



EUROPEAN COMMISSION
RESEARCH EXECUTIVE AGENCY

Legal Affairs, Internal Control and Reporting
Head of Sector

Brussels,
REA C0.1

Mr Patrick Breyer
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Germany

*Sent by registered email to:
[ask+request-6091-
41d340b3@asktheeu.org](mailto:ask+request-6091-41d340b3@asktheeu.org)*

Subject: Your application for access to documents on project iBorderCtrl (700626) –

Ref.: Ares(2018)5639117

Dear Mr Breyer,

We refer to your access to documents request submitted to the European Commission on 05/11/2018 via the website AskTheEU.org and registered on the same day under reference number Ares (2018)5639117, reassigned to the Research Executive Agency (REA) on 07/11/2018.

A. SCOPE OF YOUR REQUEST

In your application concerning the project iBorderCtrl (grant agreement nr. 700626) you request:

D1.1 Ethics advisor's first report

D1.2 Ethics of profiling, the risk of stigmatization of individuals and mitigation plan

D1.3 Ethics Advisor

D2.1 Requirement Analysis Report

D2.2 Reference Architecture and components specifications

D2.3 EU wide legal and ethical review report

D3.1 Data Collection Devices - specifications

D7.3 Dissemination and communication plan

D7.6 Yearly communication report including communication material

D7.8 Dissemination and communication plan 2

D8.1 Quality Management Plan

D8.3 Periodic Progress Report

D8.4 Annual Report

D8.5 Periodic Progress Report 2

D8.7 Annual Report 2

This request is handled within the scope of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

B. DISCLOSURE OF THE REQUESTED DOCUMENTS

Having examined the documents requested under the provisions of Regulation (EC) N° 1049/2001 regarding public access to documents, we consider that the documents which are listed in Annex 1 are related to your request. In this Annex we specify the documents to be disclosed, partially disclosed or to which public access cannot be granted according to the exceptions provided in the above mentioned Regulation. The legal grounds for calling on these exceptions are detailed for each of the documents listed in the Annex 1 to this letter.

Concerning the exceptions to the right of access laid down in Articles 4(1) (b) and 4(2) first indent of Regulation (EC) No 1049/2001, namely the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data, and the protection of commercial interests of a natural or legal person, including intellectual property we recall the following:

Protection of privacy and integrity of the individual

The documents contain personal data of individuals which are not in the public domain. 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 EU legislation regarding the protection of personal data.

When access is requested to documents containing personal data Regulation (EC) No 45/2001 becomes fully applicable¹. Article 8 (b) of Regulation (EC) No 45/2001 stipulates that 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.

¹Judgment 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.

We consider that, with the information provided in your request, the necessity of disclosing the 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. In the present case, disclosure of the personal data of persons involved in the project in question would breach their right to privacy. It cannot therefore be assumed that such release would not prejudice their legitimate rights.

The exception laid down in Article 4(1) (b) of Regulation (EC) No 1049/2001, the protection of privacy and the integrity of the individual is an absolute exception that does not have to be balanced against the public interest in disclosure.

Protection of commercial interests of natural and legal persons

The requested documents contain sensitive commercial information of the entities participating in the project consortium or of other applicants to the call not in the public domain. These documents contain, in particular, the reference to the project consortium intellectual property (background, existing and/or foreseen foreground), knowhow, methodologies, technologies, potential inventions working modalities, budget, strengths and weaknesses of the project, success of their implementation, 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.

We consider that the above-mentioned sensitive commercial information has commercial value for the entities participating in the project. In our view, releasing this information into public domain would give the competitors of the consortium an unfair advantage, as the competitors would be able to use this sensitive commercial information in their favour. Competitors would be able to anticipate the consortium strategies and weaknesses. This would, in turn, adversely affect the competitive position of the consortium on the market and, thus, seriously undermine their commercial interest, including their intellectual property.

Therefore, the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to the requested documents.

Such exception 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 application you did not bring forward any argument to justify the existence of an overriding public interest in releasing the requested document. In this instance, we have found no elements that could indicate the existence of such an overriding public interest in the sense the Regulation (EC) No 1049/2001 that would outweigh the need to protect the interests identified in this reply.

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

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to Mr Marc TACHELET, Director of the REA, at the following address:

Research Executive Agency
Covent Garden building
COV2 – 18/136
Place Charles Rogier, 16
1210 Brussels

Yours sincerely,



Barbara KAMPIS
Head of Sector

Enclosure: Annex 1 - List of documents related to the request and legal grounds regarding disclosure
Documents: Deliverable D.3.1