



EUROPEAN COMMISSION

Secretariat-General
Unit C1 – Transparency, Access to Documents and Document Registration

Brussels,

ACCESS TO NAMES AND FUNCTIONS OF COMMISSION STAFF GUIDANCE NOTE

1. BACKGROUND

Commission services receive a large number of requests each year, under Regulation 1049/2001, for access to documents (e.g. e-mails¹, copies of correspondence, meeting minutes) which include the names and functions of Commission staff.

This note sets out the approach to follow in such cases.

It aims to strike a fair balance between the right of access to documents² and the right to personal data protection³. It also takes into account the fact that, in most cases, requestors are interested in the substance of the documents rather than in the personal data appearing therein.

This approach consists of granting, in principle, access to the names and functions of Commissioners and their Cabinet members and staff in senior management positions⁴. This access is exceptionally extended to the names and functions of staff not occupying any senior management position, if:

- the applicant has substantiated the need for such transmission for a specific purpose in the public interest⁵;
- there are no reasons to assume that the legitimate rights of the individuals concerned might be prejudiced; and
- the institution considers the transmission proportionate for the specific purpose brought

¹ These are only considered documents to the extent that they are registered or should have been registered in Ares in accordance with the document management rules.

² As defined in Article 15(3) of the Treaty on the Functioning of the European Union (TFEU) and Regulation 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

³ As defined in Article 16(1) of the TFEU and Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC. The Court of Justice has confirmed that *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of “private life”*: judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, paragraph 73.

⁴ Secretary-General, Directors-General, Directors.

⁵ As specified in recital 28 of Regulation 2018/1725, [t]he specific purpose in the public interest could relate to the transparency of Union institutions and bodies.

forward by the applicant, after having demonstrably weighed the various competing interests⁶

2. BASIC PRINCIPLE: REFUSAL FOR STAFF NOT OCCUPYING ANY SENIOR MANAGEMENT POSITION

Both at the initial and at confirmatory stage, no access should, in principle, be granted to the names and functions⁷ of staff which do not form part of senior management, unless a **need** thereto is established, there are no reasons to assume that the **legitimate interests** of the individuals concerned might be prejudiced, and the transfer is proportionate for the purpose put forward by the applicant, after having demonstrably weighed the various competing interests.

2.1. How to assess the need for the data transfer

The need to obtain the personal data must be clearly demonstrated by the applicant. It should be distinguished from a mere interest in obtaining these data⁸.

For instance, some applicants request access to the names of members of a tender or project evaluation committee to verify whether there have been any conflicts of interests. However, save specific circumstances, this will rarely constitute a ‘need’ to obtain the personal data concerned, given that the Financial Regulation and its Rules of Application already establish the necessary procedural guarantees to avoid such conflicts of interests.

The necessity of the data transfer must be demonstrated by express and legitimate justifications or convincing arguments⁹, and there must be no less invasive measures available, taking into account the principle of proportionality¹⁰.

2.2. How to assess the absence of any risks to the data subjects’ rights

As regards the possible risks to the legitimate rights of the data subjects concerned, and hence to the privacy and integrity of these individuals in the meaning of Article 4(1)(b) of Regulation 1049/2001, these can in a limited number of cases be established without a need to consult the staff members concerned, in particular:

- for members of tender or project evaluation committees, for whom there is a real and non-hypothetical risk of being the subject of unsolicited contacts by unsuccessful, current or future tenderers or project promoters;
- for staff members tasked with investigative functions (e.g. investigative staff working on antidumping or competition files, auditors, OLAF investigators, etc.).
- for staff members forming part of an administrative entity which has been the subject of targeted physical or verbal attacks or defamatory actions by outside parties.

⁶ As required by Article 9(1)(b) of Regulation 2018/1725.

⁷ To the extent that they enable the individual staff members to be identified. If this is not the case, these functions are not to be considered “personal data”, and access can in principle be granted if no other exceptions of Article 4 of Regulation 1049/2001 are applicable.

⁸ Judgment of the Court of Justice of 25 September 2018 on Joined Cases T-639/15 to T-666/15 and T-94/16, *Psara et al. v European, Parliament*, paragraphs 73-76; Judgment of the General Court of 19 September 2018 in Case T-39/17, *Port de Brest v Commission*, paragraphs 37-43.

⁹ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd*, European Court reports 2010, paragraphs 77-78.

¹⁰ Judgment of the General Court of 23 November 2011 in case T-82/09, *Gert-Jan Dennekamp v European Parliament*, paragraphs 30-34.

In those cases, access should normally be denied.

In all other cases, the risks to the privacy and the integrity of the individuals can normally be better identified with the requisite degree of certainty with the data subjects themselves. Therefore, **if** it appears that there is a need to disclose the names and functions of staff not forming part of senior management, those staff members should normally be consulted before disclosure takes place, unless this is practically impossible.

If consultations are not possible for lack of time or other practical constraints¹¹, the institution has to assess the possible prejudice and weigh the various competing interests based on the information available. In case of doubt, it is advisable to err on the side of caution, so as to avoid potentially adverse consequences for the data subject concerned of which it has not been possible to assess the likelihood and magnitude set off against the purpose of the transfer.

2.3. Practical implications

The applicant should be invited, if he/she wishes to receive the names and/or functions of Commission staff members who do not occupy any senior management position, to demonstrate the need for having these personal data transferred.

Unless it is clearly evident, based on the assessment described above, that the conditions of Article 9(1)(b) of Regulation 2018/1725 are fulfilled, services are invited to redact the names and functions¹² appearing in the documents to which (full or partial) access is granted, with reference to Article 4(1)(b) of Regulation 1049/2001 read in conjunction with the above-mentioned provision of Regulation 2018/1725.

The detailed reasoning should indicate that, based on the information available, the necessity of disclosing the personal data has not been established, there are reasons to assume that such disclosure would prejudice the legitimate rights of the persons concerned, and/or the weighing of the various interests involved led to the conclusion that the transmission of the personal data would not be proportionate.

As the possible release of staff names and functions of Commission staff members not occupying any senior management position is conditional upon the prior indication, by the applicant, of a need thereto, the number of cases where a specific risk assessment has to be made, and hence the resulting administrative burden and the risk of errors, is expected to remain limited.

¹¹ For instance, if the individuals concerned no longer work for the Commission.

¹² To the extent that these enable the individuals concerned to be identified.