



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

The Director-General

Brussels,
DG CONNECT/RM/AS/pef

Mr. Ntetsikas

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Subject: Your application for access to documents – Ref GestDem No 2013/3375 under Regulation 1049/2011 regarding public access to European Parliament, Council and Commission documents – final reply

Dear Sir,

We refer to your email dated 26 June 2013 wherein you make a request for access to documents, registered by us with the above-mentioned reference number.

We furthermore refer to our letter of 5 July 2013 wherein you have been proposed that your application is handled in several successive stages and to your reply of 6 July 2013, accepting the Commission's proposal, wherein you have indicated the priority order for disclosure of the documents subject of your request for access to documents.

The current reply follows the two other responses previously sent to you and covers your request to receive the Bi-annual Management Reports (BMRs) of DG CONNECT from 1/1/2007 onwards. With this reply all your requests under GESTDEM 2013/3375 have been duly addressed.

Please find enclosed the document(s) requested.

Please be informed that only partial access can be provided to the document(s) subject to your request. This is due to the fact that some information is protected by Articles 4(1) a) fourth indent and b), 4(2) first, second and third indent and 4(3).

Pursuant to Article 4(1) a) fourth indent *"the institution shall refuse access to a document where disclosure would undermine the protection of the financial, monetary or economic policy of the Community or a Member State."*

The disclosure of some financial data as well as information related to investigations and/or audits included in the report will undermine the financial policy of the Commission. Therefore, this data has been expunged.

Pursuant to Article 4(1) b) *"the institution shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."*

This exception applies to all the names of physical persons that have been blanked, except for the officials and/or agents of the EU.

The exceptions foreseen in Article 4(1) are absolute exceptions not balanced by an overriding public interest.

In accordance with Article 4(2) first indent of Regulation 1049/2001 regarding public access to documents *"the institution shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property."*

As the identification of the legal entities could damage their commercial interests, all the data in relation to these entities has been expunged on the basis of the above-mentioned exception. This is especially valid for the Annexes to the BMRs.

In accordance with Article 4(2) second indent of Regulation 1049/2001 regarding public access to documents *"the institution shall refuse access to a document where disclosure would undermine the protection of court proceedings, and legal advice."*

Please note that all the data, where the case might be, available with respect to ongoing litigations has been expunged on the basis of the above-mentioned exception.

In accordance with Article 4(2) third indent of Regulation 1049/2001 regarding public access to documents *"the institution shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits."*

Please note that all the data relating to investigations and/or audits included in the reports has been expunged on the basis of the above-mentioned exception.

Finally, pursuant to Article 4(3) first paragraph of Regulation 1049/2001 *"access to a document drawn up by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."*

Please be informed that certain data relating to matters that are still on-going and for which a decision has not been taken yet has been expunged.

We have examined to which extent exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be of a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Articles 4(2) and 4(3).

We consider that the prevailing interest in this case is to protect the commercial interests of the legal entities concerned, the on-going and future investigations and audits and court litigations as well as the decision-making process of the institution.

Therefore, we have concluded that only partial access to the document(s) requested can be granted.

Please note that in accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position above.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency Unit SG-B-5
BERL 5/327
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-Signed)
Robert Madelin

Enclosure: 13 annexes