



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

The Director-General

Brussels,
DG CONNECT/RM/AS/sg

Mr. Nastas

Email: ask+request-686-cfc32b73@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2013/3773 under Regulation 1049/2011 regarding public access to European Parliament, Council and Commission documents

Dear Sir,

We refer to your email dated 17 July 2013 wherein you make a request for access to documents, registered by us on 17 July 2013 with the above-mentioned reference number.

We also refer to our reply to your request of 19 September 2013 and to your email dated 19 September 2013.

We understand that your request might be in relation with the processing of personal data by the Community institutions and bodies (Regulation (EC) N° 45/2000 of 18.12.2000 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 data (JO L 8 of 12.02.2001)).

Please note that you are entitled to ask clarifications and make requests only with respect to the processing of your own personal data. If this is the case, we must draw your attention to the fact that this is an issue which, in substance, cannot be addressed and dealt with within the scope of regulation 1049/2001. This regulation only relates to the public access of documents which are in the possession of the institution which has received the application. If, as a data subject, you wish to activate a remedy procedure related to the processing of your personal data by the Commission, we need to refer you to the remedies foreseen by article 32 of regulation (EC) 45/2001 (OJ L8/6 of 12.1.2001) according to which *"every data subject may lodge a complaint with the European Data protection Supervisor if he or she considers that his or her rights under article 286 of the Treaty have been infringed as a result of the processing of his or her personal data by a community institution or body"*. The regulation also states that *"the Court of Justice shall*

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have jurisdiction to hear all disputes which relate to the provision of this regulation". These means of redress would be the appropriate routes to take and they are fully available to you as a data subject.

1. The three audit announcement letters, including all annexes thereto.

Please be informed that we have identified two documents corresponding to your request. You will find enclosed the documents requested. **(Annex 1)**

Please also note that only partial access can be granted to the two documents identified. The erased parts in the documents provided fall within one or more of the exceptions laid down in Article 4 of Regulation 1049/2001.

Pursuant to Article 4(1) b "the institution shall refuse access to a document that where 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 exception in Article 4(1) is an absolute exception not balanced by an overriding interest.

Article 4(2), first indent, of Regulation 1049/2001 provides that "*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (...) commercial interests of a natural or legal person, including intellectual property.*"

We have examined to which extent the exception laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in full disclosure. Such an interest must firstly be a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2) mentioned above.

Therefore, we have concluded that only partial access to the aforementioned document(s) can be granted.

2. The cover letter dispatching to the FP5 contractor the final audit report. The audit report itself is not requested.

Please be informed that we have identified the documents corresponding to your request. You will find enclosed the documents requested. **(Annex 2)**

However, please note that only partial access can be granted to these documents. The erased parts in the documents provided fall within one or more of the exceptions laid down in Article 4 of Regulation 1049/2001.

Pursuant to Article 4(1) b "the institution shall refuse access to a document that where 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."

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Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2) mentioned above.

Therefore, we have concluded that only partial access to the aforementioned document(s) can be granted.

Please note that in accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position above.

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-5
BERL 5/327
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

For the Director General absent
Z. STANCIC
Deputy Director General



Robert Madelin

Enclosure: 1. Announcement letters;
 2. Closure letters;