

Law 241/90

New provisions on administrative procedure and right to access to administrative documents

Resolution no. 217/01/CONS

Regulation concerning the access to documents

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Article 1 Annex A

THE AUTHORITY

In its Council meeting of 24 May 2001;

HAVING REGARD TO law no. 241 of 7 August 1990 and amendments thereto;

HAVING REGARD TO law no. 249 of 31 July 1997 on the “Institution of the Communications Regulatory Authority”, and specifically article 1, paragraph 9;

HAVING REGARD TO the Regulation governing the structure and functioning of the Communications Regulatory Authority, adopted with resolution no. 17/98 of 16 June 1998, published in the Official Journal, no. 169 of 22 July 1998, and subsequent amendments and integrations thereto, approved with resolution no. 61/01 of 25 January 2001, published in the Official Journal, no. 69 of 23 March 2001;

HAVING REGARD TO law no. 265 of 3 August 1999, and specifically article 4;

HAVING DEEMED necessary the implementation of the access measures and, specifically, the measures under article 23 of law no. 241 of 7 August 1990, as amended by article 4 of law no. 265 of 3 August 1999, no. 265;

HAVING HEARD the report of Commissioner Prof. Silvio Traversa

HAS ADOPTED THIS RESOLUTION

Article 1

1. The Authority adopts, pursuant to article 1, paragraph 9, of law no. 249 of 31 July 1997, the regulation concerning the access to documents formed or permanently held by the Authority.
2. The text of the regulation laid down in paragraph 1 is reproduced in Annex A to this resolution and is an integral and essential part thereof.

This resolution has been published in the Official Journal of the Italian Republic and in the Official Bulletin of the Authority.

Naples, 24 May 2001

THE REPORTING COMMISSIONER
Silvio Traversa

THE PRESIDENT
Enzo Cheli

THE SECRETARY GENERAL
Antonio Catricalà

Article 1

1. For the purposes of this regulation the following definitions apply:
 - a. “law” means law no. 249 of 31 July 1997;
 - b. “Authority” means the Communications Regulatory Authority;
 - c. “Council” means the Council of the Communications Regulatory Authority;
 - d. “Commissions” means the Commission for Infrastructures and Networks and the Commission for Services and Products;
 - e. “organisational units” means the level 1 and 2 organisational units defined by the regulation governing the structure and functioning of the Communications Regulatory Authority, adopted with resolution no. 17/98 of 16 June 1998, published in the Official Journal, no. 169 of 22 July 1998, and subsequent amendments and integrations thereto, approved with resolution no. 61/01 of 25 January 2001, published in the Official Journal of the Italian Republic, no. 69 of 23 March 2001;
 - f. “bulletin” means the bulletin specified in article 2, paragraph 26, of law no. 481 of 14 November 1995.

Article 2

1. Anyone who has a personal and concrete interest for the defence of legally important situations may exercise the right of access to documents formed or permanently held by the Authority by means of a written and justified application, on which the person responsible for the proceeding acts within thirty days, informing the Council thereof. In the application are specifically indicated the documents for which access is requested.
2. The person responsible for the access proceeding is the executive or, at his initiative, another functionary belonging to the organisational unit competent for forming the document or holding it permanently.
3. The right of access to documents containing confidential information of a personal, commercial, industrial or financial nature concerning persons and enterprises is exercised exclusively through the viewing of said documents, within the limits within which this is necessary to handle or defend the legal interests of the applicant. The organisational units adopt all necessary measures for safeguarding the interest of the persons and enterprises so that confidential information will not be disclosed.
4. Documents containing trade secrets are not available for access.
5. The deferment of access to documents may be ordered, pursuant to article 24, paragraph 6, of law no. 241 of 7 August 1990, and subsequent amendments thereof, when there is an objective necessity to safeguard the confidentiality needs of the Authority in relation to documents the

knowledge of which may compromise the efficiency and effectiveness of the administrative action. The act ordering the deferment indicates its duration.

