

# Cada

Commission d'accès  
aux documents administratifs

# ACTIVITY REPORT 2022 2023





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Bruno LASSERRE

### ***Do you believe CADA's work is helping to improve administrative transparency?***

For several years now, the Commission d'accès aux documents administratifs (Commission for Access to Administrative Documents, CADA) has been very active, and its workload has continued to grow. In 2022 and 2023, almost 10,500 referrals were recorded: an increase of 24% compared with 2021, and 46% up on the average for the previous four years. This shows that the demand for transparency remains strong, and that the Commission is playing a central role in guaranteeing the right of access. CADA has a rich body of policy statements, and strives to promote transparency.

However, it is surprising to note that, almost 45 years on from the adoption of the 17 July 1978 Act, so many users are still being refused access to documents for which CADA's policy has long been established.

It should be remembered that this law – a parliamentary initiative – transcended traditional political divisions to achieve a relatively unprecedented consensus in the National Assembly and the Senate. The government of the day was required to implement it. This ambitious and very liberal law established the principle of transparency. Henceforth, all documents are presumed to be publicly accessible unless reasons for secrecy, as provided for in the legislation, can be put forward. In other words, the default principle is freedom of access to administrative documents, and protection of secrecy is the exception.

**To overcome the reluctance of government bodies and convince them that transparency is a way of gaining the trust of the public – as opposed to secrecy, which fosters suspicion – CADA needs to continue its work of educating and supporting government bodies; for example, by expanding the network of persons responsible for access to administrative documents (PRADA).**

***The right of access to administrative documents and administrative transparency are themes that have accompanied you throughout your career.***

***What key differences did you notice when you first took up your post at CADA?***

The right of access has undergone profound changes.

It is no longer used solely (as was originally the case) for the purposes of obtaining a particular document; for example, in support of litigation against an unfavourable individual decision. It is increasingly becoming a powerful tool for gathering information and carrying out investigations, used to inform the public and fuel democratic debate on decisions, public policies or topical issues. It is also being used by activists as a means of monitoring public action. These requests are generally more wide-ranging, and tend to cover the disclosure of documents of all kinds relating to a particular subject.

# Foreword from the Chair

The source of requests has also changed. They are no longer being made solely by private individuals. Journalists now account for 15% of CADA's referrals, as do bodies promoting transparency, such as associations, whistleblowers and researchers.

These actions, while indisputably legitimate, nevertheless reflect a widespread feeling within government that the greater the right of access, the more difficult it becomes for government bodies to satisfy it, sometimes bordering on near impossibility from a technical or material point of view.

These requests are also accompanied by changes in perception of the right of access and the role of CADA. For example, the Commission has accepted the gradual introduction into its policy of the proportionality approach in refusals of access, which is a highly topical theme in European Convention on Human Rights law and in European Union law. In each particular case, this involves balancing the public interest being served by disclosure against the private interest(s) being served by the refusal to disclose. In some cases, this balancing act may lead to the rejection of some secrets.

Lastly, digital technology, to which part of the report is devoted, is playing an increasingly important role in the opinions issued by CADA. Requests to disclose algorithms and source codes, as well as requests to post documents online, are constantly on the increase, raising new legal and technical issues to which CADA must respond with greater levels of expertise.

### ***What are the key areas of your mandate?***

During my hearing in Parliament, prior to my appointment as head of the Commission, I identified four priorities that the CADA teams and I are working together to implement:

- ▶ Develop flexible legal instruments such as factsheets and guides. In this respect, CADA has worked in partnership with the CNIL to update the guide to open data and the fact sheets on the online publication of administrative documents, such as the fact sheet on local authorities. This approach provides public stakeholders with a clearer picture of their right of access, in order to encourage transparency and open data.
- ▶ Continue to reduce the time taken to review requests for an opinion. **The average time taken to process cases at CADA has fallen considerably over the last two years: from 59 days in 2022 to 52 days in 2023, i.e. 60% less than the average for the previous four years, despite an ever-increasing workload and limited resources.** These results are the fruit of the hard work of all the Commission's staff, who work on a daily basis to achieve these excellent results.

- Invest decisively in gaining proficiency in digital transformation issues (open data, algorithms and source codes, etc.), which are the issues of the future. As mentioned above, CADA needs to develop greater expertise in these areas, which account for a growing proportion of the opinions and advice we issue.
- Develop education and support strategies for government bodies to help them understand and become proficient in issues of right of access to administrative documents. This approach will promote administrative transparency and user confidence in our democracy.

***One of the priority issues you mentioned was coordinating the network of people responsible for access to administrative documents (PRADA). What actions are you hoping to implement? How does this network, in your opinion, represent an asset for CADA?***

**One of my priorities is to create a strong regional structure for coordinating PRADAs, which the main local authorities and public institutions must appoint from among their members.** It is essential to bring them together, meet them in their places of work, train them, and give them the feeling of belonging to a network that supports and guides them.

This approach, which began at the start of my mandate, has already begun to bear fruit. In 2023, CADA met with PRADAs at three regional events: in Normandy in March, in Auvergne-Rhône-Alpes in June, and in the Grand Est region in November. We plan to continue our tour of France from April 2024 in Hauts-de-France at a rate of three visits a year.

Alongside these events, a number of training days have been held since the end of 2022, both in Paris and in the regions, to raise awareness among appointees of the right of access to administrative documents.

These actions will only be effective if this network is expanded and all the government bodies required to appoint a PRADA take the necessary steps. For this reason, CADA conducts regular PRADA surveys and awareness campaigns.

This network represents an asset for CADA and, more broadly, for administrative transparency. Through the help they receive in appropriating the right of access to administrative documents, PRADAs will develop expertise that will enable them to respond to requests without always having to refer the matter to the Commission. This network will also encourage direct exchanges between PRADAs, enabling them to discuss common issues and build confidence with public decision-makers.

## Foreword from the Chair









# Composition of CADA

## THE COLLEGE<sup>1</sup>

### Chair

**Bruno LASSERRE**, Honorary Vice-President of the Council of State

### Deputy Chairman

**Rozen NOGUELLOU**, Councillor of State

### Members of the Court of Cassation

**Bénédicte FARTHOuat-DANON**, full member  
**Nicolas MAZIAU**, substitute

### Members of the Court of Accounts

**Jean-François COLLIN**, full member  
**Raphaëlle GODDET**, substitute

### Members of Parliament

**Patrice PERROT**, full member  
**Michèle MARTINEZ**, substitute

### Senators

**Valérie BOYER**, full member  
**Jean-Michel HOULLEGATTE**, substitute

### Elected representatives of a local authority

**Philippe LOCATELLI**, full member  
**Josiane FISCHER**, substitute

## Higher education teachers

**Hélène PAULIAT**, full member  
**Benoît LE BLANC**, substitute

## Qualified archive experts

**Jean-Charles BEDAGUE**, full member  
**Mireille JEAN**, substitute

## CNIL representatives (alternating)

**Laurence FRANCESCHINI**  
**Sophie LAMBREMON**  
**Isabelle LATOURNARIE-WILLEMS**

## Qualified competition and pricing experts

**Chantal CHOMEL**, full member  
**Umberto BERKANI**, substitute

## Personalities qualified in public dissemination of information

**Anne DUCLOS-GRISIER**, full member  
**David SARTHOU**, substitute

## Members in an advisory capacity:

**Claire HEDON**, Defender of Rights

A Government Commissioner appointed by the Prime Minister in accordance with Article L. 341-1

<sup>1</sup> - As of 1st March 2024



## THE CADA TEAM

### General rapporteurs:

**Caroline GABEZ**, general rapporteur

**Laetitia GUILLOTEAU**, deputy general rapporteur

### Rapporteurs and project managers:

**Edouard ALLEGRE**, senior advisor, TA and CAA

**Barbara AVENTINO**, senior advisor, TA and CAA

**Vivien BEAUJARD**, advisor, TA and CAA

**Ophélie CHAMPEAUX**, councillor of State

**Yann COZ**, senior advisor, TA and CAA

**Cyril DAYON**, advisor TA and CAA advisor

**Katia DE SCHOTTEN**, senior advisor, TA and CAA

**Muriel DERO**, councillor of State

**Frédérique GASPARD-TRUC**, senior advisor, TA and CAA

**Rémi GRAND**, senior advisor, TA and CAA

**Guillaume HALARD**, senior advisor, TA and CAA

**Sarah HOULLIER**, senior advisor, TA and CAA

**Julien ILLOUZ**, senior advisor, TA and CAA

**Michaël KAUFFMANN**, senior advisor, TA and CAA

**Ardéchire KHANSARI**, advisor, TA and CAA

**Tancrède LAHARY**, advisor, TA and CAA

**Flavie LE TALLEC**, councillor of State

**Jeanne MALLET**, curator of cultural heritage

**Muriel MERINO**, senior advisor, TA and CAA

**Eve PERENNEC-SEGARA**, inspector general of administration

**Alexis QUINT**, senior advisor, TA and CAA

**Didier RIBES**, councillor of State

**Sylvie STEFANCZYK**, Chair, TA and CAA

**Manon VAN DAËLE**, advisor, TA and CAA

**Hélène ZETTEL**, curator of cultural heritage

**Célia DECK-CATALAN CABILDO**, legal drafter

**Elisabeth MILLER**, legal drafter

### General Secretariat:

**Hélène SERVENT**, secretary General

**Jean-Claude CLUZEL**, deputy secretary General

**Caroline DREZE**, head of communications and training

**Joël THIBEAU**, administrator of the document management database

**Georges COLLET**, coordinator of the PRADA network

**Pascale BROIX-MARTIN**, drafter

**Caroline DIMAKUIZA**, drafter

**Claire DUXIN**, drafter

**Daniela GHOUT**, drafter

**Lucien EUPHROSINE**, drafter

**Amina EL AIFATE**, drafter

**Bernard NGANGO**, drafter

**Valérie VAUDON**, drafter

**Frédéric ALLOUCHERY**, secretary

**Monique JEAN**, secretary

**Christine MERCIER**, secretary

**Thibault BERGER**, apprentice



## Composition of CADA



# Cada

Commission d'Accès  
aux Documents Administratifs

La CADA est une autorité  
administrative indépendante  
chargée de veiller  
à la liberté d'accès aux documents  
administratifs et à la réutilisation  
des informations publiques

Transparence  
Accès Secrets  
Commission  
Loi Documents  
Archives Algorithme  
Code PRADA  
Open data  
O source Réutilisation  
Liberté Citoyens  
Numérique

[www.cada.fr](http://www.cada.fr)

A photograph of a person walking away from the camera down a long, brightly lit office hallway. The person is wearing a dark long-sleeved shirt and dark trousers. The hallway has a light-colored carpet and white walls with glass partitions.

