **"request for information"** to be processed in accordance with the Code of Good Behavior.

https://myintracomm.ec.europa.eu/hr_admin/en/code/Pages/conduct.aspx

A document that is 30 years old or more can be accessed under the rules on the opening to the public of the historical archives. Contact the Historical Archives (e-mail: OIB ARCHIS BASE).

2. REGISTER THE APPLICATION

A copy of the application must be sent, as soon as possible upon receipt, to FISMA 02 (), which will verify whether the request is admissible and, if it is, will register the request in GESTDEM (shared database for applications for access to documents). FISMA 02 will send an acknowledgment of receipt to the applicant and inform you about the administrative rules in force on access to documents. You will then have to prepare a reply.

If the request was first received and registered by FISMA 02, you will receive an attribution and a request to reply.

3. PREPARE A REPLY

A reply must always be sent to the applicant, in **writing and in the language in which the application was submitted**, within **15 working days** from the date at which the application was registered by your DG's '*access to documents*' team.

Please send a copy of your answer to the functional mailbox FISMA ACCES DOCUMENTS.

If you are unable to reply within 15 days, you have to send a letter to the applicant, before the expiry of the 15-day deadline, notifying him or her of the extension of the deadline and giving reasons for the new deadline. Failure to reply within the deadline constitutes a tacit refusal which entitles the applicant to appeal through a confirmatory application.

You should **draw up a full list of the documents** to which the application refers and closely examine the content of each document in order to determine whether disclosure would undermine one or more of the interests protected by Article 4 of Regulation No 1049/2001. This list must in principle be attached to your reply, except in cases of dispense (e.g. in the field of infringements).

Classified documents may also be disclosed. If a classified document is to be disclosed it will first have to be declassified:

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

If you are unable to identify the document requested you should ask the applicant to provide you with **additional information** which will enable you to identify the document or to narrow down the request. In that case, the 15-working day deadline for reply will apply only from the date by which you receive this information.

If you think the request is **disproportionate** inform FISMA 02, referring to Article 6(3) of the Regulation.

In the case of a **vague or voluminous request**, the statutory deadline of 15 working days may be replaced by a timetable agreed with the applicant under Article 6(3) of Regulation (EC) No 1049/2001. If no agreement can be found with the applicant, you may refer to the proportionality principle to justify a refusal to process.

Positive replies can be signed by any official to whom our Director General has delegated this power.

Negative replies (total or partial) must be signed by our Director General.

In case of negative reply, please follow the 'check-list' to verify that you have complied with all necessary requirements:

https://myintracomm.ec.europa.eu/sg/docinter/Documents/check_list_2014.pdf

In case of refusal your answer must:

- 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 motivation of our answer (see annex below).
- Provide a **list of documents** refused (or granted if some can be communicated).
- Inform the applicant on his or her **right to appeal** to the Secretary General.
- Be signed by the Director General and sent by registered letter with acknowledgment of receipt.

If only parts of the document requested is covered by one or more of the exceptions listed in the Regulation, you must disclose the parts not covered by the exception (partial access) and give reasons for the partial refusal. If the requested document emanates from a 'third party' you will have to **consult the third party** as to whether the document falls into one of the exceptions or may be disclosed, unless it is obvious that the document may - or must not - be released.

If the third party objects to disclosure, you must refuse access to the document or the parts of the document concerned, reproducing the argument used by the third party. The Commission can decide to disregard the opposition of a third party only at the stage of the confirmatory application.

Article 7 of the Regulation provides that in the event of a total or partial refusal, or in the absence of a response, the applicant can make a confirmatory application to the Secretary General, who will then take a final decision on behalf of the Commission. The applicant can challenge this decision either by filling a complaint to the Ombudsman or by appealing to the Tribunal.

4. TREATMENT OF PERSONAL DATA

If a document contains personal data, the principle (Regulations 1049/2001 and 45/2001) is to refuse to give access to these data in the documents drafted by us or received by our DG. Personal data are all data linked to the private life of a person (name, title, function, phone, email, address and all elements which could allow recognizing this person). Data linked to a company are not personal data but could be protected by the exception linked to commercial interests. Inside the Commission, the personal data (names, title function) of the senior management (above HoU) are considered to be public whereas, below this level, the names of the persons could be protected.

QUESTIONS:

Consult Unit FISMA/02, [REDACTED]

List of exceptions in Regulation 1049/2001

Article 4

Exceptions

1. *The institutions shall refuse access to a document where disclosure would undermine the protection of:*
 - (a) *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;*
 - (b) *privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

2. *The institutions shall refuse access to a document where 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, unless there is an overriding public interest in disclosure.*
3. *Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*
4. *Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*