6. For each procedure, the competent office prepares a special analytical index of the documents, indicating those classified as confidential or rendered secret and their contents.

Article 3

1. Parties who intend to prevent access to the information provided present a special request to the competent organisational unit, indicating the documents or parts of documents and the specific reasons for confidentiality or secrecy justifying the request itself.

2. The office notifies the parties concerned, with a justified provision, of the positive or negative assessment with regard to the existence of the reasons for confidentiality or secrecy stated in justification of the requests under paragraph 1.

3. Non-assessment does not bar third parties from the exercise of their right of access. In the case of an application for access to documents for which a request as under paragraph 1 has not been presented, or in the case of a negative assessment of the existence of reasons for confidentiality or secrecy as under paragraph 2, the office notifies the party concerned of the start of the access procedure; said party may, within the following five days, present observations regarding the aforesaid request.

Article 4

1. In addition to the documents stated under article 2, paragraph 4, the following are excluded from access:

a. the notes, proposals, and any other document prepared by the organisational units for the purpose of study and preparation of the contents of acts;

b. the acts and documents formed or acquired in the process of preliminary studies;

c. the acts and documents concerning the activity of reporting to the Government, under article 1, paragraph 6, letter c), no. 1), of the law;

d. the legal opinions concerning ongoing or potential disputes and the inherent correspondence, unless they constitute a legal logical basis of measures adopted by the Authority and are mentioned therein;

e. the documents to be used in defence of the Authority before the courts;

f. the minutes of the meetings of the Council and the Commissions in the cases where they concern the adoption of documents excluded from access and in the parts where they carry opinions expressed singularly by meeting participants;

g. the documents of private parties held occasionally, because they cannot be separated from documents used directly and, in any case, the documents that have not had specific importance in the administrative decisions.

2. The documents formed by the Authority or held permanently by it are excluded from access, pursuant to article 24, paragraph 1, of law no. 241 of 1990, in all other cases of secrecy or prohibition of disclosure envisaged by the regulations.
3. Excluded from access, totally or in part, are the documents concerning relations between the Authority and the institutions of the European Union, as well as between the Authority and the Bodies of other States or other international organisations, of which disclosure has not been authorised.
4. The accessibility of acts and documents acquired or formed in the pre-preliminary phase is, in any case, deferred until the issuing of a decision for the initiation of the preliminary phase or filing.
5. The Council determines, with a resolution to be published in the journal, the organisational procedure for access to the Authority's premises and the costs for reproduction of the documentation.
6. Pursuant to article 24, paragraph 2, letter d), of law no. 241 of 1990 and article 8, paragraph 5, letter d), of President's Decree (DPR) no. 352 of 1992, and in relation to the need to safeguard the confidentiality of third persons, natural persons and corporate bodies, groups and associations, without prejudice for those concerned to the guarantee of the viewing of the documents regarding the administrative procedures whose knowledge is necessary to handle or defend their legal interests, also excluded from access are the following categories of documents:
 - a. informational reports and every other document concerning the evaluation of employees which contains confidential information;
 - b. documents concerning competitive exams and selection tests for the hiring of employees, until the related procedure is finished;
 - c. documentation concerning the advancements of employees, until the related procedure is finished;
 - d. documentation concerning medical check-ups and tests and people's health;
 - e. characteristic or registration documentation, or documentation concerning private situations of employees;
 - f. documentation concerning criminal procedures covered by the obligation to maintain secrecy of disclosures in legal hearings, disciplinary procedures, until the related process is finished, and monitory and precautionary procedures, and the documentation concerning the preparation of appeals presented by employees;
 - g. documentation concerning the individual economic treatment of working and retired personnel, if it may be used to obtain information of a confidential nature;
 - h. documentation concerning the family, financial, economic, and property situation of persons, including employees, used in any way for the purpose of the administrative activity.
7. In the event of doubt between possible interpretations of the preceding provisions or as to their correct application, and for all that is not directly regulated herein, the organisational units

shall conform their action to the principles of transparency, participation, and equal protection opportunities.