# Cada

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Liberté Citoyens  
Numérique

## Key figures

# 2022

## Breakdown of cases by theme

**10,474**  
referrals  
received

↗ + 46% <sup>2</sup>

**8,526**  
opinions  
and advice

↗ + 33% <sup>2</sup>

**59%**  
favourable  
opinions

**39%**  
of opinions  
issued by order



**Average  
processing time**

↗ 59 days

- Health and social affairs
- Economy, industry, agriculture
- Education, culture, leisure
- Environment, sustainable development
- Public finance and taxation
- Justice, public order and security
- Access arrangements
- Reuse of public information
- Labour and employment
- Town and country planning
- Public life

<sup>2</sup> - In relation to the 2018/2021 period

# 2023

## Breakdown of cases by theme

**57%**  
favourable  
opinions

**51%**  
of opinions  
issued by order



**10,389**  
referrals  
received

↑ + 29% <sup>3</sup>

**7,890**  
opinions and  
advice issued

↑ + 7% <sup>3</sup>

- Health and social affairs
- Economy, industry, agriculture
- Education, culture, leisure
- Environment, sustainable development
- Public finance and taxation
- Justice, public order and security
- Access arrangements
- Reuse of public information
- Labour and employment
- Town and country planning
- Public life

**Délai moyen  
de traitement**

52 jours

3 - In relation to the 2019/2022 period

## Key figures







# Highlights

## 2022 and 2023



# 2022



*Study day with INAI*

**Renewal of the CADA college** and appointment of the new chairman, Bruno Lasserre

**Participation in the "Algorithms for public decision-making" days** run by the Société Informatique de France (SIF)

**Publication of implementing decree** No. 2022-1335 of 19 October 2022, article 163 of Act No. 2022-217 of 21 February 2022 relating to differentiation, decentralisation, deconcentration and various measures to simplify local public action (known as the "3DS" law )

Speech by the Secretary General at the **local authority conference of the Association Française des correspondants à la protection des données à caractère personnel** (AFCDP)

**Appointment of Hélène Servent**, Secretary General

Reception of an **Uzbek delegation**

Hearing on the **report on transparency in public action** prepared by Paula Forteza MP

**January to April**

**September to December**

**May to August**

**Participation in the Forum** organised by Transparency International France on engaged local authorities

**Training day** for Ministry of Education employees on the right of access to administrative documents



*Training for PRADAs*



*Joint meeting of CNIL and CADA colleges*

# 2023



"Meeting" of PRADAs in the Grand Est region

**Creation of a permanent post of Deputy General Rapporteur**, to be filled by Laetitia Guilloteau

**Study day** with the Tunisian National Authority for Access to Information (INAI)

"Meeting" of PRADAs in the Normandy region (**seminar and training**)

**Joint CADA – CNIL Committee**

**Webinar on the latest developments in**

the right of access to administrative documents

Hosting of a **delegation from the Philippines**

Meeting with **departmental PRADAs and archive correspondents**

Hosting of a **Moldovan delegation** in conjunction with the CNIL

Café de la Data

"Meeting" of **PRADAs in the Grand Est region**

January to April

September to December

May to August

**Meeting with ministerial PRADAs**

**Training** for departmental councils on **child welfare issues**

"Meeting" of **PRADAs in the Auvergne-Rhône-Alpes region**



Hosting of a delegation from the Philippines

## 2022 and 2023 Highlights







# Thematic analyses







# Reconciling right of access and privacy

4-Décision du Conseil  
constitutionnel  
n° 2020-834 QPC  
du 3 avril 2020

5-Article L. 311-5  
du code des relations  
entre le public  
et l'administration

6-Article L. 311-6  
du code des relations  
entre le public  
et l'administration

The right of access to administrative documents is guaranteed by article 15 of the Declaration of the Rights of Man and of the citizen of 26 August 1789<sup>4</sup>.

However, this right is not absolute, as some secrets are intended to be protected by law.

Some of these, such as public security, secrecy relating to the conduct of France's foreign policy or national defence, may be invoked against anyone, regardless of the status of the requesting party<sup>5</sup>, while others restrict the right of access to those with an interest in the documents concerned<sup>6</sup>. The same applies to documents whose disclosure would infringe the protection of privacy, medical confidentiality or business confidentiality.

In 2022 and 2023, the Commission had the opportunity to clarify the scope of privacy.

## Personal identity: information not covered by privacy laws

The interested party, within the meaning of Article L. 311-6 of the Code of Relations between the public and the government body, is the person directly concerned by the document; in other words, in relation to a document containing information relating to a person, either the person him/herself, or a direct beneficiary who holds a right which he/she can invoke by virtue of the document of which he/she is requesting access.

In this respect, the Commission is of the view that the date of birth, personal details or e-mail address of a natural person may be shared only with the person concerned, to the exclusion of third parties.

However, the Commission regularly finds itself pointing out that a person's first name and surname are not, as such, covered by privacy laws. It is only when the combination of this information with other information relating to their private lives makes it possible to identify these persons that the Commission is of the view that concealment of this information may then be justified.

*The Commission regularly finds itself pointing out that a person's first name and surname are not, as such, covered by privacy laws.*



The Commission is thus of the view that disclosure of the identity of a donor (a natural person), by means based on a personal choice in the use he/she makes of his/her assets, is likely to infringe his/her privacy, irrespective of the purpose, value, context or recipient of the donation; for example, the list of donors to a museum must necessarily be anonymised before being disclosed in any way. In addition, it noted that although disclosure of the donation does not necessarily reveal the overall state of the donor's assets, it does reveal part of their composition, with the consequence that this information cannot be disclosed without infringing personal confidentiality<sup>7 8</sup>.

The situation would, however, be different if the rules of procedure laid down for a donation provided in advance for publication of the list of donors, and if the donation had been made with full knowledge of that fact<sup>9</sup>.



## The privacy of legal entities

Following the Conseil d'État's "Anticor" decision of 7 October 2022, CADA has stated in several opinions that legal entities governed by private law also have a right to respect for their privacy<sup>10</sup>.

In application of this principle, administrative authorities which hold documents relating, in particular, to the internal operations and financial situation of these persons, would not be required to comply with a request for disclosure from a third party. The fact that such documents have been sent to the government body to enable them to monitor the activities of the body in question does not in itself affect the conditions of access to such documents by third parties.

By way of example, the Commission is of the view that the budgets and accounts of legal entities governed by private law, auditors' reports, the minutes of the deliberative bodies and activity reports are covered by privacy rules governing private legal entities (with the exception of bodies that have received public subsidies and whose accounts may be disclosed in accordance with article 10 of Law No. 2000-321 of 12 April 2000).

However, where the source of such documents is a private body entrusted with a public service mission, all references or passages relating to this mission may be freely divulged without any objection on grounds of confidentiality.

### LEARN MORE

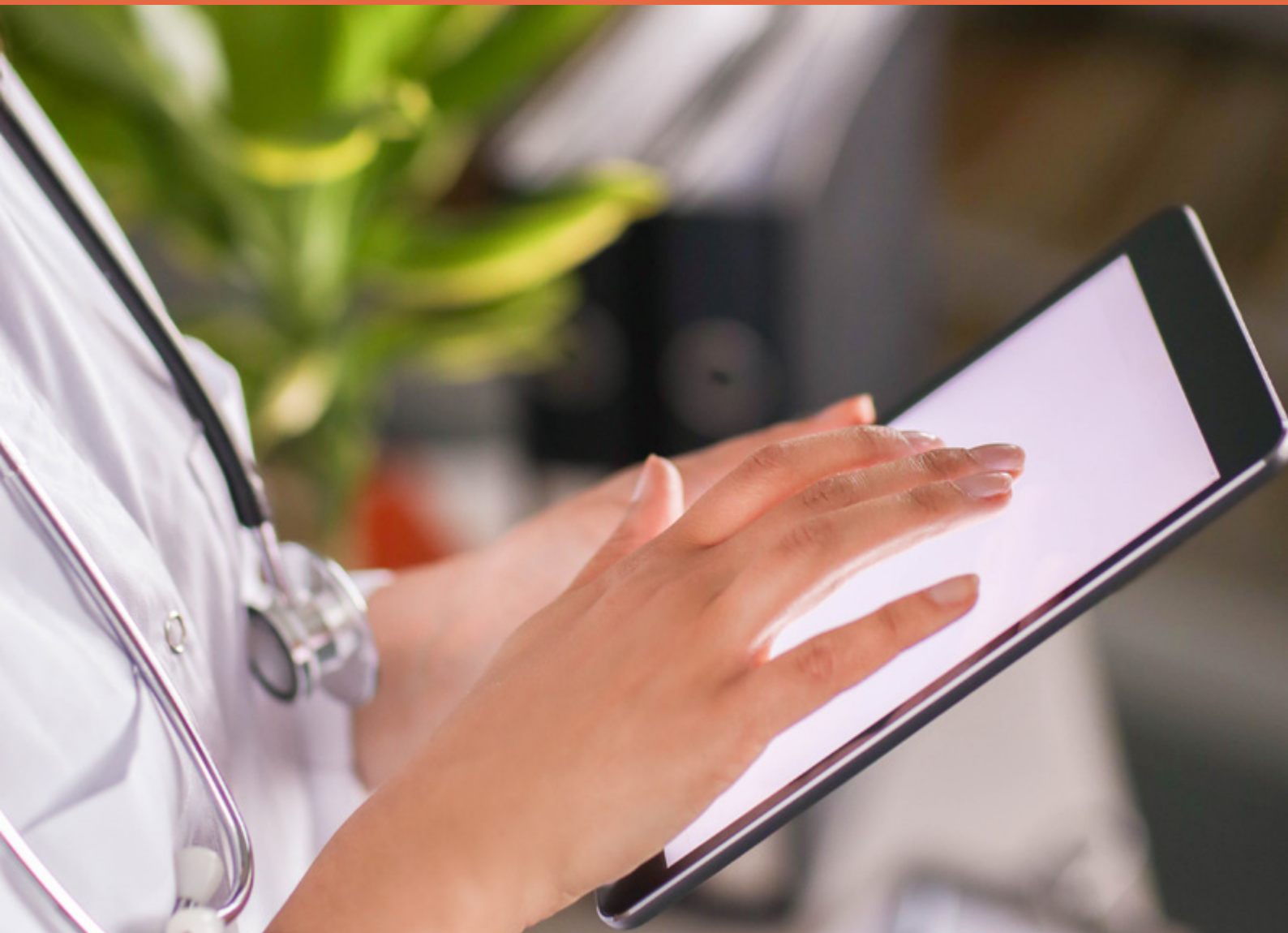
8-Opinion II No. 20221421 dated 12 May 2022, in which CADA ruled that, if they merely record recusals and not the reason for them, the recusal registers of members of ministerial cabinets can be freely divulged. On the other hand, if the reason for the recusal appears in the register, such information should be redacted as it is covered by personal confidentiality.

