



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director-General

Brussels, **30 OCT. 2015**

*By registered letter with acknowledgment
of receipt*

Klaus Zinser
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**Subject: Your application for access to documents – GestDem Ref No 2015/4931
– Partial access**

Dear Sir,

We refer to your email of 15 September 2015 in which you submit, within the framework of *Regulation (EC) No 1049/2001*¹, an application for access to documents, registered the same day under the above mentioned reference number.

1. SCOPE OF YOUR REQUEST

Your application concerns the public access to the documents as regards *the contractual relationship between the EU and the company Coffey International Development Limited, namely the tenders the company have joined, the tenders they lost and the organization who won it, historic and ongoing contracts between the company and the EU, payments to them (detailed listed), the names of the people of this organisation who worked for the EU contracts and the contact persons/project manager from the EU who guided them. You requested all details based on contract and year between 2005 and 2015.*

Your application falls within the scope of *Regulation (EC) No 1049/2001*.

2. EXAMINATION UNDER REGULATION (EC) No 1049/2001

We have identified 10 documents corresponding to your request:

- The specific contract and the study with Ref. No RTD-SSH2007-ERA-EVAL,

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43), hereinafter 'Regulation (EC) No1049/2001'.

- The proposal by the third party, the request for services by DG RTD, the specific contract and the study with Ref. No RTD/B2/2012-30-CE-0521809/00-21: "Euraxess Evaluation Study 2012",
- The proposal by the third party, the request for services by DG RTD, the specific contract and the study with Ref. No RTD/B2/2013/10/_30-CE-0589995/00-96 "Geographic Expansion of the Euraxess-Links Network".

Having examined the documents requested under the provisions of *Regulation (EC) No 1049/2001*, we have assessed that all three above mentioned studies can be fully disclosed to the public.

The Euraxess Evaluation Study 2012 is attached to this letter. The studies concerning ERA evaluation and Geographical expansion of the Euraxess-Links Network are publicly available here:

- Study concerning the ERA Evaluation: https://ec.europa.eu/research/evaluations/pdf/archive/other_reports_studies_and_documents/evaluation_of_the_impact_of_the_framework_programme_on_the_formation_of_the_era_in_social_sciences_and_humanities.pdf.
- Study concerning the Geographical expansion of the Euraxess-Links Network: http://ec.europa.eu/euraxess/pdf/research_policies/Geographical_expansion_2014.pdf.

As regards the other 7 documents, partial access can be granted to them. Disclosure of certain parts of these documents is namely prevented by exceptions to the right of access laid down in Article 4 of this *Regulation*.

2.1 Protection of privacy and integrity of individual

The proposals, requests of service and contracts contain personal data, in particular the names, signatures, positions, E-mail addresses and professional experience of individuals.

Pursuant to Article 4(1)(b) of *Regulation (EC) No 1049/2001*, access to a document has to be refused if its "*disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with the EU legislation regarding the protection of personal data*". When access is requested to documents containing personal data, *Regulation (EC) No 45/2001* becomes fully applicable².

The names, signatures, positions, E-mail addresses and professional experience of individuals undoubtedly constitute personal data in the meaning of Article 2(a) of *Regulation (EC) No 45/2001*. The EU Court of Justice case-law³ confirms that "*there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'*".

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, *Commission v. The Bavarian Lager Co. Ltd*, ECR 2010 I-06055.

³ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, paragraph 73.

According to Article 8(b) of *Regulation (EC) No 45/2001*, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the individuals concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the concerned individuals. The Commission considers, notably, that release of the personal data of its staff members – in particular those that are not holding senior managerial positions – and the third party employees would potentially subject these persons to external pressure. It cannot therefore be assumed that such release would not prejudice their legitimate rights.

For this purpose, in the documents we redacted all personal data of the Commission staff not holding senior managerial positions and of the third party's employees. As regards the Commission staff holding senior managerial positions, we only redacted their signatures. If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the individuals whose personal data should be disclosed.

2.2 Protection of commercial interests

The proposals contain sensitive commercial information of the third party concerning, *inter alia*, its know-how, methodologies, budget, management of resources, etc.

Pursuant to Article 4(2), first indent, of *Regulation (EC) No 1049/2001*, access to a document has to be refused if its "*disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property*".

For this purpose, we redacted all sensitive commercial information, the disclosure of which would undermine the protection of the third party's commercial interests. In our view, putting them in the public domain would affect the third party's competitive position on the market. Indeed, such disclosure would result in a negative impact on the third party's ability to exercise its commercial and business activities and give its competitors an unfair advantage, as they would use this sensitive commercial information, including when competing in calls for tenders and proposals. Therefore, the exception laid down in Article 4(2), first indent, of *Regulation (EC) No 1049/2001* applies to these documents.

2.3 Third-party documents

5 of the requested documents were drawn up by a third party. Pursuant to Article 4(4) of *Regulation (EC) No 1049/2001*, the institution has to "*consult the third party with a view to assessing whether an exception in [Article 4] (1) or (2) is applicable, unless it is clear that the document shall or shall not be disclosed*".

In our view, it is clear, that 3 of the requested third party documents (studies) may be fully disclosed. It is also clear that the other 2 third party documents (its proposals) may not be disclosed in its entirety as they contain commercially sensitive information of the third party and the personal data of the individuals linked to this third party. The disclosure of the documents would undermine the protection of the commercial interests of the third party that submitted them, for the reasons described above under point 2.2.

Additionally, it would undermine the protection of the privacy and integrity of the individuals, the personal data of which is contained in the documents. As you have not mentioned any necessity justifying such transfer of data, we consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the concerned individuals.

2.4 Non-existence of the overriding public interest

The exception laid down in Article 4(2) of *Regulation (EC) No 1049/2001* applies unless there is an overriding public interest in disclosure of the requested documents. Such an interest must, first, be a public interest and, secondly, outweigh the harm caused by disclosure.

In your initial application you did not bring forward any arguments to justify the existence of an overriding public interest in releasing the requested documents. We have found no elements in this instance which could indicate the existence of such an overriding public interest in the sense of the *Regulation* that would outweigh the need to protect the interests identified in this letter. We have therefore concluded that the public interest is better served by protecting the privacy and integrity of the individuals as well as the commercial interests of the third party.

2.5 Legal notice

You may reuse the disclosed content of the requested documents provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse of the disclosed content.

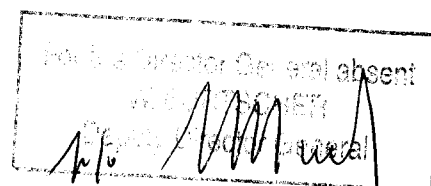
3. MEANS OF REDRESS

In accordance with Article 7(2) of *Regulation (EC) No 1049/2001*, you are entitled to make a confirmatory application requesting the Commission to review this position. 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

Yours faithfully,



Robert-Jan Smits

Enclosures:

- The Euraxess Evaluation Study 2012,
- The redacted specific contract with Ref. No RTD-SSH2007-ERA-EVAL,
- The redacted proposal by the third party, the redacted request of service by DG RTD and the redacted specific contract with Ref. No RTD/B2/2012-30-CE-0521809/00-21: "Euraxess Evaluation Study 2012",
- The redacted proposal by the third party, the redacted request of service by DG RTD and the redacted specific contract with Ref. No RTD/B2/2013/10/_30-CE-0589995/00-96 "Geographic Expansion of the Euraxess-Links Network".