



Walter Stanish

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Brussels, 18 September 2012

PH/HK/mk D(2012)1858 C 2012-0673

Please use edps@edps.europa.eu for all correspondence

Subject: Your requests for access to documents of 5 August 2012 (C 2012-0673)

Dear Mr. Stanish,

On 5 August 2012, you have sent an access to documents request to the EDPS on the basis of Regulation (EC) No 1049/2001.

The request concerns information regarding any and all international financial data sharing agreements that are either presently active or under consideration by EU bodies. Furthermore, the request concerns any and all information available regarding the name, scope, and content of any similar information sharing scheme operating within the European Union or individual EU nations.

By letter of 27 August 2012, we informed you that, due to the relatively large number of documents relating to different dossiers, and due to the absence of certain persons during the summer period in the Commission and in the Council, the EDPS was forced to extend the deadline by 15 working days on the basis of Article 7(3) of Regulation (EC) No 1049/2001. In the same letter, we provided you with a list of documents we hold that were already publicly available and information on where to find these documents on the Internet.

In the annex to the present letter, we have identified two more relevant documents the EDPS holds which are already publicly available. We have again indicated where to find these documents on the Internet.

As regards the documents held by the EDPS which needed further examination, some of those documents are drawn up by the EDPS, others originate from the Commission.

As regards the documents originating from the Commission, we have consulted this institution in accordance with Article 4(4) of Regulation (EC) No 1049/2001. This was done with a view to assess whether any of the exceptions in Article 4(1) (documents where disclosure would undermine (a) the protection of the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Union or a Member State; or (b) privacy and the integrity of the individual) or Article 4(2) (documents where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, court proceedings and legal advice, the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure) would be applicable.

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I. As regards the Commission documents

We have identified the following Commission documents:

- I.1 JLS D(2010)737, 22.1.2010; Recommendation for opening of negotiations (TFTP);**
- I.2 JLS D(2010)9695, 21.6.2010; Proposed agreement (TFTP).**

Following the consultation of the Commission, we have decided to grant access to document I.2.

We regret that the consultation process has not been finalised yet with regard to documents I.1. We are therefore not in a position to decide on the possible disclosure of these documents. The Commission has indicated today that it will inform the EDPS as soon as possible. A copy of the present letter will be forwarded to the Commission with an accompanying letter indicating that we require an answer from the Commission as soon as possible, and in any event no later than on Tuesday 25 September.

II. As regards the EDPS documents

We have identified the following EDPS documents:

- II.1. EDPS D(2010)0188, 15.2.2010; TFTP Informal Comments - EU RESTRICTED;**
- II.2. EDPS D(2010)0526, 13.4.2010; EDPS Comments on the Recommendation from the Commission to the Council to authorise opening of negotiations between the European Union and the United States of America for an international agreement to make available to the United States Treasury Department financial payment messaging data for the purposes of the Terrorist Finance Tracking Programme (TFTP II agreement) - RESTREINT UE.**

As these documents have been drawn up by the EDPS, there is no obligation to consult third parties under Article 4(4) of Regulation (EC) No 1049/2001. However, since these comments are based on documents which originate from the Commission and are provided to the EDPS on a need to know basis, the assessment of whether these comments can be disclosed depends on the assessment of the possible disclosure of the underlying documents. Therefore, we have also asked the Commission's opinion on the possible disclosure of these comments.

We regret that the consultation process has not been finalised yet with regard to these two documents. We are therefore not in a position to decide on the possible disclosure of these documents. The Commission has indicated today that it will inform the EDPS as soon as possible. As stated, a copy of this letter will be forwarded to the Commission with an accompanying letter indicating that we require an answer as soon as possible, and in any event no later than Tuesday 25 September.

Please find attached the documents to which you have been granted full or partial access.

Please note that pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may make a confirmatory application asking the EDPS to reconsider his position as regards the total or partial refusal of your request. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the EDPS general e-mail: edps@edps.europa.eu.

However, we would note that we are currently not in a position to assess whether the remaining three documents should be disclosed, in whole or in part. In such circumstances you may find it more convenient to await the decision following the outcome of the consultation process with the Commission before lodging your confirmatory request.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Hielke', followed by a horizontal line.

Hielke HIJMANS
Head of Unit Policy and Consultation

Annex: List of documents already publicly available

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TFTP:

Commission documents

- COM(2010)316 final, 18.6.2010; Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program;
- COM(2010)317 final, 18.6.2010; Proposal for a Council Decision on the signature of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program.

To be found through EUR-LEX: <http://eur-lex.europa.eu>