9-Opinion II No. 20231499 of 11 May 2023, relating to the holding of elections for staff representatives at the Caisse des dépôts et consignations, in which CADA pointed out that, while lists containing the names of persons who have actually stood as candidates to publicly assume responsibilities in the interest of the organisations to which they belong may be freely divulged, the same does not apply to lists that have been declared inadmissible and which have therefore not been submitted to the ballot, the disclosure of which would infringe on the secrecy of the private lives of the persons named therein.

# Reconciling right of access and privacy







# Guaranteeing access to health data



**H**ealth information is defined in Article L. 1111-7 of the Public Health Code as all information concerning a person's health, held by healthcare professionals and institutions, which is formally recorded or has been the subject of written exchanges between healthcare professionals.

This article also states that everyone has access to all information concerning their health held by health professionals and establishments.

Although its policy on access to medical records is well established, the Commission d'accès aux documents administratifs receives new legal questions every year. 2022 and 2023 have been no exception in this respect.

### Accessing your personal medical file

In principle, the medical file of an adult may be disclosed only to that adult. It may not be disclosed to third parties, including relatives, unless the patient gives his or her consent.

CADA has specified the conditions for exercising this right for adults under legal protection.

For example, it is of the view (a) that a protected adult under guardianship may access his or her medical file, subject to any provisions to the contrary in the guardianship decree, in a manner suited to his or her ability to understand and without it being necessary to obtain the guardian's consent<sup>11</sup>.

Furthermore (b), in cases where the adult is subject to legal protection measures with representation relating to the person, the person in charge of these measures can access the patient's medical file as part of their assignment. However, in cases where the adult is the subject of legal protection

measures with assistance, the person in charge of these measures may access the patient's medical records only with the patient's express consent.<sup>12</sup>

### Disclosure to interested parties

An interested party within the meaning of Article L. 311-6 of the Code of Relations between the Public and the government body is, first and foremost, the person to whom the information contained in the document relates or, if that person is deceased, his or her heirs.

Medical confidentiality is afforded special protection. This is why access to the medical records of deceased persons is subject to strict conditions.

Article L. 1110-4 of the Public Health Code restricts the waiver of the deceased's medical confidentiality to persons who can claim to be a beneficiary, cohabitee or partner linked by a civil solidarity pact (PACS), to the exclusion of any other category of third party, such as family or close friends. In addition, requests from beneficiaries must satisfy one of the three objectives set out in the Public Health Code: medical information concerning a deceased person may only be divulged to those entitled to it, insofar as it is necessary for them to know the cause of death, to defend the memory of the deceased or to assert their rights, unless a desire to the contrary was expressed by the person before his or her death.



As a result, the rightful claimants do not have right of access to the deceased's entire medical file, but only to the medical information necessary for the pursuit of the stated objective.

In application of these principles, CADA has clarified the rules governing the disclosure of advance directives expressed by a deceased person. It is of the view that these documents, which contribute to the medical care of patients, constitute an element of the medical file. They may therefore be divulged to heirs, cohabitants or a partner linked by a PACS, provided that they are necessary for the pursuit of the objective they refer to.<sup>13</sup>

Conversely, the identity of a "trusted support person" named on a hospital report does not automatically constitute information concerning the health of the deceased patient, but relates to his or her administrative record. CADA has concluded from this that this document could be disclosed to the

interested party alone, within the meaning of the aforementioned article L. 311-6. In this case, the requested document did not contain any information relating to the rights of the deceased's spouse, which prompted CADA to reject the request. It is therefore not sufficient to have an interest in obtaining the document in order to be regarded as "interested" within the meaning of these provisions.<sup>14</sup>

The assessment of the link between medical information and the aim pursued by the applicant is a matter for the medical team that treated the deceased patient. The medical team is therefore competent to assess whether the information requested is relevant to the aim stated by the rights holders, and to determine the extent of the resulting disclosure.

The Commission recommended that the medical information contained in the psychiatric file of a patient who committed suicide several weeks after hospitalisation should be shared widely with his/her heirs. This was because in this situation, the causes of death could not be reduced to the "act of suicide" alone, but include all the factors that could potentially explain it, including the psychiatric state of the deceased. CADA also ruled that the fact that the death occurred outside the public agency's premises had no bearing on the determination of the cause of death and the possibility of finding, where applicable, enlightening information in the medical record.<sup>15</sup>



## IN BRIEF

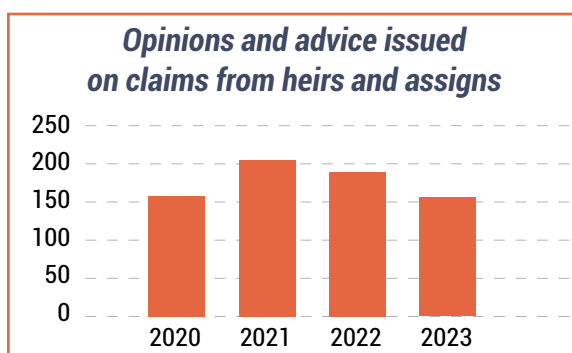
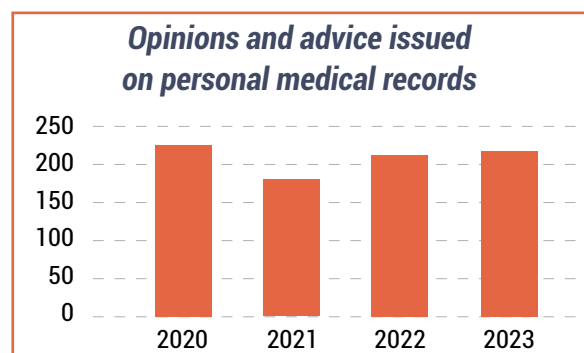
The "benchmark" of the various possible cloud hosting solutions for healthcare data produced by a company under a public contract concluded with the Health Data Hub (HDH) is an administrative document that may be freely disclosed to any person, subject to the removal of information protected by business confidentiality.

[Opinion II No. 20232973 of 22 June 2023](#)



*Heirs and assigns do not have a right of access to the deceased's entire medical file, only to the medical information required to pursue the stated objective.*

## Access to medical records: a few figures



# Guaranteeing access to health data



# Interview with...



*Charlotte HEILBRUNN ,  
Head of Studies  
and Mediation,  
PRADA at AP-HP*

***Over the last two years, CADA has received referrals of cases involving the AP-HP healthcare establishment. What proportion of all the requests for access that have been submitted to you does this represent, particularly in relation to medical records?***

The AP-HP is a healthcare establishment organised into six university hospital groups and four hospitals outside the Ile-de-France region (with a combined total of 38 hospitals and nearly 800 medical departments, all of which treat 8 million patients a year) and employs 100,000 staff. The company's head office is located at Hôpital Saint-Antoine (Paris 12ème), and houses strategic, expert and control functions.

In 2022, the AP-HP received 50 referrals from CADA relating to the disclosure of medical records, and 44 in 2023. For information, the number of requests for medical records sent to our hospitals in the Ile-de-France region is around 15,600 a year.

The other referrals concern AP-HP employees and, from time to time, public procurement.

***What structure have you set up within the AP-HP to respond to requests for access to administrative documents?***

As regards requests for access to medical records, each hospital site has a user relations officer, one of whose tasks is to receive and process these requests. This agent is accessible and clearly identified to users, working locally and acting as the interface between the care services and users, so that requests can be investigated and processed as quickly as possible.

Requests for access to the administrative files of AP-HP employees are handled directly by the site HR departments.

Lastly, a new PRADA was appointed in October 2023 within the Legal Affairs and Patients' Rights Department (AP-HP head office), in order to improve the monitoring and processing of referrals. She is responsible for ensuring that CADA requests are handled with the necessary care, and for allocating them to the relevant departments according to their subject matter (medical records, civil service, public procurement), both within the departments at AP-HP headquarters and within the hospitals. She then centralises the information gathered so that she can respond to CADA and inform it of the action taken on its opinions.

### ***What are the main difficulties encountered by your organisation with regard to right of access to administrative documents?***

The main difficulties are linked to the purely material "logistics" of disclosure, in particular due to the size of the institution, which requires internal coordination and the involvement of the relevant departments across a number of geographically dispersed departments and sites.

In addition, the complexity of some requests means that it takes a long time to anonymise documents.

Finally, while there is no question here of disputing the validity of the legal eight-day deadline for providing medical records, it should be emphasised that in practice it is incompatible with the reality of hospital life in an establishment as large as the AP-HP, or even a university hospital. This especially includes the disclosure of medical records, which requires time-consuming prior medical checks (not disclosing information relating to third parties, only disclosing to heirs and assigns information that may legally be disclosed in the case of deceased patients' records, etc.), amid a general environment in which teams are currently extremely busy with other care and diagnostic activities and do not necessarily have the medical secretariats they would like to have. It should be pointed out that medical secretaries are not among the professionals authorised to view medical records, as they are not members of the "care team", and the assistance they can offer in document disclosure tasks is therefore limited.

One factor common to all healthcare establishments – and therefore not specific to the AP-HP – is that the hospital information systems ("the computerised patient record") with which hospitals are equipped are most often unsuitable for rapid and complete printing of medical documents. The AP-HP aims to develop software in this area, making it much easier to aggregate and print information.

## **Guaranteeing access to health data**







# Helping to inform the public on environmental matters

Access to environmental information is governed by provisions of the Environment Code, which, in application of the European directive, provide for a significant reduction in the restrictions on the right of access under the ordinary law regime.

The purpose of this special access regime is to help to inform the public on environmental matters.

## More extensive right of access

Firstly, unlike the system of access to administrative documents (CRPA) guaranteed by the Code of Relations between the public and government bodies, this regime relates to the disclosure of information and not documents. In addition, the scope of environmental information is defined very broadly by article L. 124-2 of the Environment Code: the state of elements of the environment (such as air, water, soil and biological diversity), decisions, activities and factors that may potentially have an impact on the state of these elements of the environment, and also decisions and activities designed to protect them.

CADA has thus deemed the following to contain information relating to the environment: a project to set up a wind farm<sup>16</sup>; a climate database<sup>17</sup>; reports relating to the issue of fishing capacity<sup>18</sup>; a plan for the water drainage network of a water treatment plant<sup>19</sup>, orders granting environmental authorisation for the construction of a motorway project<sup>20</sup>, and a woodland and forest management plan<sup>21</sup>.

