



Directorate B: Investigations II
Director

Mr Martin Turček

via e-mail

ask+request-3296-
f9b42ae4@askthe.eu.org

Brussels
ARES/olaf.c.4(2016)6388210

Subject: Your request for access to information - Slovakia

Dear Mr. Turček,

We refer to your email of 23 September 2016, registered in OLAF under Ares(2016)5586415, in response to OLAF's answer of 23 September 2016 (Ares(2016)5860252) to your initial request of 10 September 2016 (Ares(2016)5507694).

1. Access to information

In your email of 23 September 2016 you request "information about the particular cases that were investigated by OLAF [in Slovakia], in very short form – name of investigated institution and object of investigation (particular tender, or use of funds,...)." We understand your email of 23 September 2016 as a request for access to information.

Having carefully reconsidered your request, OLAF regrets to inform you that the information that you seek to obtain cannot be made available.

OLAF is legally bound, pursuant to Article 339 of the Treaty on the Functioning of the European Union, Article 10 of Regulation (EU, Euratom) No 883/2013, and Article 17 of the Staff Regulations, to treat the information it obtains during an investigation as confidential and subject to professional secrecy.

The specific confidentiality rules regarding the documents related to OLAF investigations, even with regard to the persons concerned by such investigations¹ is justified not only in so far as OLAF collects, as part of such an investigation, sensitive business secrets and highly sensitive information on individuals whose disclosure could significantly harm their reputation. The publication of the sensitive information contained in the OLAF investigative files is likely to harm the protection of personal data regardless of whether an investigation is pending or closed.

¹ See, to that effect, judgment of the General Court of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04 Y, EU:T:2006:190, paragraph 255.

The prospect of such publication after an investigation is closed runs the risk of adversely affecting the willingness of informants and of those who hold relevant

which governs OLAF's administrative activity and provides for the obligation of confidentiality with regard to all information gathered during investigations.

In view of that regulatory context, the Court held that allowing public access to OLAF investigation documents would be particularly detrimental to OLAF's ability to fulfill its mission of fighting against fraud in the public interest. The disclosure of the documents concerned would seriously affect the decision-making process of OLAF, as it would seriously jeopardize the full independence of future OLAF investigations and their objectives by revealing OLAF's strategy and working methods and by reducing OLAF's power to make independent assessments and to consult the Commission services or other EU institutions about very sensitive issues.

The disclosure of documents could also discourage individuals to send information concerning possible fraud thus depriving OLAF of useful information to initiate investigations aiming at protecting the financial interests of the Union. They must be reassured that their statements will be kept confidential, otherwise they may be inclined to censor the information they give or to hold back sensitive information.⁷

To these arguments, it must be added that according to the case law of the Court, the administrative activity of the Commission does not require the same extent of access to documents as required by the legislative activity of a Union institution⁸.

In view of the foregoing, the documents in OLAF's case files fall under a general presumption of non-accessibility as documents containing information collected during an OLAF investigation and subject to professional secrecy. In accordance to the case-law, that presumption applies in full regardless of whether the request for access to documents concerns an ongoing or a closed investigation.⁹ In addition, the general presumption also entails that the documents covered by that presumption are not subject to the obligation to assess whether a partial access should be granted to them pursuant to Article 4(6) of Regulation No 1049/2001.¹⁰

Consequently, the documents requested are exempt, in principle and in full, from disclosure to the public, unless the applicant demonstrates that the presumption is not applicable because an overriding public interest justifies the disclosure of the requested documents.¹¹

2.2. Partial Access

OLAF has also examined the possibility of granting partial access to the requested documents in accordance with Article 4(6) of Regulation 1049/2001.

Partial access is not possible, given that the information the documents contain falls entirely under general presumption of applicability of Article 4(2), third indent of Regulation 1049/2001 in the context of inspections and audits.

C-139/07 P, EU:C:2010:376, paragraph 55 ff.; judgment of the Court of Justice of 29 June 2010, *Commission v Bavarian Lager*, C-28/08, EU:C:2010:378, paragraph 40 ff.

⁷ See judgment in *Agrofert Holding v Commission*, cited above EU:C:2012:394, paragraph 66.

⁸ Judgment of the Court of 27 February 2014, *Commission v EnBW*, C-365/12 P, EU:C:2014:112, paragraph 91.

⁹ Judgment of the General Court of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, paragraph 162.

¹⁰ *Ibid.*, paragraph 168.

¹¹ *Ibid.*, paragraph 91.

2.3. Overriding public interest in disclosure

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. For such an interest to exist it, firstly, has to be a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access.

OLAF understands the importance of transparency of the functioning of the EU institutions and particularly of the European Commission. However, given the nature of the anti-fraud investigations conducted by OLAF, and the confidential nature of information collected, such as sources of information, content of case files and reputation of natural persons, OLAF considers there are no elements that would show the existence of an overriding public interest in disclosing the requested documents.

2.4. Confirmatory application


In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting OLAF to review this position. Pursuant to Article 4 of Commission Decision 2001/937/EC, ECSC, Euratom, such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director General of OLAF.

Any confirmatory application to OLAF should be sent to the following address:

Mr Giovanni KESSLER
Director General OLAF
European Commission
B-1049 BRUXELLES.

Your attention is drawn to the privacy statement below.

Yours sincerely,



Ernesto BIANCHI

Privacy statement

Pursuant to Article 11 of Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, please be informed that your personal data are stored in OLAF's electronic and paper files concerning this matter for the purposes of ensuring conformity with the requirements of Regulation 1049/2001.

The categories of your personal data being processed are identification and contact data (name, address, e-mail, telephone, fax) and any other personal data provided by or to you in relation to your request. Officials within OLAF and other Commission services responsible for dealing with requests for access to documents have access to your personal data.

All documentation and communications concerning OLAF investigations are stored in the relevant OLAF investigation files and are retained for a maximum of 15 years. Thus personal data contained in requests for public access to documents concerning OLAF investigations are retained for a maximum of 15 years.

You have the right to access those data and to correct and complete them. On request and within three months from its receipt, you may obtain information concerning your personal data which we have processed. Any such request should be addressed to the Controller (OLAF-FMB-Data-Protection@ec.europa.eu).

You may lodge a complaint concerning the processing of your personal data with the European Data Protection Supervisor (edps@edps.europa.eu) at any time.

The complete privacy statements for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud.