



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

The Director-General

Brussels 14/10/2021
ENV/PD/ib

Mr Fred Logue
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Smithfield
Dublin 7
D07 EN2Y
IRELAND

*Sent by email with acknowledgement of receipt:
ask+request-9959-6d61dc68@asktheeu.org*

Subject: Your request for access to documents — Ref GestDem No 2021/5649

Dear Mr Logue,

We refer to your e-mail of 20 September 2021, which was registered under reference number GestDem 2021/5649. You request access to documents which are related to the ongoing infringement procedure INF2015/2006 against Ireland, which was referred to the Court of Justice in July 2021 and which is still pending. Specifically you would like to receive the list of the 217 sites that are claimed not to have been designated and the 140 sites that are claimed not to have site-specific conservation objectives set in accordance with Directive 92/43/EEC *on the conservation of natural habitats and of wild fauna and flora*¹.

Having examined the requested documents under Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your request cannot be granted, as the exception laid down in Article 4 of that Regulation prevents disclosure of the documents in question. The documents you requested, namely the lists of sites, are part of an ongoing infringement case concerning a possible breach of EU law.

¹ OJ L 206 22.7.1992, p. 7.

In its judgment in the LPN case, the Court of Justice stated that there is a general presumption that documents relating to ongoing infringement proceedings cannot be disclosed.² In that judgment, the Court of Justice confirmed the earlier judgment of the Court of First Instance (now the General Court) in *Petrie*, in which it held that ‘Member States may expect confidentiality from the Commission during investigations which may lead to infringement proceedings’³ This is based on the exception provided for in the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

This consideration also applies when the case was already referred to the Court of Justice but is still pending. Furthermore, the exception applies to all documents related to an ongoing infringement procedure, independently whether parts of the information used for the case would also be available from other public sources, as you mention with regard to the list of sites you are requesting.

Against this background, public disclosure of the requested documents at this stage would not only negatively influence the dialogue between the European Commission and the Member State, for which a climate of trust is essential, but would also alter the strictly bilateral nature of the informal and formal stages of the infringement procedure as laid out above and provided for in Article 258 of the Treaty on the Functioning of the European Union. In this context, the possibility of partial access to the requested documents was examined. However, as the above mentioned concerns apply to all documents related the infringement case, including the list of sites you requested, it is unfortunately not possible to grant access to parts of these documents.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. However, having carefully examined your request in the light of Article 4(2) of Regulation 1049/2001/EC and Article 6(1) of Regulation 1367/2006/EC, I conclude that in the present case there is no overriding public interest that would require disclosure of the document. The strong public interest, which you mention in your letter, in accessing the list of sites at this stage of the procedure is not sufficient to justify an overriding public interest in disclosing the above mentioned documents.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you may make a confirmatory application requesting the Commission to review this position with regard to your request for access to the file.

² Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission*, Joined Cases C-514/11 P and C605/11 P, EU:C:2013:738, paragraph 65.

³ Judgment of 11 December 2001, *Petrie and Others v European Commission*, Case T-191/99, EU:T:2001:284, paragraph 68.

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
1049 Brussels
BELGIUM

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

e-signed
Florika FINK-HOOIJER