The Environmental Code also includes environmental information relating to human health, safety and living conditions, buildings and cultural heritage, insofar as they are, or could be, altered by environmental factors. Examples include a certificate stating that a member of the armed forces has been exposed to a carcinogenic, mutagenic or reprotoxic





agent<sup>22</sup>, studies carried out on the activities of a facility classified for environmental protection (ICPE)<sup>23</sup>, or a technical asbestos diagnosis for a public building<sup>24</sup>.

Reports drawn up by public authorities or on their behalf on the application of legislative and regulatory provisions relating to the environment, such as a report on the application of the "coastal" law<sup>25</sup>, are also covered by the system of access to information relating to the environment.

Finally, insofar as this special regime applies to information and not to documents, in cases where such information is held, received or produced by an administrative authority, it is up to that authority, when it receives a request in this respect, to draw up a document specifically for the purpose of providing the information requested, even if it does not already appear in an existing document<sup>26</sup>.

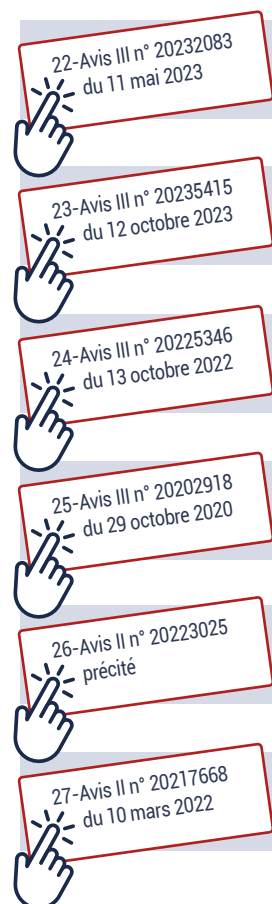
### More control over secrets

Restrictions on the right of access provided for under the CRPA's ordinary law regime are greatly attenuated in the case of access to environmental information. The secrets listed in Book III of the Code are therefore more difficult to cite as obstacles in environmental matters.

Firstly, the preparatory nature of documents containing information relating to the environment does not constitute grounds for refusing to disclose them. However, the Environmental Code allows the government body to reject a request relating to a document that is in the process of being drawn up, provided that it specifies the time frame within which the document will be produced, and also the public authority responsible for producing it (articles L. 124 4 and L. 124-6 of the Environment Code).

Secondly, a number of secrets set out in articles L. 311-5 and L. 311-6 of the French Code of Relations between the public and government bodies are excluded from the list of types of secret that may be cited in response to a request for disclosure of environmental information. The government body may not cite "currency and public credit" secrecy or "other secrets protected by law"<sup>27</sup> to justify a refusal to disclose information.

*The restrictions on the right of access provided for under the ordinary law of the Code of relations between the public and government bodies have been greatly reduced in the case of access to environmental information.*



## Helping to inform the public on environmental matters



In terms of environmental information, the Environmental Code reserves a special place for information relating to the emission of substances into the environment. These may involve pollutants such as wastewater<sup>28</sup> or chemicals<sup>29</sup>, and also noise or odour pollution<sup>30</sup>.

The rules governing access to such information have been relaxed, since disclosure can only be refused if it is detrimental to the conduct of France's foreign policy, public security or national defence, the conduct of legal proceedings or the investigation of offences that may give rise to criminal penalties, as well as intellectual property rights. However, privacy and business secrecy do not constitute valid reasons for rejecting this type of request.

The right to information is thus further strengthened when it concerns emissions of substances into the environment.

## Balancing of interests

The existence of protected secrets does not automatically prevent the disclosure of environmental information. CADA regularly finds it necessary to point out that, in accordance with the provisions of the Environmental Code, limits on the right of access to environmental information must be interpreted restrictively, balancing secrets that are protected by law against the public interest accompanying the disclosure of environmental information.

In balancing these interests, the Commission focuses primarily on the real-world benefit for environmental protection of providing the information requested, and on the specific circumstances of each case<sup>31</sup>. The context of the request and the interests of the applicant are therefore essential factors in the assessment.

More rarely, the Commission has also considered that the disclosure of certain information was, in itself, likely to generate a risk for the protection of the environment<sup>32 33</sup>.



*Limits on the right of access to environmental information must be interpreted restrictively, balancing secrets that are protected by law against the public interest accompanying the disclosure of environmental information.*



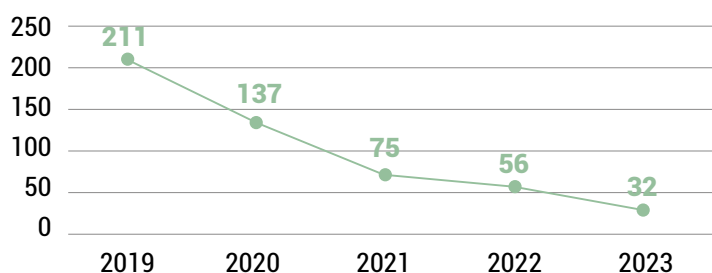


## IN BRIEF

With a view to reducing the time taken to process requests for access to environmental information, in order to comply with the one-month time limit resulting from the application in France of European Directive 2003/4/EC, CADA has made significant efforts to accelerate its procedures and make them more efficient. From now on, such requests will be dealt with by a permanent rapporteur dedicated to these issues, and will be made by means of ordonnances. As a result, lead times have been reduced to 32 days in 2023; a reduction of 77% compared with the average lead time for the 2018-2021 period.

For example, in an opinion dated 2 November 2023 concerning a request to disclose GPS data enabling the location of a particularly rare and protected plant, the *Androsace delphinensis*, CADA considered, after noting the scientific interest and the high ecological value associated with the discovery of this plant, that the disclosure of the requested data, by enabling the precise location of this plant, would pose a threat of practical and effective harm to its preservation. After weighing up the interests involved, the Commission therefore concluded that the interest in safeguarding biological diversity and protecting the *Androsace delphinensis* outweighed the interest in protecting the environment of providing the requested information<sup>34</sup>.

**Change in average time taken for CADA to issue opinions on access to environmental information**



# Helping to inform the public on environmental matters

# Interview with...



Laura MONNIER,  
Legal Manager,  
Greenpeace France

## *Does Greenpeace France regularly make requests for access to administrative documents or environmental information?*

Greenpeace France is an approved environmental protection association that is involved in advocacy, mobilisation and legal initiatives, particularly in the areas of deforestation, nuclear and fossil fuels, factory farms and, more generally, issues relating to climate change.

Over the last two years, Greenpeace France has made around thirty requests for access to environmental information to public authorities and one public company. Nearly half of these requests were subsequently referred to CADA.

## *How does the right of access to environmental information help you?*

Access to this information is essential to the work of Greenpeace France, as it enables us to adjust our lobbying of public and private bodies on the basis of our analysis of the supplied information.

It also enables us to consolidate our expertise in environmental issues.

Lastly, the right of access to environmental information is of interest in litigation. Access to information that potentially indicates improper behaviour through administrative or criminal channels then enables us to take legal action in cases where the administrative authorities have decided not to act. In addition, our association strives to assist the courts in these proceedings, by providing the results of its investigations and developing legal arguments, in order to contribute to the success of the actions taken.

### ***What is your analysis of the effectiveness of the right of access to environmental information in France?***

Effective access to information is not guaranteed, for several reasons.

Firstly, we note that the one-month response period set by law is never adhered to; in some cases, the administrative authority does not even request an extension in order to comply with the request. As a result, the association is often obliged to insist on a response, which, when unfavourable, is rarely supported with evidence.

Secondly, we believe that access to environmental information is still too dependent on the political sensitivity of the issues. This is due to the fact that in our view, government bodies never engage in the balancing of interests, which should facilitate disclosure when justified by public interest. The specific features of the special regime for access to environmental information, as set out in the Environment Code and European Directive 2003/4/EC, therefore still appear to be poorly understood by the administrative authorities.

Finally, given that there are no penalties for refusing to disclose environmental information, even if this refusal is unsupported by evidence, there is no incentive for the government body to disclose more information. In addition, CADA's lack of coercive powers and the time limits for appeals have the effect of dissuading people from taking legal action. As a result, access to environmental information still too often appears to be a veritable "obstacle course" that takes several years to complete. And by the time the association has finally obtained access to the information it is seeking, three or four years after the initial request, it is no longer of great value.

For example, we have major difficulties in accessing information on controls in the timber import sector, or information on the nuclear industrial sector, such as the inspection of equipment manufacture, the financing of nuclear reactor projects (EPR), the climate scenarios taken into account in defining the climate change strategy, and so on. All too often, such requests are rejected on the grounds of business confidentiality, without any balancing of interests.

### ***The Loi pour une République numérique (Law for a Digital Republic) has brought substantial changes to the right of access, including the online publication of administrative documents and the development of open data. Do you feel that your work has been facilitated by these provisions?***

In principle, the spontaneous posting of data online should have facilitated our work. In practice, however, this is far from being the case, as much information is not published spontaneously by government bodies. For example, in the sector relating to classified installations for environmental protection, we are still obliged to request the information contained in the "raw" databases. This data is out of date, contains errors and is relatively illegible. Our data specialists have been making this observation for several years.

Indeed, we cannot use these databases directly, as we are forced in every case to check and cross-reference them against other datasets.

## **Helping to inform the public on environmental matters**





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# Promoting administrative transparency through algorithms and source code



Today, public action is part and parcel of the digital age. Administrative authorities are electronically transforming their procedures across the board and developing algorithms to support their decision-making processes.

To create the conditions to inspire public confidence in government action, the introduction of digital tools to improve government performance must be accompanied by administrative transparency.

### Transparency: essential for confidence in public action

The concept of administrative documents to which the public has access is understood in a very broad sense.

Administrative documents are all documents produced or received, within the context of their public service mission, by the State, local authorities and other persons governed by public law or persons governed by private law entrusted with such a mission, regardless of their date, place of storage, form or medium.<sup>35</sup> With technological developments and changes in working methods, the concept of administrative documents has been extended to include new media, such as databases and computer files.

Law 2016-1321 of 7 October 2016 for a Digital Republic enshrined this right of access in the digital domain, since source code is now expressly included in the definition of disclosable administrative documents<sup>36</sup>.

A specific right of access to certain information relating to algorithmic processing on which individual decisions are based<sup>37</sup> has also been created, and is open to people who are the subject of such decisions.

This legislative breakthrough is an essential one. Transparency plays a key role in the acceptability of the use of digital tools by administrative authorities.

### The search for balance between administrative transparency and protected secrets

The right of access to source code and algorithms may only be exercised subject to secrets protected by law.

