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EDPS Opinion on access to EU documents: a right balance between public access and data protection has to be secured

Today, the European Data Protection Supervisor (EDPS) adopted an Opinion on the Commission's proposal aimed at reviewing the rules on public access to documents held by EU institutions. The Opinion focuses on an amended provision dealing with the relation between public access to documents and the protection of personal data.

Although the EDPS welcomes the Commission's intention to clarify the delicate interaction between public access and data protection, he feels that the substance of the proposed amendment fails to provide the appropriate answer.

Peter Hustinx, Supervisor, says: "Public access on the one hand and privacy and data protection on the other are fundamental rights which represent key elements of good governance. The interaction and possible tensions between them must be carefully analysed. I am not fully satisfied with the solution proposed by the Commission on how to grant public access to documents containing personal data. I therefore propose a different provision to stimulate discussions in Parliament and Council."

The EDPS' position on the issue is mainly based on the following grounds:

- **failure to reflect the European Court case law:** with the deletion of the reference to the harm to "the privacy and the integrity" of the individual as a necessary threshold to justify refusal of access to documents containing personal data, the Commission strongly alters the balance reached so far by the legislator, as interpreted by the Court of First Instance (Bavarian Lager case);
- **insufficient balance between the fundamental rights at stake:** the proposed provision implies that the decision on a request for public access must be based on the Regulation on the processing of personal data by EC institutions, and not on the public access Regulation. This approach may respect the right to data protection, but not the right to public access, and as such does not strike a right balance between the two considered rights;
- **lack of practical viability:** the provision refers to EC legislation on data protection that does not provide a clear answer when a decision on public access must be made, and will therefore result in a "catch 22" situation.

The EDPS also suggests clarifying the relations between the public access Regulation and the Regulation on the processing of personal data by EC institutions, in particular so as to ensure that the right of public access to documents is without prejudice to the right of access to own personal data.

The [Opinion](#) is available on our website.

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EDPS - The European guardian of personal data protection

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