



EUROPEAN ENVIRONMENT AGENCY

Report on the application of Regulation (EC) No 1049/2001 regarding
public access to documents

Copenhagen, September 2012

EEA IN BRIEF

The European Environment Agency (EEA) is a specialised agency of the European Union dedicated to providing objective, reliable and comparable information on all aspects of the environment. The aim of the EEA is to ensure that decision-makers and the general public are kept informed about the state and outlook of the environment. The EEA also provides the necessary independent scientific knowledge and technical support to enable the Union and member countries take appropriate measures to protect and improve the environment as laid down by the Treaty and by successive Community action programmes on the environment and sustainable development. The EEA works in partnership with government departments and agencies, international conventions and UN bodies, the scientific, technical and research communities, private sector and civil society.

The EEA undertakes a comprehensive range of integrated environmental and thematic assessments. These include a five-yearly state and outlook of the environment report, thematic and sectoral assessments, analyses of the effectiveness of policy measures, forward studies and the impacts of globalization on Europe's environment and resources. The EEA is an important source and custodian of up-to-date environmental data and indicators, and a key provider of environmental knowledge and information services.

The European Environment Agency (EEA) and the European environment information and observation network (Eionet) were established by Council Regulation (EEC) No 1210/90 on 7 May 1990.

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 recommended that all agencies established by the institutions shall apply the principles laid down in this regulation.

Regulation (EC) No 1641/2003 of the European Parliament and of the Council of 22 July 2003 amended Council Regulation (EEC) No 1210/90 in order to make Regulation (EC) No 1049/2001 applicable to the EEA.

On 22 June 2004, the EEA Management Board has adopted implementing rules for the application of Regulation (EC) No 1049/2001 as well as a decision whereby the European Code of good administrative behaviour adopted by resolution of the European Parliament on 6 September 2001 would apply by analogy to the EEA.

Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 codified the original founding regulation and its subsequent amendments and provides now in its Article 6 that Regulation (EC) No 1049/2001 shall apply to the documents held by the EEA.

Following the entry into force of the Treaty of Lisbon on 1 December 2009, the European Commission has submitted on 21 March 2011 a new proposal with a view to adapting Regulation (EC) No 1049/2001 to the requirements of the Treaty of Lisbon. This proposal aims at extending the institutional scope of the Regulation to all the European Union institutions, bodies, offices and agencies, with some restrictions as regards the European Court of Justice, the European Central Bank and the European Investment Bank, in accordance with Article 15(3) of the consolidated version of the Treaty on the Functioning of the European Union.

INTRODUCTION

The present report, drawn up in accordance with Article 17(1) of Regulation (EC) No 1049/2001, covers the period from 1 September 2009 to 30 September 2012 and is based on statistical data which are summarised in the annex.

These statistics reflect only the number of applications lodged on the basis of Regulation (EC) No 1049/2001 and not of applications for information or documents submitted via either the EEA inquiries service or the EEA forum available on the EEA external website. In practice, applications may cover a single document or entire files concerning a specific procedure.

THE EEA'S INITIAL CONTACTS WITH THE PUBLIC

The very principle of access to information and documents is embedded in Regulation (EC) No 401/2009 on the European Environment Agency and the European environment information and observation network, since the role of the EEA is to support the European Union in the development and implementation of environmental policy by providing relevant, reliable, targeted and timely information on the state of the environment and future prospects. For the purposes of achieving this objective, the EEA shall inter alia ensure the broad dissemination of reliable and comparable information, in particular on the state of the environment, to the general public and, to this end, promote the use of new telematics technology for this purpose, as specified in Article 2(m) of Regulation (EC) No 401/2009.

The EEA external website and the Eionet portal provide free access to a wide range of environmental information and documents covering a large range of themes, including reports, assessments and indicators, datasets, maps, charts and applications, multimedia, etc... The EEA external website provides as well free access to internal documents about the EEA, such as multi-annual strategies, annual work programmes, administrative documents, agendas and minutes for the EEA Management Board, Bureau, Scientific Committee and NFP meetings, etc...

The EEA has introduced an inquiry service for handling initial inquiries and requests from the public which allows for an efficient and regular monitoring of the requests. Initial requests are handled by members of the generalist staff to the greatest extent possible, eventually guiding members of the public to the EEA's online information sources. If need be, the generalist staff will coordinate with expert staff.

The public inquiry service underwent a dramatic change in 2011 as the EEA moved from emailed inquiries to an online forum which enables any visitor to see previous questions and their answers. The public can pose questions by telephone, by filing the inquiry form or submitting it to the forum. The EEA has also promoted the forum among EEA expert personnel and encouraged them to answer questions directly. The EEA will continue to promote the use of the forum and continuously improve its accessibility.

Although the EEA forum is now the main entry point for lodging a request for access to documents, it happens that requests are made through other channels and to different recipients (e.g. project managers, procurement services or human resources department). In such cases, the request is registered in the document management system of the EEA and assigned to the relevant case worker with clear action codes. As a request for access to documents shall be subject to a test whether one of the exceptions foreseen in Article 4 of

Regulation (EC) No 1049/2001 would apply, the draft reply is always reviewed by the legal adviser in the Administration services.