With regard to the former, information systems security considerations may prevent the disclosure of the entire source code insofar as its disclosure may constitute a factor of vulnerability in information systems<sup>38</sup>. Taking into account the legislator's desire to open up source codes and the need to guarantee citizens' rights, the Commission nevertheless makes a very strict assessment of this reservation, which cannot be presumed and must be demonstrated on the basis of detailed information provided by the administrative authorities<sup>39</sup>.

Business secrecy – mainly with relation to processes – and copyright may also prevent source code from being made available in cases where it has been developed by private companies.

Indeed, once the administrative authority has established that the software in question is indeed an intellectual work within the meaning of the Intellectual Property Code<sup>40</sup> by providing detailed evidence of the creative contribution made by the author of the requested document, it is the responsibility of that administrative authority to first seek the agreement of the author, who would

35-article L. 300-2 du code des relations entre le public et l'administration

37-Article L. 311-3-1 du code des relations entre le public et l'administration

38-Avis III n° 20235126 du 21 septembre 2023

39-Avis II n° 20213847 du 13 janvier 2022

40-Article L. 112-2 du code de la propriété intellectuelle.

#### LEARN MORE

36-In Opinion II No. 20144578 of 8 January 2015, CADA had already classified the source code of software simulating the calculation of personal income tax as an administrative document that could be disclosed.

Transparency plays a key role in determining the acceptability of the use of digital tools by administrative authorities.

41-Article L. 311-4  
du code des relations  
entre le public et  
l'administration

42-1° de l'article L. 311-6  
du code des relations  
entre le public et  
l'administration



then be entitled to object to the disclosure of their work to third parties<sup>41</sup>. In the absence of proof of originality of the source code, business secrecy<sup>42</sup> may also, if justified, lead to the obscuring or severing of protected information<sup>43 44</sup>.

With regard to algorithms, the main secrecy issue is the risk that they may affect the investigation and prevention, by the competent services, of offences of any kind<sup>45</sup>.

in this respect, CADA has taken a view that, with regard to the datamining model algorithm used by the Caisse Nationale d'Allocations Familiales (CNAF) to assign a risk score to recipient applications, disclosure of this information would amount to revealing the variables taken into account, along with the associated coefficients, and would consequently result in the disclosure of the criteria used to target inspections. The Commission was of the opinion that the risk of development of individual or organised fraud likely to result from this was sufficiently likely to be taken for granted and therefore considered that such disclosure would be likely to breach the CNAF's policy of combating social fraud and, more generally, the effectiveness of controls.

However, it took the view that the same did not apply to the variables used in models that were no longer in force, and on which current and future controls were not based<sup>46</sup>.

43-Avis II n° 20220816  
du 31 mars 2022

44-Avis I n° 20221454  
du 23 juin 2022

45-g) du 2° de l'article  
L. 311-5 du code des  
relations entre le public  
et l'administration

46-Avis I n° 20226179  
du 15 décembre 2022



## IN BRIEF

The Commission took the view that disclosure of the trained learning models of the pseudonymisation tool for court decisions developed by the Cour de cassation would be likely to call into question the very purpose of these models and, more generally, of the tool, i.e. to secure the public dissemination of court decisions while ensuring respect for the privacy of the persons concerned, due to the risk of operations that would make it possible to reconstitute the redacted data. It was therefore of the opinion that disclosure of these documents would involve the protection of privacy within the meaning of Article L. 311-6 of the Code of Relations between the public and government bodies.

*Opinion II No. 20230314 of 30 March 2023*

# Promoting administrative transparency through algorithms and source code

# Interview with...



**Fabien TARISSAN,**  
Researcher in Computer  
Science at CNRS  
(Section 06),  
associated Professor  
at ENS Paris-Saclay  
and member of the CNIL

## *Could you explain what an algorithm is? And what is source code?*

An algorithm is a sequence of operations used to solve a given problem. Within this very broad family (the first algorithms date back more than 2,000 years), algorithms in the computer sense have at least two distinguishing characteristics. Firstly, these operate on a symbolic version of the real world (numbers, characters, etc.). Secondly, their purpose is to be run by machines. It is this last feature that makes the link with source code.

Source code is a string of text that describes the instructions that a computer must execute to solve the problem. This text is written in a given (computer) language and this language is based on a set of instructions and constructs, each of which has a very specific meaning for a computer.

We can say that source code is the translation of an algorithm into a specific language that can be understood by a computer.

## *What are the main issues involved in publicly disclosing the algorithms and source codes developed by government bodies?*

Among the many challenges, I would highlight the following.

Transparency first of all, because the disclosure of algorithms and source code gives citizens precise knowledge (with the same level of precision as a computer with regard to source code) of how an administrative decision affecting them will be, or has been, taken. This is linked to the concept of trust in the workings of the public authorities.

I also believe that the concept of independence is important, because access to the source code enables everyone to check for themselves (or with the help of a trusted third party) the legitimacy and fairness of a decision based on an algorithm. This is then linked to the concept of acceptability of the administrative decision, which is essential when it goes against the wishes of the constituent.

### ***What challenges lie ahead in terms of source code and access to administrative documents?***

Source code is usually highly technical information. One of the challenges of disclosing it is to ensure that it is easy for the public to read and understand. One avenue that could be explored here is to write source code in such a way that it is not only correct from the point of view of its execution by computers (as all source code must be), but also understandable by a human being. In this case, the public nature of the source code would legitimise this additional constraint.

We could also link this issue to the question of formal verification of the properties expected by such source code and, behind it, the algorithms. Such techniques already exist, particularly in industry (aviation, for example). This requires source code to be written in a certain way, adding constraints. But the benefit is that we can then be sure that they are correct (in the mathematical sense). Here we come back to a question of trust in public decision-making.

Another growing challenge relates to the data on which algorithms and source code operate. In many cases, in line with the acceptability perspective mentioned above, access to the algorithm alone is not enough to explain the result leading to a decision. Another way of looking at the problem is to link this challenge to the issue of the explicability of an administrative decision on the basis of algorithmic processing: merely disclosing the algorithm does not always shed light on the final decision.

### ***In your opinion, how is the opening up of public data useful, or even necessary, for administrative transparency?***

I believe it is essential, for the reasons given above. If we link the problem of access to an algorithm or source code to the question of the explicability and acceptability of an administrative decision, then the data supplied to the algorithm plays a crucial role here. The question of the transparency of the algorithm is mechanically reflected in the question of the data used by the algorithm.

In other words, disclosing an algorithm with a view to making an administrative decision transparent requires some thought to be given to disclosing the data on which it operates.

# **Promoting administrative transparency through algorithms and source code**



### ***What are the digital challenges facing the public sector today?***

I believe the main issue is of electronic and digital approaches in the public sphere. This can be broken down into two areas: firstly, the need for government bodies themselves to have a better understanding of these techniques, so that they are not simply using tools without understanding how they work, which would put them in a position of depending on the results obtained from running algorithms. In the case of decision-making support algorithms, for example, the question of the user's ability to work independently of the algorithmic recommendation is of vital importance in the context of a public decision.

This question is linked more broadly to the need for a better understanding on the part of the public, once again in the interests of acceptability.

This issue is linked to the issue of training (both initial and continuing) in computing and digital technology, aimed at the general public as well as practitioners and experts; a distinction should be made between these two audiences when considering training.

### ***How can the use of artificial intelligence (AI) improve the quality of public service? Can you give us an example?***

AI is a very powerful tool for analysing data by identifying trends and dominant characteristics in specific contexts. When the knowledge resulting from the application of these techniques is then used for "predictive" purposes, this poses a problem and requires careful thought, training, the ability to take a wider view and consultation based on societal choices. But when it is used for analysis purposes, it becomes an element that can then be used in decision-making and the shaping of public policies.

The recent debate surrounding the abuses of the algorithm used by the Caisse d'allocations familiales agency is a case in point. When data analysis is then used to detect potential fraud (predictive aspect), there may be a tendency towards discrimination. On the other hand, these same analysis techniques could be used to detect profiles that could be eligible for assistance but do not apply for it, thereby re-establishing a form of equity in access to social rights.

Similarly, in the case of so-called “predictive” justice, the value of machine learning lies not so much in its supposed ability to automate decisions (again, the predictive aspect) as in its ability to reveal the patterns that emerge in the practice of law (identification of trends or determining factors in legal or judicial decision-making).

***Artificial intelligence still raises major fears on the part of government bodies. Why is this?***

I think the main reason for this lies in the lack of understanding and the difficulty of appropriating these techniques and, behind them, algorithms and IT. This is linked to problems of education and training in computer science. Today, government bodies seem to me to be in a state of dependency with regard to the projection of these artificial intelligence algorithms into the public sphere, making it difficult for them to retain any perspective or control over the final decision-making process. The challenge here is how to make government bodies centres of expertise in their use of artificial intelligence tools.

**Promoting administrative transparency  
through algorithms and source code**





# Clarifying the scope of our action



## Simplifying the processing of serial requests

For several years now, the Commission has been receiving an increasing number of serial requests, consisting of at least five requests on the same subject, sent by the same applicant to different government bodies.

The special nature of these referrals, the sheer volume of which created tangible operational difficulties for the Commission, justified the adoption of an adapted procedure designed to limit the risk of other cases being sidelined and to preserve the time required to process the requests<sup>47</sup>.

From now on, when a referral forms part of a series of requests, the Commission can receive referrals for only one single refusal of disclosure, and will issue only one opinion. This referral constitutes a compulsory prior administrative appeal for each of the requests in the series.

This new system enables CADA to adapt its operations to the changes in the use of the right of access observed in recent years, in order to respond to these new serial requests quickly and efficiently, without prejudicing other requesters.

### LEARN MORE

47-Article L. 342-1 of the Code of relations between the public and government bodies, amended by Act No. 2022-217 of 21 February 2022; articles R. 343-3-1 and R. 343-3-2 of the same code from Decree No. 2022-1335 of 19 October 2022.

## Developing the PRADA network

With a view to developing the network of people responsible for access to administrative documents (PRADA), the Commission has created the post of PRADA network coordinator, whose main tasks are to develop, coordinate and lead the PRADA network via three main approaches:

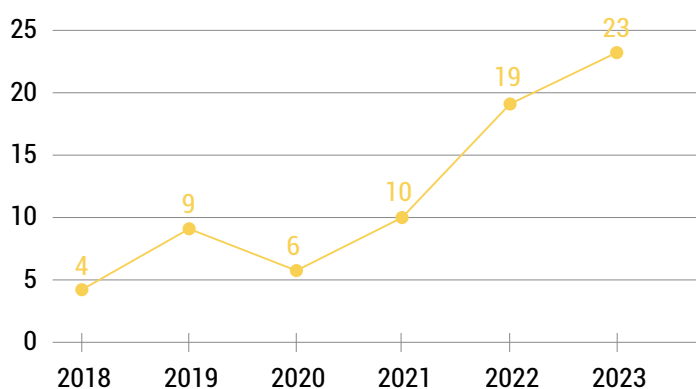
- Appointment campaigns,
- Regional meetings,
- Training initiatives.

