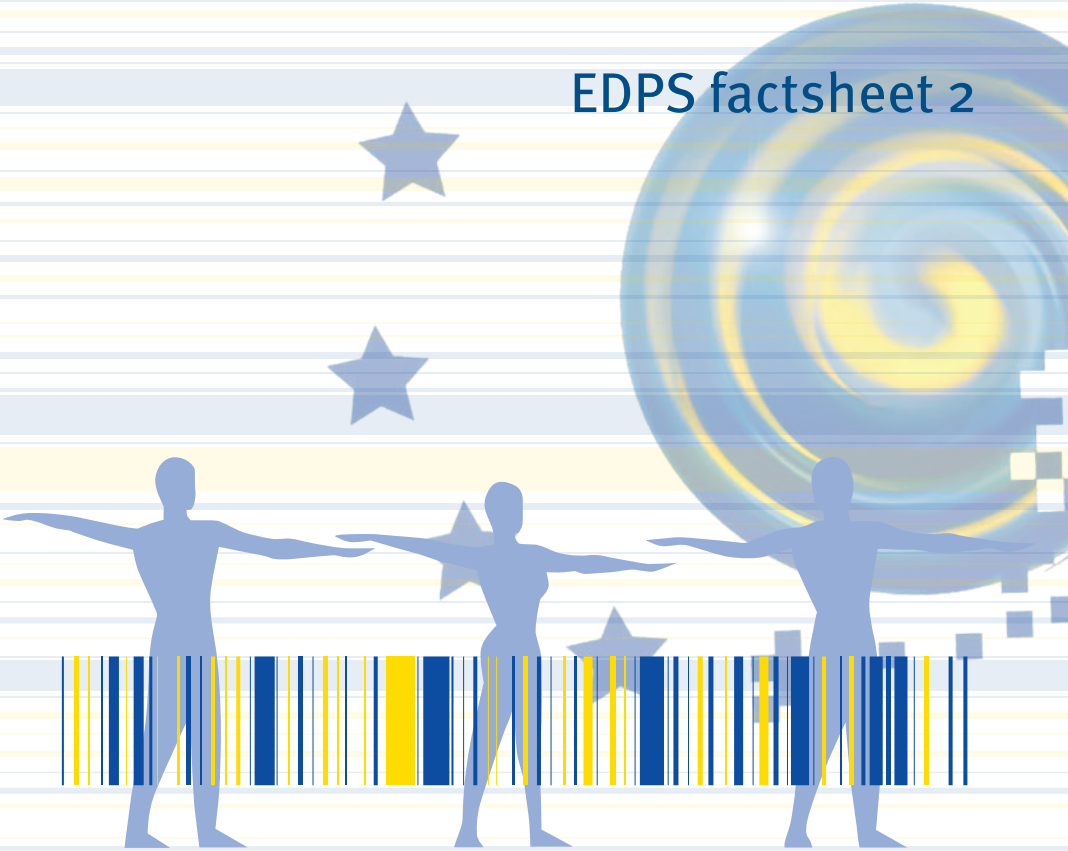
European Data Protection Supervisor

Transparency in the EU administration: Your right to access documents

EDPS factsheet 2



www.edps.europa.eu

The European institutions and bodies make decisions and adopt legislation that affect the lives of all citizens in European Member States. As a citizen you have the right to know why, how and who is involved in making these decisions and laws. You also have the fundamental **right of access** to the documents prepared in these activities.

The treaties establishing the European Union (EU) and the EU Charter of Fundamental Rights oblige the EU institutions and bodies to be **open** and **accessible**. This openness contributes to better control of the activities of the EU institutions and makes the institutions more **accountable** to the public.

At the same time, the EU treaties and the Charter oblige EU institutions to protect the personal information that they are collecting and using: the right to **data protection**. As many documents contain personal information, the Court of Justice of the European Union has insisted that there has to be a **fair balance** between these two fundamental rights.

Public access to documents - your rights

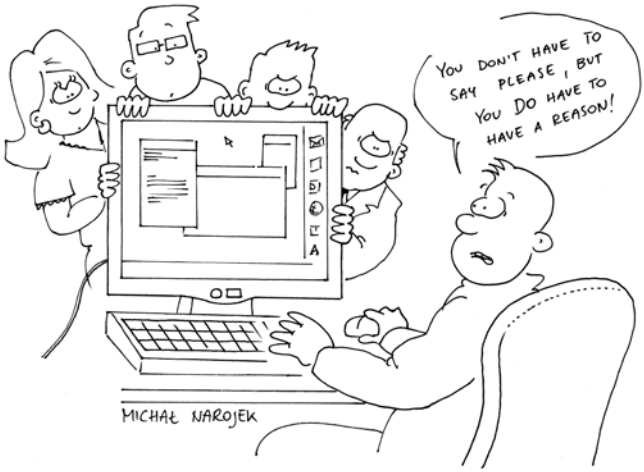
Any EU citizen, and any natural or legal persons residing or having their registered office in a member state, **may request access to any document held by the EU institutions**. This includes any content in whatever form - paper, electronic or audiovisual - concerning any matter relating to the policies, activities and decisions falling within an institution's sphere of responsibility.

A request for access can be sent in writing to the institution concerned by regular post or in an email. A request does not have to contain reasons why access is needed (unless the request is specifically to access documents containing personal information). In exceptional cases, the EU institution can refuse to disclose a document or part of it. The reasons for refusal and other procedural rules are outlined in the **EU Public Access Regulation**.

