

P.09 Freedom of Information & Transparency

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Freedom of information and transparency are mentioned in different contexts in the GDPR:

Freedom of information as an individual fundamental right: Art. 9 II e, 17 III a and 85 as well as Rec. 153 GDPR.

Archiving Purposes in the Public Interest: Art. 5 I b/e, 9 II j, 14 V b, 17 III d, 21 VI and 89 I/III/IV as well as Rec. 50, 52, 53, 62, 65, 73, 153, 156 and 158 GDPR.

Public Access to Official Documents: Art. 86 and Rec. 154 GDPR.

Keeping of Public Registers: Art. 10 and 49 I g/II as well as Rec. 73, 111 and 157 GDPR.

Example from the case law of the ECJ [\[C-92/09\]](#): The publication of information on the recipients of agricultural subsidies serves the interest of taxpayers, in a democratic society, to be informed about the use of public funds (para. 79). This strengthens public control of the use of taxpayers' money and contributes to the best possible use of public funds (para. 75). In the specific case, the ECJ gave priority to data protection over the objective of transparency.

EU primary law also has a transparency obligation:

Art. 1 II TEU: "This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken **as openly as possible** and as closely as possible to the citizen."

Art. 10 III 2 TEU: "Decisions shall be taken **as openly** and as closely **as possible** to the citizen."

Art. 15 I TFEU: *"In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible."*

Right of access to documents: *Art. 15 III TFEU; Art. 42 CFR.*

Other data-related legal acts also confirm that access to official information is a public interest:

"Public access to official documents may be considered to be in the public interest." (Rec. 11 sent. 4 Data Governance Act)