### • **The evolution of the PRADA network**

To create a truly dynamic network, it is essential for it to be as comprehensive as possible. For this reason, from the end of 2022, CADA has initiated a major project to update and identify the government bodies subject to the obligation to appoint a PRADA. Between the start of this campaign and the end of 2023, the PRADA network grew by 13%.

These awareness-raising campaigns are run when CADA travels to the regions to meet with PRADAs.

**Number of serial requests submitted to CADA**



Between the start of this campaign and the end of 2023, the PRADA network grew by 13%.

### • **Regional seminars**

In 2023, Normandy, Auvergne-Rhône-Alpes and Grand Est were the first regions to be visited by the Commission. These trips provide an opportunity to meet the appointed PRADAs, elected representatives and government officials, through a half-day seminar on two topics relating to administrative transparency, and a day of training. These PRADA “meetings” provide an opportunity for rich discussions of the problems encountered on a daily basis concerning the right of access to administrative documents and the best practices implemented by the institutions.

In 2024, CADA will continue these meetings at a rate of three a year, starting in April in Hauts-de-France.



### • **Training courses**

From late 2022, to support PRADAs in their ownership of the right to access administrative documents the Commission began expanding its range of training courses, both in Paris and in the regions.

More than 200 PRADAs took advantage of one of the nine training days organised in 2023.

In addition to these general actions, the Commission sought to diversify the events offered to network members to take account of specific issues encountered by certain types of government bodies. For example, one training course for accessing child welfare cases was provided to the departmental councils. Similarly, a meeting of ministerial PRADAs was held on CADA's premises to encourage discussion on subjects common to the various ministries in relation to the right of access. This meeting was followed, in the second half of 2023, by a webinar on current policy.

This offer is set to continue in 2024, with the aim of increasing the number of training days and diversifying the topics covered.

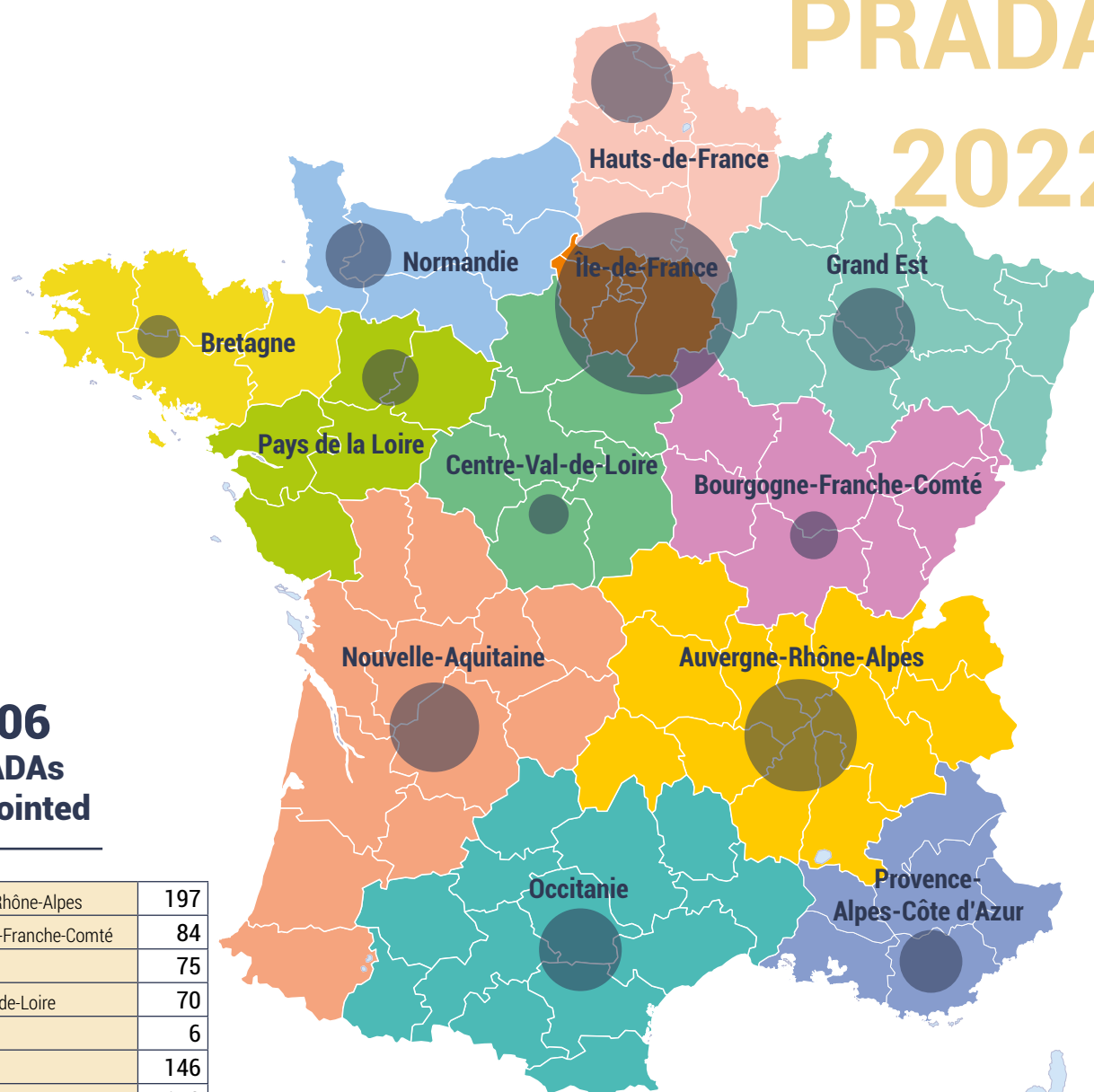
In addition to these actions, the Commission is also considering the introduction of new tools to ensure a truly regional approach, and to encourage and facilitate interaction between PRADAs.

*In 2023 la Normandy, Auvergne-Rhône-Alpes and the Grand Est were the first regions visited by the Commission.*



## Clarifying the scope of our action

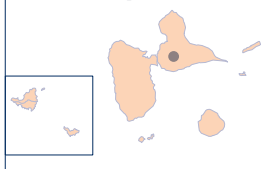
# PRADA 2022



**1706  
PRADAs  
appointed**

Auvergne-Rhône-Alpes	197
Bourgogne-Franche-Comté	84
Bretagne	75
Centre-Val-de-Loire	70
Corse	6
Grand Est	146
Hauts-de-France	143
Ile-de-France	319
Normandie	115
Nouvelle-Aquitaine	157
Occitanie	145
Pays de la Loire	99
Provence-Alpes-Côte d'Azur	110
Guadeloupe	17
Martinique	4
French Guiana	3
La Réunion	16
Mayotte	0

**Guadeloupe**



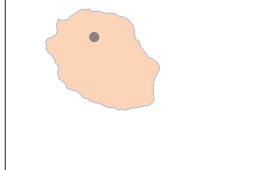
**Martinique**



**Corse**



**La Réunion**



**French Guiana**



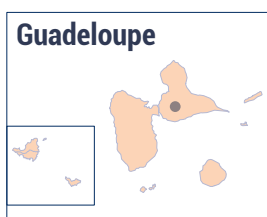
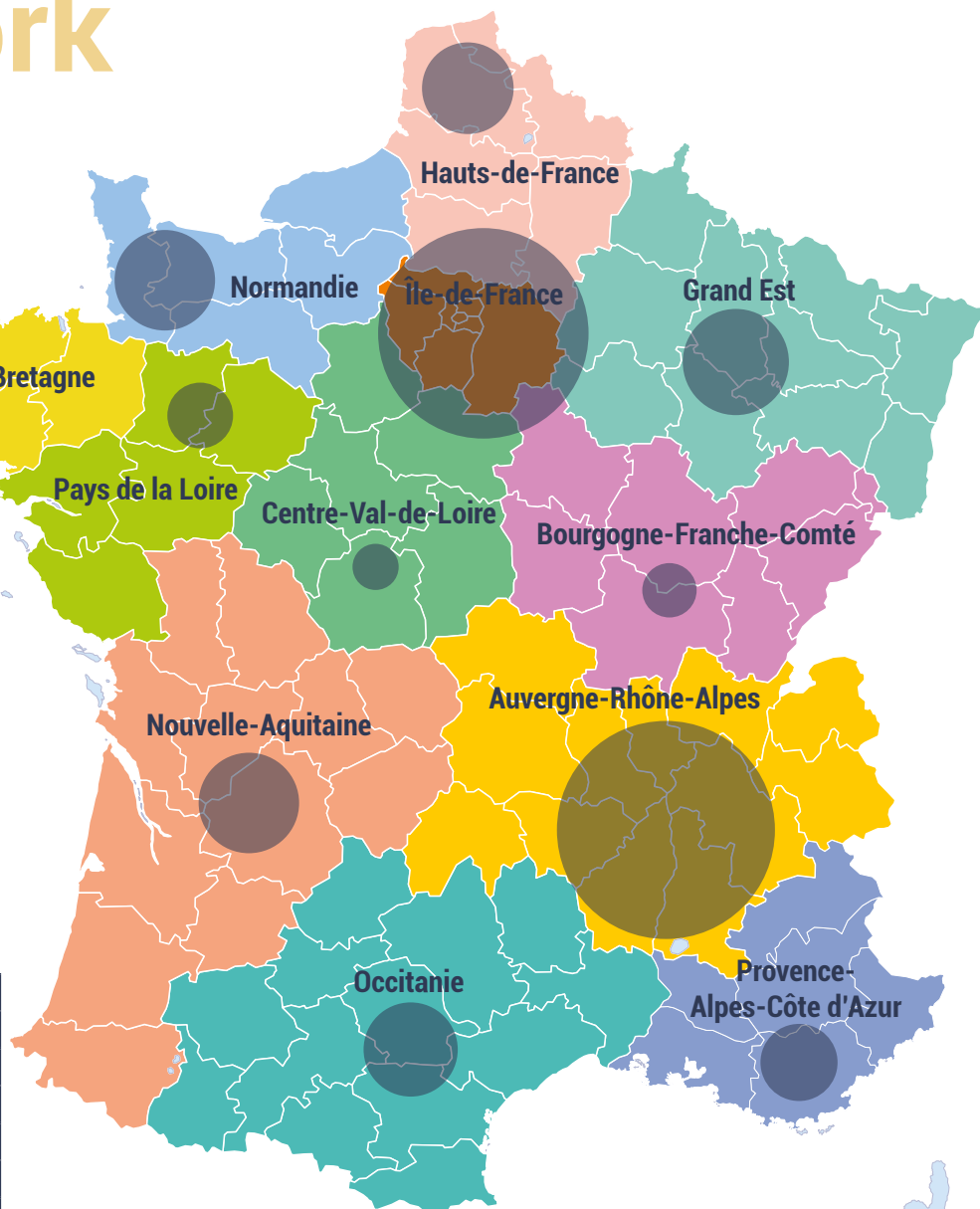
**Mayotte**



# network 2023

**1953**  
PRADAs  
appointed

Auvergne-Rhône-Alpes	345
Bourgogne-Franche-Comté	86
Bretagne	79
Centre-Val-de-Loire	73
Corse	10
Grand Est	168
Hauts-de-France	145
Ile-de-France	333
Normandie	133
Nouvelle-Aquitaine	159
Occitanie	149
Pays de la Loire	104
Provence-Alpes-Côte d'Azur	122
Guadeloupe	17
Martinique	4
French Guiana	3
La Réunion	22
Mayotte	1



## Clarifying the scope of our action



# Perspectives from PRADAs



Florence  
COCHU-GUILLEMAIN

Expanding the network of individuals responsible for access to administrative documents (PRADA) and supporting those individuals – a priority for CADA since 2022 – is of central importance to the work done by the Commission.

