

Refusal of the Council to publish opinions regarding nominations for the Court of Justice and the General Court

Case opened

Case 1011/2015/TN - **Opened on** 13/07/2015 - **Decision on** 04/05/2016 - **Institution concerned** Council of the European Union (Settled by the institution) |

Complainant(s)

- Access Info Europe
- EU Public Interest Clinic

Allegation(s)

The Council wrongly refused to grant public access to the panel opinions regarding all judicial candidates nominated for the Court of Justice and the General Court since the panel's establishment, or at least to the panel opinions for all current members of the Court of Justice and the General Court.

In support of their allegation, the complainants argue that:

- (a) Regulation 1049/2001 applies to the panel opinions;
- (b) The Council failed to balance, under Article 8(b) of Regulation 45/2001, privacy interests with the necessity of disclosure to serve legitimate transparency interests in a democratic society, thereby allowing the professional nature of the data to tilt the scale in favour of disclosure;
- (c) The Council failed to consider providing access to redacted versions of the panel opinions in case they contain certain sensitive data;
- (d) The Council failed to explain how disclosure of the panel opinions would foreseeably and more than hypothetically cause serious harm to the panel's decision-making process;
- (e) The Council incorrectly consulted with the panel and the Member States on the possibility to disclose the opinions; and



(f) The Council failed to take into account the overriding public interest in disclosure of the panel opinions.

Claim(s)

The Council should:

1. Affirm that Regulation 1049/2001 applies to requests for access to panel opinions;
2. Reconsider the access request on the basis of Regulation 1049/2001 and a correct application of the exceptions set out in Article 4(1)(b) and 4(3); and
3. Grant at least partial access (with minimal redactions) to the panel opinions, if necessary in order to protect interests covered by the exceptions to access set out in Regulation 1049/2001.

The Ombudsman invites the Council to submit an opinion by 31 October 2015.