If you have requested access to documents from an EU institution or body and you think you have been **unjustifiably refused access**, you can lodge a complaint with the **European Ombudsman** or you can bring an action before the **Court of Justice of the European Union**.

Privacy and access to documents

The right of public access concerns all documents held by the EU institutions. Documents containing personal information are not excluded from this right. However, according to the EU Public Access Regulation, **access to a document shall be refused if disclosure**



would undermine the privacy and the integrity of the individual. This is in line with EU rules on data protection - the **EU Data Protection Regulation** - which applies to the EU institutions and bodies.

The Court of Justice of the European Union has given guidance on the balance between the two fundamental rights, **privacy** and **public access to documents** in a series of cases, notably in its judgment of 29 June 2010 in the **Commission v Bavarian Lager** case. The Court held that the Commission lawfully refused to disclose the names of some participants mentioned in the minutes of a meeting given that Bavarian Lager had not stated that access to the names was **necessary** and the Commission had not obtained the **consent** of those persons for the disclosure.

When may personal information be publicly disclosed?

In the *Bavarian Lager* case, the Court ruled that public disclosure of personal information is possible if the conditions of the EU Data Protection Regulation are met.

- Public disclosure of personal information must be based on the **consent** of the person concerned or have some **other legitimate** basis laid down by law;
- The disclosure must be **necessary** and **proportionate**. This will normally **not** be the case with **sensitive information** (information relating to health or sex life for example);

– The person involved must be **informed** about the public disclosure in advance. This enables the person to exercise his or her rights as laid down in the Data Protection Regulation, in particular the **right to object** to the disclosure on compelling legitimate grounds;

– For access to **documents containing personal information,** the requesting party needs to demonstrate why public access to the personal information is necessary. The information will be released only if the **balance** of the various interests involved favours disclosure. Otherwise the document might be disclosed only after deleting the personal information.

Can personal information be used after disclosure?

Yes, but this is subject to national or European data protection rules. The recipient of the documents containing personal information is only allowed to use the information for the purpose it was originally collected for and is bound thereafter by the national rules on data protection. For example, personal information used to spam individuals is regulated at national level; media accessing documents on public funding may choose to include specific personal information about the recipients of public funds in their reporting, but this must be done in accordance with national rules.

Can you request access to documents that contain your own information?

One of the rights laid down in the EU Data Protection Regulation is the right of access to personal information held about you by the EU institutions. This right of access has **priority** over the right of public access to documents.

What is the EDPS position?

The EDPS is the European Union's **independent** data protection authority. We monitor and ensure the **protection of personal data and privacy** when EU institutions and bodies process the personal information of individuals.

We advise EU institutions and bodies on all matters relating to the processing of personal information. We are consulted by the EU legislator on proposals for legislation and new policy development. We monitor new technology that may affect the protection of personal information. We intervene before the Court of Justice of the EU to provide expert advice on interpreting

data protection law. We also cooperate with national supervisory authorities and other supervisory bodies to improve consistency in protecting personal information.

The relationship between the right of public access to documents and the right to privacy and data protection is, therefore, a matter of special interest for the EDPS.

The EDPS encourages the EU institutions to take a **proactive approach** to address the implications for privacy, data protection and public access to documents. He encourages EU institutions to think about whether information should be disclosed or not at the time of collecting it. For example: informing and asking for the consent of meeting attendees prior to a meeting for the possible public disclosure of their personal information (name, nationality, organisation and so on) in the event of a request and making them aware of their rights under the EU Data Protection and Public Access Regulations.

The EDPS recommends that EU institutions develop **clear internal policies** on access to document requests. New rules on public access are also necessary in the long term for more substantive guidance on the subject. Both the current EU Data Protection and Public Access Regulations are under review so definitive guidance may be offered when the rules are reformed.

Further reading

- **Public Access Regulation**: Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).
- **Data Protection Regulation**: Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).
- **EDPS guidance** of 24 March 2011: Public access to documents containing personal data after the Bavarian Lager ruling.
- See *the EDPS website for more information: www.edps.europa.eu*

Glossary

- **Personal data or personal information**: any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity. Examples of information about a natural (living) person which can be used to identify that person include names, dates of birth, photographs, e-mail addresses and telephone numbers. Other details such as health data, data used for evaluation purposes and traffic data on the use of telephone, email or internet are also considered personal data.
- **Consent**: refers to any freely given, specific and informed indication of the wishes of a person concerned, by which s/he agrees to personal data relating to him/her being processed. Consent is an important element in data protection legislation, as it is one of the conditions that can legitimise the processing of personal data.
- **Document**: any content whatever its medium - written on paper, stored in electronic form, as sound, visual or audiovisual recording - drawn up or held by EU institutions relating to the policies, activities and decisions of the EU institutions.
- **EU institutions and bodies/EU administration**: all institutions, bodies, offices or agencies operating for the European Union e.g. European Commission, European Parliament, Council of the European Union, European Central Bank, specialised and decentralised EU agencies.
- **Sensitive data or information**: includes any information that 'reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership and the processing of data concerning health or sex life' (Article 8 of the EU data Protection Directive). The processing of such information is in principle prohibited, except in specific circumstances.

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QT3012767ENC
doi 10.2804/45522

ISBN 978-92-95076-01-3

Publications Office