For this activity report, three PRADAs from different government bodies have agreed to share their experience and vision of administrative transparency.

## *Introduction to PRADA functions in your institution:*

### **Florence COCHU-GUILLEMAIN, PRADA for the Ministry of Ecological Transition and Solidarity and Territorial Cohesion:**

I've been doing PRADA work, which accounts for 90% of my business, for the last 2 years. At the same time, I am responsible for handling certain disputes relating to access rights. Lastly, I lead a number of training courses on access rights and general administrative law to various human resources development centres (CVRH).

### **Hugo Chatagner, EDF PRADA:**

I'm in charge of the public law and environment unit in EDF's legal department, which is made up of seven people. The PRADA function and the management of requests for access to administrative documents make up less than 5% of our activities, along with other work linked to the company's public service missions.

In short, we operate in the following areas:

- energy law (support for renewable energies, regulated energy sales tariffs, regulation of nuclear infrastructure, European energy law, market mechanisms, etc.);
- public business law (operations and governance of public companies, public procurement, public property, etc.);
- general public law (administrative authorisations, access to administrative documents, litigation procedures);
- environmental law (public participation, environmental assessment, biodiversity, classified facilities, waste, greenhouse gases and climate change) and CSR (duty of care).

### **Benoît Poche, PRADA for the city of Grenoble:**

I was assigned responsibility for access to administrative documents in February 2018. I carry out these tasks alongside my main role of data protection officer for the local authority and its communal social action centre (CCAS). Between 15% and 20% of my working time is devoted to PRADA assignments.



Benoît POCHÉ

### *Process for handling CADA referrals:*

**FCG:** A memo dated 9 June 2022 sets out the processes put in place for the ministerial division. Referrals to the Commission are forwarded to the various departments by the PRADA, which, on the basis of the information he/she receives, formally records the comments to be sent to CADA.

**HC:** The initial disclosure request is examined by the departments directly concerned (the business units advised by their local legal support). The PRADA is then responsible for investigating the referrals that CADA sends to EDF, always preparing its observations in direct liaison with the departments responsible for responding to the initial request for information

**BP:** I forward CADA referrals to the departments concerned by the request for information. I then personally draft the comments sent to CADA and follow up the cases. Ultimately, it is the responsibility of the department concerned to send the document to the applicant

### *Right of access activities in your institution:*

**FCG:** As far as the Ministry is concerned, requests for access are varied and cover all of the ministerial division's policy areas: energy, climate, biodiversity, housing, town planning, roads, the sea, civil aviation, etc.

They can be divided into three categories:

- ▶ the first covers requests for access to environmental information;
- ▶ the second concerns requests of a more political nature, including the activities of ministerial cabinets in particular;
- ▶ the last section covers targeted requests relating to clearly identified documents (accident investigation bureau (BEA), investigation reports, town planning documents, etc.);

In 2023, around 206 requests were processed. Although these requests are divided equally between direct requests from citizens and known requests at the CADA referral stage, it is difficult to give a percentage that reflects the proportion of requests that result in referrals to CADA, as the PRADA is not a central focus point for all requests. Some of these are only brought to my attention when they are referred to CADA. However, it is possible to estimate that around 25% of the requests received by the PRADA were subsequently referred to CADA.

## Clarifying the scope of our action

**HC:** A large number of disclosure requests are investigated and processed directly by the entities that receive them. For our part, we investigate an average of ten CADA referrals each year, most of which concern requests for access to environmental information or documents relating to EDF's electricity generation activities.

**BP:** For the city of Grenoble, more than forty requests for access were received by the PRADA in 2023. This figure is an 80% increase on 2022 and 2021. 20% of all these requests are referred to CADA. In descending order of importance, requests relate to the activities of elected representatives, planning permission, the local authority's human resources, accounting and financial documents, public contracts and municipal buildings and facilities. Next come requests relating to associations, electoral rolls, studies and the work of advisory councils set up by the municipality.

### ***The challenges presented by open data and the disclosure of administrative documents:***

**FCG:** The culture of spontaneous dissemination of information held by government bodies, enabling it to be used and exploited, is making progress, but this is not resulting in a reduction in the number of one-off requests for access to administrative documents. Indeed, we have observed the opposite: that spontaneous transparency generates new disclosure requests. In the area of environmental information, for example, requests for access continue unabated, even as the culture of publication and open data becomes more firmly rooted in practice.

The challenge is (a) to make departments aware of their publication obligations, and (b) to improve the readability and referencing of the data made available online via a single, easily identifiable portal providing access to the wealth of data held by departments.

**HC:** I believe that the introduction of tools for sharing documents with the public, enabling them to access information easily and quickly, is an undeniable step forward.

It does, however, leave open the question of the scope and conditions under which open data solutions are implemented. I think it is important, in this new and evolving landscape in which new information media are becoming increasingly important, that open data is used in a way that complies with the law, and in particular complies with the secrecy requirements protected by law.

**BP:** One of the future challenges of open data is to make elected representatives aware that, once their decisions have been adopted, the reasons behind them should be accessible to everyone. This increased transparency and citizen monitoring of public action should intrinsically enhance the quality of municipal work.

However, the publication of open-access data and documents creates an obligation for information to be relevant and regularly updated, requiring the allocation of resources.

Furthermore, it is important to ensure this tool does not become a means for government bodies to offload their duty of providing information by repeatedly referring users to information available in digital format, which risks further widening the digital divide.

## Clarifying the scope of our action





# Cada

Commission d'Accès  
aux Documents Administratifs

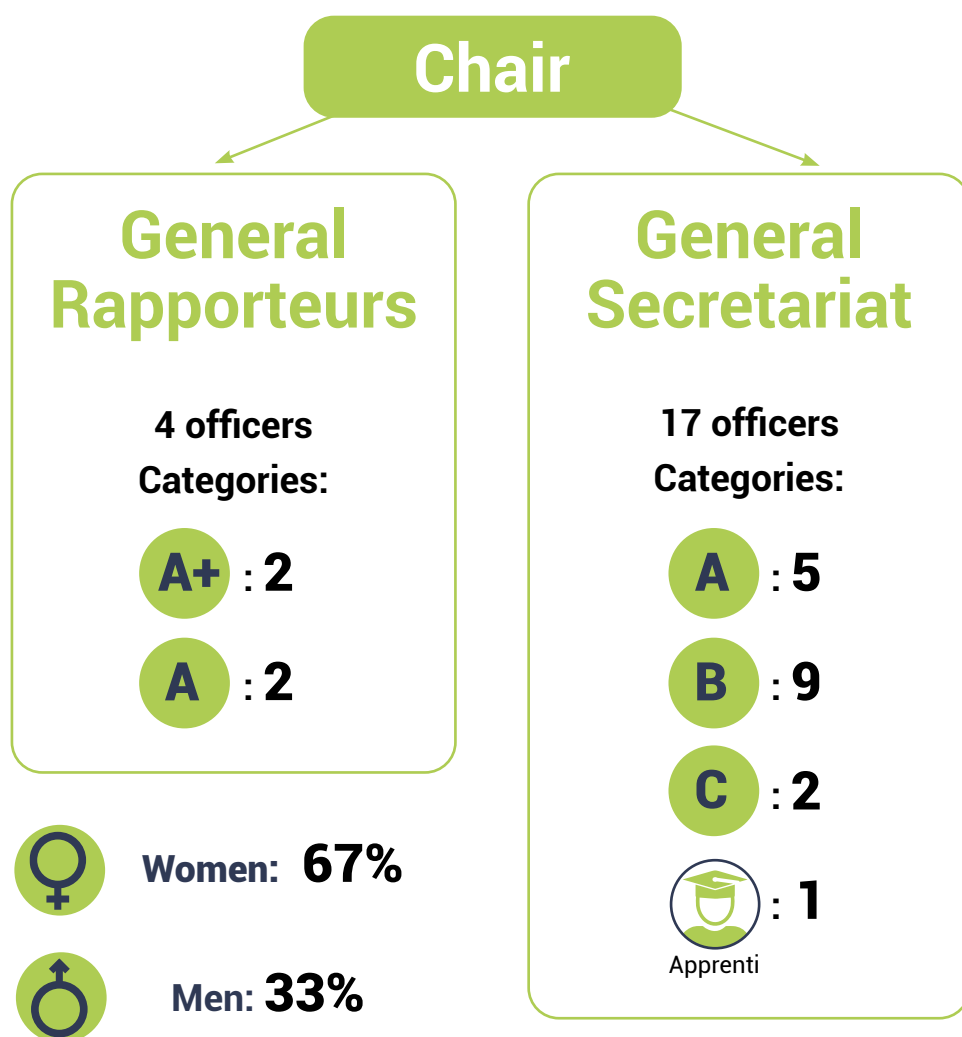
La CADA est une autorité  
administrative indépendante  
chargée de veiller  
à la liberté d'accès aux documents  
administratifs et à la réutilisation  
des informations publiques

