



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate E - Citizens, Health, Migration & Security Union  
**The Director**

Brussels  
SG.E.1/TB

Sergio Pérez Sangiao  
By email:  
[ask+request-10238-6f6476d2@asktheeu.org](mailto:ask+request-10238-6f6476d2@asktheeu.org)

Dear Sir,

**Subject: Your application for access to documents – Ref GestDem No 2021/7174**

In your e-mail of 18 November 2021, you request access to documents and this request has been registered on the following day under the above-mentioned reference number.

You request access to “*All correspondence (including reports, official letters, emails, databases, attachments, minutes and memoranda of meetings, as well as any other public document not mentioned in the list above) sent or received by the Secretariat-General or Presidency of the European Commission, and in particular by President Ursula von der Leyen and her team, from 1 January 2020 to the present with the Polish Government on LGTBI policies, equality policies, LGTBI and any other similar issues in Poland or Europe in general*” (free translation)

Your application concerns the following documents:

- Letter of formal notice under Article 258 TFEU to Poland of 15 July 2021 in infringement case INFR(2021)2115 (‘Incompatibility with EU non-discrimination law of resolutions adopted by Polish municipalities/regions on the so-called ‘LGBT ideology free zones’);
- Reply of Poland of 15 September 2021 to the letter of formal notice in infringement case INFR(2021)2115;
- Letter of formal notice under Article 258 TFEU to Poland of 18 February 2021 in infringement case INFR(2020)2322 (‘Incorrect transposition of the Council Framework decision 2008/913/JHA by Poland’);
- Reply of Poland of 19 April 2021 to the letter of formal notice in infringement case INFR(2020)2322;

Article 4(2), third indent of Regulation 1049/2001 provides that the *'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits'*.

The documents to which you request access form part of the procedure laid down in Article 258 of the Treaty on the Functioning of the European Union, which consists of two consecutive stages, the administrative pre-litigation stage and the judicial stage before the Court of Justice of the European Union. The purpose of the pre-litigation procedure is to allow the Member State to put an end to any alleged infringement, to enable it to exercise its rights of defense and to define the subject matter of the dispute with a view to bringing an action before the Court.

The requested documents relate to two infringement procedures, which are ongoing. Public disclosure of the requested documents 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 infringement procedures as provided for in Article 258 of the Treaty on the Functioning of the European Union. Such disclosure would consequently adversely affect the European Commission's investigations, as it would undermine the climate of mutual trust required to resolve disputes between the European Commission and the Member State concerned, without having to use the judicial phase of the infringement procedure.

The EU Courts underlined on several occasions that in ongoing infringement cases, the institution may base itself on a general presumption of non-disclosure.<sup>1</sup>

The disclosure of the requested document would undermine the purpose of the ongoing investigation. In particular, its disclosure at this point in time would affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice. Therefore, the exception laid down in Article 4(2), third indent of Regulation (EC) No 1049/2001 applies to this document.

The exceptions laid down in Article 4(2) must be waived if there is an overriding public interest in disclosure. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure. Based on the elements at my disposal, I have not been able to establish the existence of any overriding public interest in disclosure of the documents in question.

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.

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<sup>1</sup> For example, Judgment of 14 November 2013, *Liga para a Protecção da Natureza and Finland v Commission*, Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraphs 55, 65-68; Judgment of the Court of Justice 16 July 2015 in case C-612/13 P, *ClientEarth v Commission*; and Judgment of 11 December 2001, *Petrie and Others v Commission*, 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  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

William SLEATH