



EUROPEAN COMMISSION
 SECRETARIAT-GENERAL
 LEGAL SERVICE

The Secretary General
 The Director-General

Brussels, 21/01/2011
 SG.E.3/ /psi - Ares(2011)

NOTE TO DIRECTORS-GENERAL

Subject: Handling of applications for public access to documents

We refer to our meeting on 2 December 2010, when the handling of applications for access to documents under Regulation 1049/2001 was discussed.

It was agreed that, in general, the Directorates-General should substantially improve the way in which initial application for access to documents are handled, in particular as regards:

- (1) compliance with the statutory time-limits;
- (2) the quality of the reasoning for denying access to documents, which must be specific in nature in that it must refer to the contents of the concerned documents, and must show that disclosure would result in a reasonably foreseeable risk to an interest protected by the relevant exceptions.

With a view to ensuring adequate control, it was agreed to observe strictly the implementing rules of Regulation 1049/2001, according to which replies to initial applications are given by the Director-General or by a member of staff they have specifically designated for that purpose¹. However, whereas it is possible to delegate positive replies, all refusals to grant access to a document must be signed by the Director-General personally. As regards OLAF (and the Secretariat-General), negative replies will be signed at the initial stage by a Director, as the Director-General of OLAF and the Secretary-General sign replies to these confirmatory applications.

It is furthermore required that each Directorate-General appoints an 'access to documents' coordinator, who must have a solid legal background and a central position in the DG. This person should monitor the implementation of the Regulation in your DG and be the contact person for the SG 'access to documents' team. The existing network of coordinators was composed of persons with varying profiles. Some of them had the required legal expertise, but others had only an administrative role in their DG. The latter

¹ Commission Decision of 5 December 2001 (2001/937), OJ L 345 of 29.12.2001, p. 94; see Article 3 of the detailed rules

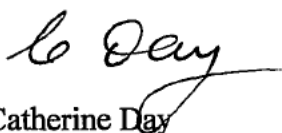
had therefore not been able to play the role required for a correct implementation of the Regulation.

There is a need for this legal expert on access to documents in each DG. The person in charge will, in addition to the coordination of access to documents requests within the DG, liaise with the SG team on the handling of confirmatory applications and participate in meetings with the Secretariat-General and the Legal service, where the Commission's policy on public access is discussed and coordinated, in particular on the basis of the analysis of case law. We would be grateful if you could designate the person with the appropriate profile and inform Mr Legris, head of the unit "Transparency relations with Stakeholders and external organisations" in the Secretariat-General by 31 January at the latest. We will then call a first meeting of the new network of legal experts from all the DGs in February.

We also enclose a check-list with minimum requirements which we hope will enable your assistants to monitor the files where it is proposed in part or fully to reject an application for access to documents and which are, therefore, submitted for your signature.

We trust that with common efforts we shall be able to improve the Commission's performance substantially, while at the same time adequately protecting the legitimate interests of the Commission and of third parties concerned by disclosure of documents.

This should also lead to eventually reducing the number of complaints to the Ombudsman and of cases brought to the Court.



Catherine Day



Luis Romero Requena

Enclosure: Check-list with basic requirements

c.c.:

Messrs

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Regulation 1049/2001 Quality Chart – Initial Replies to Access to Documents

Negative replies to requests for access to documents
(full or partial)

should

(1) be signed by the Director General

Signature

(2) include a clear list of documents falling within the scope of the request

List of documents

(3) include a description of the content of the document(s) or part(s) of document(s) refused

Description of documents

(4) include the conclusions of the DG after a detailed examination

Conclusions of the analysis

(5) mention the exceptions set out in Article 4 (1) to (3) of the Regulation

Exceptions applicable

(6) include the reasoning and grounds that link each exception to the document(s) or part(s) of document(s) refused

Reasoning

(7) include the reasoning given by the third party to refuse its document or part of it

Reasoning regarding third party documents

(8) when partial access is not possible provide the reasoning

Partial access

(9) give the reasons explaining the absence of an overriding public interest

Overriding Public Interest

(10) mention the right of the applicant to make a confirmatory application

Right to request a review