transparence  
Accès Secrets  
Commission  
Loi Document  
Archives Algorithme



# Behind the scenes at CADA

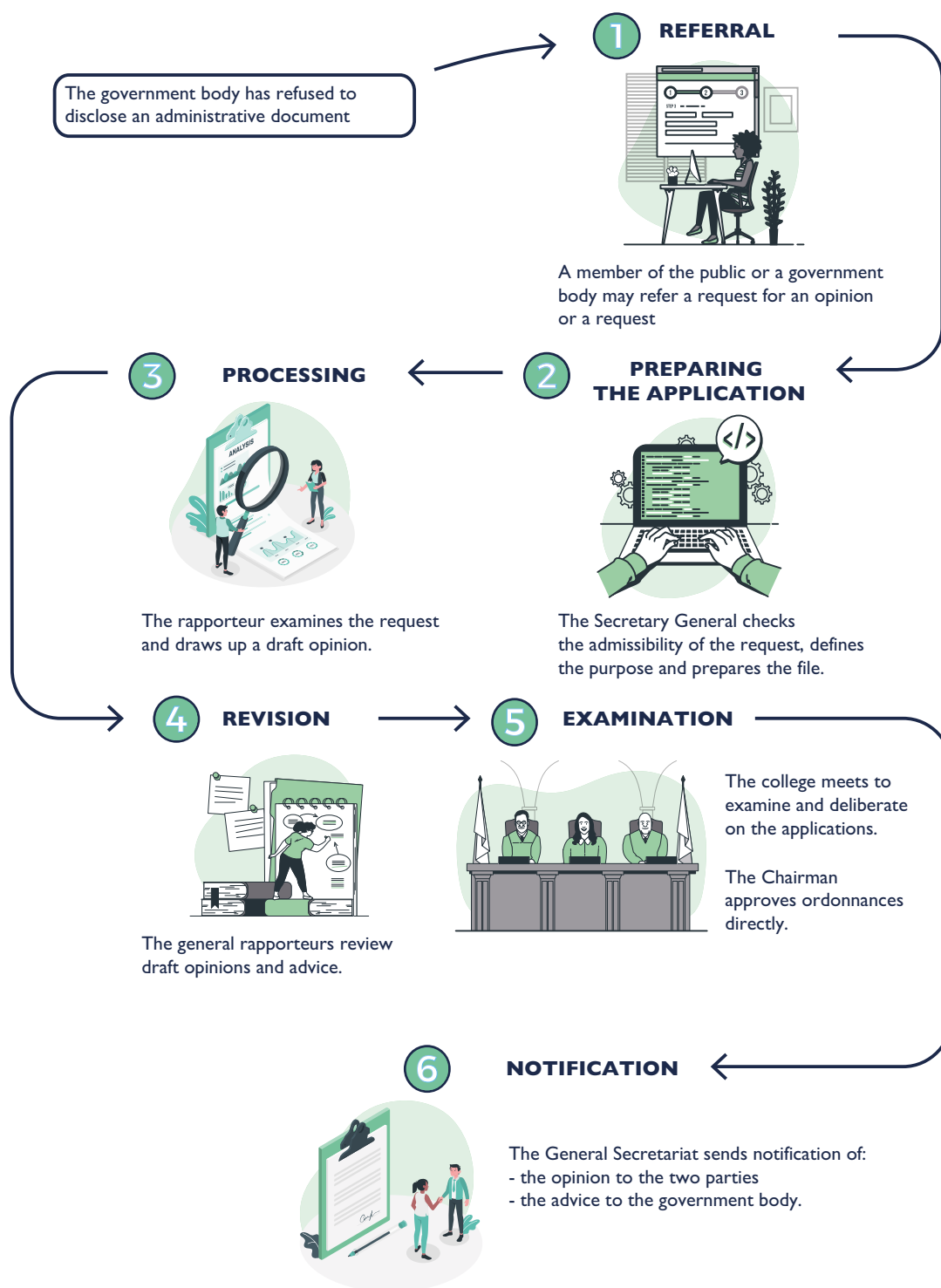
# CADA's resources<sup>48</sup>



	2018	2019	2020	2021	2022	LFI 2023	PLF 2024
<b>Title 3: operating expenditure</b>	<b>252,071</b>	<b>249,659</b>	<b>99,659</b>	<b>99,081</b>	<b>98,585</b>	<b>293,585</b>	<b>253,585</b>
Title 2: staff costs	1,332,507	1,549,174	1,388,120	1,440,799	1,304,255	1,582,253	1,641,765
Employment ceiling	15	16	17	17	17	18	21
Employment scheme	14	15	16	16	16	17	20

48 - at 1st March 2024

# CADA's work in 6 steps



## Behind the scenes at CADA



# A rapporteur's point of view



*Mickaël KAUFFMANN,  
senior advisor,  
TA and CAA*

## *Do you feel that your role as rapporteur for CADA complements your duties as an administrative magistrate?*

I have been a rapporteur since 2021.

On a day-to-day basis, this role cannot go hand in hand with my duties as a magistrate, as the principle of impartiality would prevent me, as a magistrate, from dealing with a case relating to the disclosure of any document that I have had to deal with as rapporteur for CADA.

However, from a structural point of view, administrative magistrates, who are responsible for interpreting laws before applying them – particularly the sometimes complex legislation relating to right of access – inevitably draw heavily on their experience as rapporteurs. This provides a practical understanding of how this right is exercised, as well as the constraints that may apply to both government bodies and applicants for right of access, in order to refine this interpretation and, where necessary, develop case law to take account of this reality as far as possible.

Based on your experience, what is your analysis of how applicants use the right of access available to them?

I believe that the vast majority of applicants make reasonable use of it. For example, consider associations whose requests encourage an greater (and often welcome) transparency in areas such as environmental law and public safety.

However, a tiny minority of applicants use right of access as a pretext to try to disrupt the operation of a government body or settle disputes that have nothing to do with this right. CADA, in conjunction with administrative case law, has developed effective tools to limit this type of excess.

By way of example, the possibility of rejecting “vexatious” requests as inadmissible is a tool used sparingly by the Commission, yet it is proving to be decisive.

In the same vein, the Conseil d’Etat recently introduced a degree of subjectivity into the (by nature essentially objective) right of access, ruling that the benefit for the applicant and for the public in providing a document may be taken into account when assessing whether the workload required of a government body by such a request is excessive.

***Do you feel that legislation relating to the right of access, as currently drafted, is suited to today's need for greater transparency? What changes would you like to see?***

Broadly speaking, the right of access seems to me to strike a satisfactory balance between the need for transparency and the organisational constraints of the government body. Nevertheless, I can think of two developments – one in terms of form, the other in terms of substance – that might be considered.

In terms of form, despite the creation of the Code of Relations between the public and government bodies in 2015, the right of access is still spread too thinly across a number of scattered legislative and regulatory texts, which can be difficult for citizens and government bodies alike to negotiate. Let us consider, among a large number of schemes, the ones that are frequently used in relation to the environment, public life within local authorities or medical records, each of which is set out in different codes. A more ambitious formal overhaul could be envisaged by creating, for example, a “code of access to administrative documents” in which all the general or specific legislation and regimes relating to the right of access would be grouped together, without alterations to the law and by theme, along the lines of what has recently been achieved with the new “general civil service code”.

Basically, as we know, the right of access is not unlimited and has from the outset been framed by the need to protect certain secrets, such as privacy and business confidentiality, which are listed by the CRPA using terminology that has not changed significantly over time. The components and delimitation of these secrets often pose difficulties for citizens and government bodies alike, and the solutions obtained in this respect are now mainly inspired by CADA case law or doctrine. As public awareness of privacy issues has evolved considerably, and amid a landscape in which public economic life has become increasingly complex, a legislative or regulatory intervention – one that is intended not to be exhaustive, but illustrative – that details the practical applications of these secrets would perhaps ensure greater transparency in the legislation.

## Behind the scenes at CADA

# A drafter's point of view



Denis BRIN

## *What role does the drafter play?*

The drafter's role, which is comparable to that of a court clerk, is to check the admissibility of referrals and prepare cases before they are examined by a rapporteur.

The drafter is also involved in the final stage of case processing, as he/she is responsible for notifying the parties of their opinions and advice.

## *Can you briefly describe the CADA referral process?*

Referrals are sent to the General Secretariat by post or, in most cases, by e-mail using the online referral form on our website.

These referrals are then transferred to CADA's business application, which ensures that the case file is processed in its entirety. The case file passes successively through the hands of all the Commission staff involved in issuing opinions or advice: secretaries, drafters, rapporteurs, general rapporteurs, Secretary General and Chair.

## *What have the main changes or developments at CADA been since you joined?*

I've been a drafter for just over twelve years. Over this time, I could mention:

- ▶ the codification of the Act of 17 July 1978 in Book III of the Code of Relations between the public and government bodies;
- ▶ the extension of CADA's remit to cover algorithms and source codes by the Law for a Digital Republic in 2016;
- ▶ better communication between CADA and CNIL on common issues;
- ▶ the creation of orders so that cases relating to subjects for which CADA's policy is stabilised and constant can be dealt with more quickly;
- ▶ and, lastly, the procedure for handling serial cases, which means that only one case can be registered for a large number of referrals.

In addition, the majority of referrals now come to us by e-mail, and the number of letters sent by post has decreased considerably since I joined CADA.

The online referral form on our website makes it easier for users to submit their complaints and for the General Secretariat to process them. Finally, I would like to point out that the number of referrals continues to increase from one year to the next, raising the question of the resources allocated to the Commission, which remain modest.

***Based on your experience, what is your analysis of how applicants use the right of access available to them? Do you think there is an increasingly “professional” component of referrals to CADA (e.g. increase in referrals from journalists, associations, etc.)?***

Yes, I have noticed a significant change in the profile of applicants over the last few years.

As a result, more and more referrals are being made by print and television journalists and data journalists, who are using the provisions on access to administrative documents as a basis for their work on current affairs. Subjects such as Covid, contracts with consultancy firms and expense accounts for elected representatives have been the subject of recent CADA opinions following these referrals.

I have also noticed an increase in the number of cases referred to us by animal protection associations; often on a massive scale, as they can be aimed at dozens or even hundreds of different government bodies. Fortunately, the procedure for handling serial requests adopted at the end of 2022 means that we can now absorb them without jeopardising the smooth running of the institution.

In addition, CADA is very frequently contacted by elected representatives of the opposition in local authorities. Although the Commission is not competent to rule on the specific right to information enjoyed by elected representatives, they are nonetheless citizens who, as such, are entitled to exercise the right of access provided for in the Code of Relations between the public and government bodies.

Finally, it seems to me that claimants are increasingly, and insistently, appealing against opinions that do not produce the outcome they want. However, CADA's role is to issue an advisory opinion, meaning that the statutory authority in question is free not to follow it, leaving it up to dissatisfied applicants to then appeal to the administrative court to challenge the refusal made by the government body.

## Behind the scenes at CADA





# Credits

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