



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR EUROPEAN CIVIL PROTECTION AND HUMANITARIAN AID
OPERATIONS (ECHO)

The Director-General

Brussels
ECHO.E.3/KS

**E-mail with acknowledgment of
receipt**

Subject: Your application for access to documents – GESTDEM 2020/0054

We refer to your message of 5 January 2021 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number.

Your request concerned the documents defined as follows:

“In September and October 2020, the Commission requested all relevant partners to provide detailed information in relation to the allegations of sexual exploitation and abuse occurred during the Ebola emergency response in the Eastern region of the DRC. I am seeking a copy/copies of all the detailed information sent by relevant partners to the European Commission since that demand.”

Until 12 February 2021, we have identified 26 documents (including emails and documents attached to the emails) falling under the scope of your request under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents.

Having examined the documents requested, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain:

- contain commercially sensitive information of the organisations that submitted them;
- contain personal data;
- relates to a decision which has not yet been taken by DG ECHO.

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EUobserver
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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, [...], unless there is an overriding public interest in disclosure.”

This exception also applies to non-profit organisations¹. The withheld emails and reports contain information about the partners, including details of their actions. Putting this information in the public domain, without full context and if not assessed in an appropriate manner, would have a strong negative reputational effect on the partners with possible financial consequences.

In consequence, there is a real and non-hypothetical risk that public access to the abovementioned information could potentially undermine the commercial interests, in particular the reputation of the partners. I conclude, therefore, that access to the requested documents has to be refused on the basis of the exception laid down in the first indent of Article 4(2) (protection of commercial interests) of Regulation 1049/2001.

Furthermore, the disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because the documents contain the following personal data:

- the names and contact information of Commission staff members not pertaining to the senior management;
- the names and contact details of other natural persons;
- other information relating to an identified or identifiable natural person (related to its function or employment).

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Finally, the withheld documents cannot be disclosed on the basis of Article 4(3), first indent of the Regulation 1049/2001 which reads that:

“Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.” This exception aims at protecting the decision-making process of the Commission, as it would reveal preliminary views and policy options which might be

¹ Judgment of 21 October 2010, Agapiou Josephides vs. Commission and EACEA, T-439/08, EU:T:2010:442, paragraphs 126-129.

currently under consideration. Indeed, the Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. The European Commission requires that its humanitarian aid partners have in place effective and coordinated prevention, reporting and response mechanisms. Any organisation receiving EU funds for humanitarian aid has a duty to abide by the highest ethical and professional standards in the areas of humanitarian assistance. The Commission is always entitled to request further information on their policies and procedures regarding the prevention, reporting and management of sexual exploitation and abuse. Failure to have adequate and functioning mechanisms in place, as well as to appropriately address cases, can lead to a series of actions to be taken by the Commission, such as suspension of the actions concerned, termination of the agreements, suspension of payments, and reduction of the EU financial contributions. The Commission can suspend and/or terminate the agreement with an International Organisation or EU Humanitarian Partnership Certificate with the NGO concerned based on such information. Therefore, the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to this document.

To summarise, the documents may not be disclosed by reference to exceptions contained in Article 4 of Regulation 1049/2001, i.e. the protection of commercial interest related to commercially sensitive information (Article 4(2) first indent of the Regulation 1049/2001) to the personal data protection (Article 4(1)b of the Regulation 1049/2001) and to the protection of the decision-making process (Article 4(3), first indent of the Regulation 1049/2001).

The exception 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. We have not been able to identify such an interest.

We have considered whether partial access could be granted to the documents requested. However, either the totality of the relevant documents is covered by the exceptions or the remaining parts after expunging the confidential information would become meaningless or illegible.

I would like to underline that DG ECHO reacts immediately to address any allegations of cases sexual abuse and exploitation. There are different levels at which this issue may be addressed. Under indirect management, the Commission analyses the systems of the organisation (pillar assessment) and then relies on the assessment. One of the assessed pillars is the internal control system. Non-compliance with the internal rules of the International Organisation should be spotted by the UN internal audit or during a verification performed by European Commission. Moreover, the Commission may decide to terminate the agreement, in the following circumstances: if the International Organisation, the Sub-delegates or any related person, is guilty of grave professional misconduct proven by any justified means. Under direct management, the Commission works with NGOs that have been granted the EU Humanitarian Partnership Certificate². In order to become a partner, any organisation needs to go through an ex-ante assessment that ensures the organisation is compliant with DG ECHO requirements, including handling cases of sexual abuse and exploitation. Concerning those cases, the EU Humanitarian Partnership Certificate specifically states that:

² The Certificate is awarded to organisations that, as a result of the positive assessment of their partnership application (more information on the application process can be found on the page <https://www.dgecho-partners-helpdesk.eu/ngo/become-a-dg-echo-partner>, are considered suitable to apply for EU funding for the implementation of humanitarian aid actions.

“Art 4.9. The organisation undertakes to comply with the following minimum standards for the preparation and implementation of humanitarian actions (...): ensure ‘zero tolerance’ for sexual exploitation, sexual abuse, sexual harassment, physical abuse and other forms of misconduct through effective and coordinated prevention, reporting and response mechanisms (in line in particular with the United Nations Inter-Agency Standing Committee’s Six Core Principles Relating to sexual exploitation and abuse).

Art 5. Ensure transparency and accountability, compliance with applicable rules, policies and procedures, and internal control, through notably:(...)

Art 5.2. An effective and efficient internal control system for the management of actions (which includes effective segregation of duties and appropriate risk management mechanisms, identifying risks and appropriate risk responses).

Art 5.3. An annual reporting to the Commission on the implementation of its policy related to sexual exploitation, abuse, harassment and other types of unethical behaviour in accordance with the applicable Commission guidance.”

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
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

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

According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during to the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, this communication will be sent only by e-mail.

We would therefore appreciate if you could confirm receipt of the present e-mail by replying to ECHO-DOC-ACCES@ec.europa.eu

Yours faithfully,

[E-signed]

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