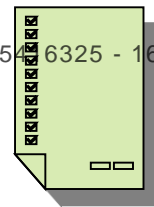


WHAT SHOULD I DO WHEN I RECEIVE AN APPLICATION FOR ACCESS TO DOCUMENTS ?



Under the Treaty (Article 15(3) TFEU), any citizen has a right of access to documents held by the EU's institutions, bodies, offices and agencies. For the Commission 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** - <http://eur-lex.europa.eu/legal-content/EN/TXT/?aid=1410512987716&uri=CELEX:32001R1049> and further detailed in its Detailed Rules of application : <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001D0937&qid=1449740600369&from=EN>

Under Article 7 of Regulation 1049/2001, 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 then challenge this decision either by filing a complaint to the Ombudsman or by appeal to the General Court.

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

Regulation 1049/2001 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 any existing documents, and if replying would involve compiling 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 Administrative Behaviour: https://myintracomm.ec.europa.eu/hr_admin/en/code/Pages/conduct.aspx
- A document that is 30 years old or more can normally be accessed under the rules on the opening to the public of the historical archives. Contact the Historical Archives (e-mail: OIB ARCHIS BASE).
- If documents are requested by Member States' national administrations, this is not an access to documents request and must be processed in the framework of sincere cooperation according to Article 4(3)TEU.
- Some documents are already in the public domain: check in the Register of Commission documents, Eur-Lex or other publicly available search tools.

2. REGISTER THE APPLICATION FOR ACCESS TO DOCUMENTS

A copy of the application must be sent, as soon as possible, to the team in charge of access to documents in your DG, which will check/ask for the postal address, register the request in GESTDEM (shared database for 'access to documents' coordinators) and send an acknowledgement of receipt to the applicant. This team will also inform you of the administrative rules in force on access to documents in your DG – see coordinator's list: https://myintracomm.ec.europa.eu/sg/docinter/documents/liste_corresp_fr.pdf.

3. PREPARE A REPLY TO THE APPLICANT (if you are the person who should reply)

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 your DG's 'access to documents' team. If it is not possible to reply within that deadline, a holding reply must be sent. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

4. HOW SHOULD I ASSESS A REQUEST?

Under the principle of transparency, citizens are entitled to the widest possible access to Commission documents (Article 1 of Regulation (EC) No 1049/2001)

When processing a request for access, documents are to be searched only in ARES or another document management system – see note Ares(2015)182108: https://myintracomm.ec.europa.eu/sg/docinter/Documents/DMO_access-to-doc.pdf. You should **draw up a full list of the documents** to which the application refers (including their ARES or equivalent registration number, the author, addressee, subject matter or title and date) and closely examine the content of each document (and its specific parts) in order to determine whether disclosure would undermine one or more of the interests protected by Article 4 of Regulation No 1049/2001.

The list of documents must be attached to or be included in your reply, except in cases where the Commission may dispense with an individual examination of each document (check with the coordinator in your DG).

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

- **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 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. See standard letters: <https://myintracomm.ec.europa.eu/sg/docinter/Pages/tools.aspx>.
- **If you think the scope of the request is too large to be handled within the extended 15 + 15 working-day deadline**: 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. See standard letters: <https://myintracomm.ec.europa.eu/sg/docinter/Pages/tools.aspx> and guidance note on wide scope request: https://myintracomm.ec.europa.eu/sg/docinter/Documents/ATD_Info_22_EN_wide-scope.pdf.

In the case of wide-scope 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 a fair solution cannot be found, you may unilaterally restrict the scope of the application to those parts that can be handled within 30 days, counting from the moment of registration of the application. In exceptional cases, you could even refer to the proportionality principle to justify a refusal to process the application on the grounds that to do so would involve a disproportionate amount of work, provided that you have genuinely attempted to agree on a fair solution.

5. WHAT IF I HAVE TO REFUSE AN APPLICATION (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. In case of a full refusal, you should specify that you also examined the possibility to grant partial access.
- inform the applicant of his/ her right to appeal to the Secretary General in relation to the application;
- be signed by the Director-General and sent by registered letter with acknowledgment of receipt.

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 specified above. Save in cases where the refusal is based on the exceptions in Article 4(1), the potential harm caused by disclosure must be weighed against the public interest in disclosure.

6. WHAT IF THE DOCUMENT REQUESTED CONTAINS PERSONAL DATA?

The disclosure to third parties of personal data is covered by Regulation 45/2001. In case of doubt, please consult your DG's Data Protection Coordinator: <https://myintracomm.ec.europa.eu/serv/en/dpo/home/mandate/Pages/mandate.aspx>

The applicant must prove the necessity to obtain the personal data. In addition, the legitimate interests of the person in question must not be harmed.

No access is granted to the names of Commission staff not forming party of senior management (defined at Director level and above) - see note Ares(2015)1350426: https://myintracomm.ec.europa.eu/sq/docinter/Documents/ATD_Info_19_EN_Names_functions_Commission_staff_Guidelines.pdf.

7. WHAT ABOUT DOCUMENTS RECEIVED FROM THIRD PARTIES / MEMBER STATES?

Consult the third party, including Member States, to obtain their opinion (or their agreement in the case of a MS) on whether the document may be disclosed, unless it is clear 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, even if their objections are not of a nature to justify refusal. The Commission can decide to disregard the opposition of a third party only at the stage of the confirmatory application. The DG is however advised, already at initial level, to enquire about the specific reasons under Regulation 1049/2001 for refusing access if the Member State or third party failed to provide such reasons.

8. WHAT IF I AM UNABLE TO REPLY WITHIN THE 15-DAYS DEADLINE?

Send the applicant a letter, before the expiry of the 15-day deadline, notifying him/her of the extension of the deadline 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.

9. WHO SHOULD SIGN THE REPLY TO AN INITIAL 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 your director general (see attached Note from Ms Day and Mr Romero Requena (21.1.2010): https://myintracomm.ec.europa.eu/corp/sq/en/docinter/Documents/check_list_2011.pdf).
- Partial replies must be signed by your director general. Exception: when only personal data (for which the applicant has not expressed a specific interest) has been redacted, and access to the rest of the document is granted, it can be signed by the HoU.

10. WHAT SHOULD I DO BEFORE SUBMITTING THE REPLY FOR SIGNATURE?

It is compulsory to use the check-list **in the attached note from Ms Day and Mr Romero Requena, mentioned above, in order to be sure that your reply meets the requirements imposed by Regulation (EC) No 45/2001**. The check-list must be included with your draft negative answer in the signataire sent to the director general, **but must not be attached to the reply to the applicant**.