



EUROPEAN COMMISSION
Information Society and Media Directorate-General

The Director-General

Brussels,
INFO/E4/KJP/jf
D/ARES(2011)

Katarzyna Batko-Toluc

via e-mail: xxxxxxxxxxxxxxxxxxxxxx@xxxxxxxx.xxx

**Subject: Request to Access to documents under Regulation No 1049/2001¹
regarding public access to European Parliament, Council and
Commission documents**

Dear Mrs Batko-Toluc,

Thank you for your e-mail registered on 3rd October 2011 (Gestdem Ref. 2011/5046) requesting access to documents under Regulation No 1049/2001. You have requested access to electronic copies of whole correspondence between the Polish government and the European Commission regarding transposition of Directive No 2003/98/EC² on the re-use of public sector information in Poland since 1st January 2005.

I am very sorry to inform you that at this point of the infringement procedure the required documents cannot be made available to you. The case concerning incorrect transposition of the Directive on the re-use of public sector information is currently pending before the European Court of Justice. The requested documents are composed of various administrative letters proceeding or accompanying the infringement procedure, infringement documents including letter of formal notice, reasoned opinion and replies to those documents as well as all pleadings before the Court. Having examined the nature and the content of all those documents, it appeared that they fall within the exceptions set out in Article 4, paragraph 2, second and third indents, concerning the refusal of access to a document where disclosure would undermine the protection of the court proceedings and the protection of investigations, unless there is an overriding public interest in disclosure. Please find attached the list of exceptions provided for by Regulation 1049/2001.

The scope of exceptions was clarified by the European Courts on many occasions (see for instance case *Petrie* T-191/99, judgment of 11 December 2001 and most recently joined cases C-514/07 P, C-528/07 P and C-532/07 P, judgment of 21 September 2011).

¹ L145, 31.05.2001, page 43.

² OJ L345, 31.12.2003, pages 90-96

According to the Court, the Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to an infringement procedure. This requirement of confidentiality remains even after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that the discussions between the Commission and the Member State in question regarding the latter's voluntary compliance with the Treaty requirements may continue during the court proceedings and up to the delivery of the judgment of the Court of Justice. Moreover, a disclosure of the pleadings of the parties to the case pending before the Court would undermine the court proceeding to which they relate. After studying requested documents, it also appeared that a partial access, i.e. access to some of the requested documents or their parts may equally undermine the possibility of reaching an amicable setting of the case and upset the court proceeding in question. Furthermore, after studying your request, there would not appear to be an overriding public interest justifying the disclosure of the documents in question.

Nevertheless, I would like to draw your attention to the fact, that according to the calendar of the European Court of Justice, the judgement in case C-362/10 concerning the infringement case in question is expected on 27 October 2011. Following delivery of the judgement, the above-mentioned exceptions would no longer be applicable.

If you wish the above mentioned position to be nonetheless reconsidered, you are entitled to write to the Secretary-General of the Commission, at the address given below, confirming your initial request. That must be done within 15 working days after receipt of this letter. Once that deadline has passed, your initial request will be considered withdrawn.

The Secretary-General will inform you of the result of the reconsideration within 15 working days from the date of registration of your request, either by granting you access to the document or confirming the refusal. In the latter case, he will also point out the remedies open to you.

All correspondence must be sent to the following address:

The Secretary-General
European Commission
B-1049 BRUSSELS

Yours sincerely,

(e-Signed)
Robert Madelin

Encl: Annex I – Exceptions provided for by the policy on access to Commission documents

