

ABSTRACT

Rights of Access to Institutional information, what are the costs of awarding rights to Humans AND Machines?

The Opinion of Advocate General Medina delivered on 25 March 2025, in Case C-129/24 (ECJ) recommends that the mandatory identification of applicants be removed as a pre-requisite in national administrative proceedings within which access to institutional documents is sought.

Our paper focuses on the analysis of the legal framework governing

(i) the reasons that classical national administrative law lays down an identification pre-requisite for persons seeking access to information held by public administrations. Herein we distinguish Applicant's scope, Interest blindness and Applicant blindness, 3 concepts that must be kept separate within administrative law. We also compare the theoretical framework with the actual text of Directive 2003/4 that requires an applicant to be (only) a "natural or legal person".

(ii) the legal and social costs of the bottleneck (excessive burden) that will arise if this pre-requisite (identification) is removed since administrations will not be able to impede machines (bots) from capturing the application procedure. Here we address the legitimacy (or not) of anonymous and/or pseudonymous requests and the incentives for frivolity, vexatiousness and abuse. We conclude by addressing another set of costs: those arising from the circumstance that the intended beneficiaries of the Directive "natural or legal persons" are disenfranchised from their rights (to obtain a response) due to exhaustion of the Administrations capacity.

The paper then moves to examine (iii) a second bottleneck that will inevitably arise as per justiciability of administrative refusals: how to prove correlation between the applicant and the would-be litigant. We examine the AG's statement that "mere existence" is a sufficient condition for titlehood of rights and that it is procedurally severable from identification.

Next we analyse (iv) the scope of the so-called "practical arrangements" discretion that is competence of the public administration as per the concrete enforcement of rights

Finally, the paper addresses (v) the discussion of whether -in the event that the Opinion is followed- rights that protect persons from the public Administration, formerly awarded only to humans: the duty of the Administration to respond and make information available, might be extended to machines.

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