



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels
SANTÉ

By registered letter with acknowledgment of receipt¹

Vicky Cann
CEO
Rue d'Edimbourg 26
1050 Brussels

Advance copy by email: ask+request-9047-86f3834c@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2021/0635

Dear Mrs Cann,

We refer to your e-mail dated 11 February 2021 in which you make a request for access to documents, registered on the same date under the above mentioned reference number.

In your request, you ask on the basis of Regulation (EC) No 1049/2001² access to:

- “minutes and other reports of meetings (including online meetings and phone calls) between the European Commission and McKinsey in which the EU’s COVID-19 response was discussed, from April 1st 2020 onward.
- all correspondence (including emails) between the European Commission and McKinsey in which the EU’s COVID-19 response was mentioned, from April 1st 2020 onward.”

1. Identification and assessment of relevant documents

We have identified 11 documents that fall within the scope of your request.

You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Since all documents originate/include information referring to the third party, in accordance with Art. 4(4) of Regulation (EC) 1049/2001, the third party has been

¹ 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 the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

² Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

consulted in order to assess whether an exception established in Article 4 applies to these documents.

The 11 documents falling within the scope of your application are:

- Title: McKinsey - Testing, author: McKinsey, addressee: EC – SANTE C3, date: 29/04/2020, reference Ares(2020)3916161 (hereafter ‘document 1’) and its attachment (hereafter ‘document 1(bis)’)
- Title: FW: COVID-19 outbreaks, author: EC – SANTE C3, addressee: EC – SANTE C3, date: 08/04/2020, reference Ares(2020)3916236 (hereafter ‘document 2’) and its attachment (hereafter ‘document 2(bis)’)
- Title: RE: COVID-19 outbreaks, author: McKinsey, addressee: EC – SANTE C3, date: 03/04/2020, reference Ares(2020)2483734 (hereafter ‘document 3’) and its attachment (hereafter ‘document 3(bis)’)
- Title: Follow-up phone call with McKinsey, author: EC – SANTE C3, addressee: EC – SANTE C3, date: 14/04/2020, reference Ares(2020)3915981 (hereafter ‘document 4’)
- Title: McKinsey - RE: Testing, author: EC – SANTE C3, addressee: McKinsey, date: 22/05/2020, reference Ares(2020)3916201 (hereafter ‘document 5’)
- Title: Email Interview 16 Sept External strategic and performance analysis of ECDC response to COVID19, author: McKinsey, addressee: EC – SANTE C3, date: 16/09/2020, reference Ares(2021)4661195 (hereafter ‘document 6’)
- Title: Email Interview 16 Sept External strategic and performance analysis of ECDC response to COVID19, author McKinsey, addressee: EC – SANTE C3, date: 16/09/2020, reference Ares(2021)4660931 (hereafter ‘document 7’)
- Title: 4 Sept Request for Interview with McKinsey, author: McKinsey, addressee: EC – SANTE C3, date: 04/09/2020, reference Ares(2021)4660666 (hereafter ‘document 8’)

In addition, the report ‘Strategic and performance analysis of ECDC response to the COVID-19 pandemic’ by McKinsey was published on the ECDC website³.

Having examined the documents under the provisions of Regulation (EC) No 1049/2001 and considered the opinion of the third party, we have come to following conclusion, which is further explained below:

- documents No 1, 2, 3, 4, 5, 6, 7, 8 may be partially disclosed as their full disclosure is prevented by one exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.
- no access can be granted to document No 1 bis , 2 bis and document 3 bis as their disclosure is prevented by an exception to the right of access laid down in Article 4 of the Regulation.

The enclosed meeting minutes (document 4) were drawn up for internal use under the responsibility of the relevant service of the Directorate-General for Health and Food Safety. It solely reflects the author's interpretation of the interventions made and does not set out

³ https://www.ecdc.europa.eu/sites/default/files/documents/ECDC_report_on_response_Covid-19.pdf

any official position of the third parties to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

2. Partial disclosure of documents

- a) Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001*

With regard to the documents No. 1, 2, 3, 4, 5, 6, 7, 8 a complete disclosure of the 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 they contain the following personal data:

- the names/initials and contact information of staff of national authorities.
- the names/initials and contact information of staff of other natural persons.
- handwritten signatures/abbreviated signatures of natural persons.

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 any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, we 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.

In accordance with the above mentioned, partial access is granted to the mentioned documents, expunged of personal data.

b) Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

With regard to the documents No. 1, 2, 3, 4, 5 a complete disclosure of the documents is prevented by the exception concerning the protection of the commercial interests of a legal person, as laid down in the Article 4(2), first indent, of Regulation (EC) No 1049/2001. We consider that granting access to this information could undermine the protection of the commercial interests of McKinsey.

The principal objective of Union rules in the field of public procurement is the opening-up of public procurement to undistorted competition in all the Member States. We consider that granting access to this information in the context of the performance of public contracts could undermine the protection of the commercial interests of the bidders, as putting information related to the particular details of a bid in the public domain would affect their competitive position on the market.

This third party has objected to the disclosure of these documents invoking the argument that their disclosure may undermine the commercial interest of a legal person.

Therefore, having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to parts of the documents you requested access to.

In accordance with the above mentioned, partial access is granted to the mentioned documents expunged of information that may undermine the protection of the commercial interests of the bidders.

3. Refusal of documents

Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

The documents 1(bis), 2(bis) and 3(bis) contain information whose disclosure may undermine the commercial interest of a legal person, and it may include business sensitive information and information covered by intellectual property.

Documents 1(bis), 2(bis) and 3(bis) include information originated with the third party; informed of the present request for this access to documents, the third party has been consulted and has objected to the disclosure of the documents in question, alleging that disclosure would put in the public domain business sensitive information and risk resulting in potential adverse impacts on their competitive position on the market.

Having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 applies to the concerned documents.

We have considered whether partial access could be granted to this document. However, we have come to the conclusion that the documents are entirely covered by the above exception to the right of access to documents.

Therefore, no access can be granted to documents 1(bis), 2(bis) and 3(bis).

4. Overriding public interest

The exceptions to the right of access provided for in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested document. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

5. Means of redress

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

Yours sincerely,

[e-signed]

Sandra GALLINA

Enclosures: List with assessment and disclosed documents

