

TRANSPARENCY

Access to documents

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REQUESTS BY CONSULTED THIRD PARTIES TO KNOW THE NAME OF THE APPLICANT UNDER REGULATION 1049/2001

When consulting third parties under Article 4(4) and (5) of Regulation 1049/2001, Commissions services are sometimes asked to provide details about the identity of the applicant.

The request of consulted third parties to know the name of the applicant is a request for information. Disclosure of the applicant's name would entail a transfer of personal data, falling under the provisions of Regulation 45/2001.

For transfers of personal data within the EU¹, Article 8(b) of Regulation 45/2001 requires the recipient to establish, through the provision of one or more express and legitimate reasons, the necessity of the transfer of the personal data. Once the necessity has been substantiated, the institution examines whether there are reasons to think that the personal data transfer might prejudice the legitimate interests of the data subjects concerned. Such an examination could entail the consultation of the individual concerned^{2 3}.

It will not be easy for the consulted third party to demonstrate the necessity of the data transfer. Indeed, in the context of an access-to-document request, the identity of the applicant is irrelevant, as access is not given to this individual personally, but to the public at large (*erga omnes*). This is why the applicant for access to documents is not obliged to state reasons for the application, according to Article 6(1) of Regulation 1049/2001. It follows that he/she is not obliged to reveal his/her identity to third parties consulted by the institutions according to article 4(4) or (5) of Regulation 1049/2001.

Therefore, there will usually be no necessity to disclose the applicant's name to consulted third parties in the context of Regulation 1049/2001. Consequently, if the necessity to transfer this personal data is not substantiated, services do not need to verify whether the privacy or integrity of the applicant might be undermined, for instance by asking the applicant whether s/he agrees to the disclosure of their name.

In case a Member State has specific, legitimate reasons to request information about the identity of an applicant in the framework of that Member State's consultation under Article 4(4) and (5), such a request has to be examined carefully. In the light of the principle of sincere cooperation, you could consider providing information on the category to which the applicant belongs (i.e. academia, law firm, NGO, etc), unless such information (taken together with the information already available to the Member State) would make the applicant identifiable. In the latter case, such information (or any other personal data of the applicant) cannot be provided without the applicant's express consent.

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- ¹ *For transfer of personal data to recipients outside the EU, article 9 of Regulation 45/2001 applies. According to Article 9(1), personal data shall only be transferred to recipients, other than Community institutions and bodies, which are not subject to national law adopted pursuant to Directive 95/46/EC, if an adequate level of protection is ensured in the country of the recipient or within the recipient international organisation and the data are transferred solely to allow tasks covered by the competence of the controller to be carried out.*
 - 2 *In its Judgement of 29 June 2010, in Case C-28/08 P, Commission v Bavarian Lager, the Court stated: [a]s Bavarian Lager has not provided any express and legitimate justification or any convincing argument in order to demonstrate the necessity for those personal data to be transferred, the Commission has not been able to weigh up the various interests of the parties concerned. Nor was it able to verify whether there was any reason to assume that the data subjects' legitimate interests might be prejudiced, as required by Article 8(b) of Regulation No 45/2001 (para. 78).*
 - 3 *In its Judgment of 21 October 2010 in Case T-439/08, Agapiou Joséphidès v Commission and EACEA, the General Court accepted the following argument of the Commission: n'ayant pas obtenu, dans le délai imparti, la certitude que les données en cause étaient publiques, l'EACEA a estimé par prudence devoir occulter ces données pour qu'il soit satisfait au principe de protection de la vie privée et de l'intégrité de l'individu (para 115).*