ANALYSIS OF APPLICATIONS FOR ACCESS TO DOCUMENTS

For the period between September 2009 and September 2012, four initial applications for access to documents on the basis of Regulation (EC) No 1049/2001 were officially received by the EEA. Three applications concerned access to documents in relation to public procurement award procedures, whereas the fourth one concerned access to documents in relation to the decision-making process.

These four initial applications led to the submission of two confirmatory applications in the area of public procurement award procedures. Whereas one of these confirmatory applications led to a decision confirming the initial refusal for access to document, the other one resulted in a decision granting partial access to the requested documents.

The profile of the applicants ranges from student to economic operators and non-governmental organisation, established in Belgium, Denmark, Greece and the United Kingdom.

While full access to the requested documents was not granted for any of the four applications, partial access was granted in two instances in relation to public procurement award procedures; in one of these cases, partial access was granted after an initial refusal.

The main reasons for refusing an initial application and confirming a refusal of access were:

- The protection of commercial interests foreseen in Article 4(2) first indent of Regulation (EC) No 1049/2001;
- The protection of privacy and the integrity of the individual foreseen in Article 4(1) (b) of Regulation (EC) No 1049/2001

COMPLAINTS TO THE EUROPEAN OMBUDSMAN AND THE COURT OF JUSTICE OF THE EUROPEAN UNION

For the period from September 2009 to September 2012, no applicant has ever lodged a complaint with the European Ombudsman and/or the General Court following a decision to deny access to documents.

In one of the instances referred to above, the European Ombudsman got involved although not directly in connection with the initial application for access to documents. The circumstances may be summarised as follows:

In the framework of a public procurement award procedure, a tenderer challenged the rules of participation to the call for tenders and in particular the question of eligibility of tenderers and subcontractors from third countries non-parties to the Government Procurement Agreement concluded within the WTO, and submitted therefore a request for review of the tender specifications. Following an initial request for clarification, the tenderer sent a confirmatory request which was copied to the European Ombudsman. This confirmatory request for clarification was addressed in writing by the EEA and the reply was copied to the European Ombudsman. Upon notification of the evaluation results, the tenderer requested

additional information on the name of the winning tenderer, the scores awarded for each criterion for their offer and that of the successful tenderer, including comments on the strengths and weaknesses of the offers, a detailed copy of the evaluation report and the names of the evaluation committee. EEA replied to the tenderer and provided information as to the successful tenderer and granted access to the evaluation report, although partially since the exception foreseen in Article 4(1) lit (b) of Regulation (EC) No 1049/2001, i.e. protection of privacy and integrity of the individual, applied to all names of the evaluation committee members as well as those of the other successful tenderers. In its reply, EEA also informed the tenderer of his right to submit a confirmatory application for access to document. The tenderer was satisfied with the replied and did not pursue further his request.

CONCLUSION

Sharing information is the cornerstone of all the work undertaken by the EEA as its main objective is to provide sound, independent information on the environment to those involved in developing, adopting, implementing and evaluating environmental policy, and also the general public. The development of an efficient public inquiries service and the introduction in 2011 of an online forum where citizens may pose their questions and ask for information and documents, as well as the free access to a wide range of information, documents, maps and data through its external website, may well explain the very low number of formal application for access to documents and the subsequent complaints that the EEA has received so far.

As stated in the European Ombudsman's report¹ following his visit to the EEA on 20.10.2011, this very low number of complaints should be taken as a sign that EEA successfully manages to integrate good administration into its procedure and working methods.

¹ Report of the European Ombudsman following his visit to the European Environment Agency – OI/11/2011/PB of 6.6.2012, <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/11712/html.bookmark>

ANNEX

Statistics relating to the application of Regulation (EC) No 1049/2001

Initial requests:

	2009	2010	2011	2012
Initial applications received	-	1	3	-

Results:

	2009	2010	2011	2012
Access granted	-	-	-	-
Access refused	-	1	2	-
Partial access	-	1		

Confirmatory requests:

	2009	2010	2011	2012
Confirmatory applications received	-	1	1	-

Results:

	2009	2010	2011	2012
Confirmation	-	1	-	-
Partial revision	-	-	1	-
Full revision	-	-	-	-

Breakdown of refusal by exception applied:

	2009	2010	2011	2012
Article 4.1(a) Protection of the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State	-	-	-	-
Article 4.1(b) Protection of the privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data	-	2	1	-
Article 4.2 Protection of commercial interests of a natural or legal person, including intellectual property, court proceedings and legal advice, the purpose of inspections, investigations and audits	-	1	1	-
Article 4.3 Protection of the decision-making process, when no decision has been taken yet; and after the decision has been taken, where the document contains opinion for internal use as part of deliberations and preliminary consultations	-	-	-	-
Articles 4.4 and 4.5 Protection of the interests of a Member State or of a third party author	-	-	-	-

Remark: in two instances, the refusal for access to documents combined the exceptions foreseen in Articles 4.1(b) and 4.2 (i.e. privacy and commercial interests).