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SECRETARIAT-GENERAL

Directorate B  
Director

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Mr Olivier Hoedeman  
Corporate Europe Observatory

*By email only to:*  
*ask+request-1312-1bcfb302@asktheeu.org*

**Subject: Your requests for access to documents under Regulation (EC) No 1049/2001 – reference GestDem No 2014/2012**

Dear Mr Hoedeman,

We refer to your email of 14 April 2014, transmitted via the *asktheeu* website, in which you make the following requests:

- The letter from Swedish Match to the European Commission dated 14 May 2012 (on the Dalli case) (document 1);
- The Secretary General's reply to this letter, dated 30 May 2012, acknowledging receipt of document 1 and informing Swedish Match that it had been transmitted to OLAF (document 2).

Document 2 was already disclosed to you on 8 February 2013 as a consequence of your earlier application made on 21 January 2013, registered under the Gestdem reference 2013/243, in which you requested the very same documents. It therefore falls outside of the scope of this letter.

Document 1 contains allegations concerning former Commissioner Dalli. It was part of the investigation file of OLAF. When concluding its investigation, OLAF transmitted its findings to the Maltese authorities. These authorities undertook a subsequent judicial investigation. After the results of these investigations were made public, Mr Dalli launched several judicial proceedings, both before European and national Courts, which are still on-going.

Disclosing the allegations made against Mr Dalli at this stage when the subsequent judicial proceedings are still on-going would undermine the protection of court proceedings.

Since the proceedings to which the requested document pertains are fully ongoing, its disclosure would have the effect of exposing judicial activities to external pressure, albeit only in the perception of the public, and would disturb the serenity of these proceedings and thus undermine their protection. In consequence, access to the documents has to be refused on the basis of the exception provided for under Article 4(2), second indent of Regulation 1049/2001 (protection of Court proceedings).

The public interest in disclosure of the letter of Swedish Match does not, on balance, outweigh the need for continued protection of the judicial proceedings.

Furthermore, until the judicial proceedings are completed, Mr Dalli and any other party, including Swedish Match, benefit from the presumption of innocence. Disclosing allegations made against Mr Dalli when the court proceedings are on-going would clearly breach this presumption and, therefore, undermine the protection of Mr Dalli's integrity.

For this reason, disclosure of the letter is also prevented by the exception laid down in Article 4(1) (b) of Regulation 1049/2001.

Partial access to this letter is not possible as its content is fully covered by the exceptions invoked.

To the extent that no access is granted to the letter from Swedish Match to the Commission of 14 May 2012, you are entitled to make a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001.

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-4  
BERL 5/327  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Marianne Klingbeil