



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director-General

Brussels,
home.ddg2.d.4(2017)4005870

**By registered letter with
acknowledgment of receipt**

Ms Lucie Krahulcova
Access Now
20 Rue Belliard 20,
1040 Brussels

Advance copy by email :

[ask+request-3598-
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Subject: Your application for access to documents – Gestdem 2017/3127

Dear Ms Krahulcova,

We refer to your e-mail dated 01/12/2016 in which you made a request for access to documents. Following your request, we asked you, in accordance with procedural requirements, your postal address by mails dated 02/12/2016 and 18/05/2017. You indicated a valid postal address by mail dated 29/05/2017. We registered your request for access for documents on 29/05/2017 under the above mentioned reference number.

You request access to the responses given by EU Member States to the Questionnaire on improving criminal justice in cyberspace.

Since all the documents requested originate from Member States, they have been consulted. We had informed you by mail dated 06/07/2017 that we were still waiting for some of the 28 answers required from Member States and that we would transmit to you our answer as soon as we get these answers.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the Member States who provided the responses to the questionnaire whose disclosure you seek, I have come to the conclusion that, for the most part, they may be partially disclosed.

Two documents cannot be disclosed, as their originators (France and Lithuania) oppose to the disclosure of their replies to the questionnaire. Poland did not reply to the questionnaire. All other 25 Member States accepted a partial release of their answers to the questionnaire.

Documents or parts of the documents that cannot be disclosed have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of the Regulation 1049/2001.

The redacted parts of the partially released documents contain information whose disclosure would undermine the protection of the public interest pursuant to Article 4(1)(a) first indent of the Regulation 1049/2001 (protection of public security), or contain personal data which has been redacted in accordance with Article 4(1)(b) of the Regulation 1049/2001.

The documents whose disclosure is refused contain information whose disclosure would undermine the protection of the public interest pursuant to Article 4(1)(a) first indent of the Regulation 1049/2001.

As far as the documents concern information whose disclosure would undermine the protection of the public interest pursuant to Article 4(1)(a) first indent of the Regulation 1049/2001 (protection of public security), the relevant Member States have objected to disclosure of parts of or the entire document that they sent to the Commission and have motivated their position as follows:

The answers to the questionnaire do not only include legal provisions but also information on procedures of law enforcement and judicial authorities in criminal proceedings, including procedures agreed upon with other states or supra-national companies, detailed technical information on communication etc.

Disclosure of such information might jeopardize or frustrate the ability of law enforcement and judicial authorities to investigate and prosecute criminal offences in particular cases, especially those of the same kind. For some Member States, disclosure of such information is explicitly prohibited under national law.

I am therefore of the opinion that the disclosure of these parts of the partially or fully released documents could jeopardize the public interest as protected by Article 4(1)(a) first indent of the Regulation 1049/2001.

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 Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

According to Article 8(b) of this Regulation, 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 persons 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 persons concerned. Therefore, we are disclosing the documents requested having deleted all personal data.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

¹ Official Journal L 8 of 12.1.2001, p. 1

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

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 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Matthias RUETE
*[e-Signed by delegation
by Simon MORDUE]*

Enclosed: List of documents
Replies to questionnaires