



EUROPEAN ANTI-FRAUD OFFICE

The Director-General

**Mr Maximilian Henning**

Cava de San Miguel 8  
4º centro  
28005 Madrid  
Spain

E-mail: [ask+request-10760-113ba01b@asktheeu.org](mailto:ask+request-10760-113ba01b@asktheeu.org)

Via e-mail and registered mail

Brussels

Subject: **Your confirmatory application for public access to documents – ARES(2022)2987465**

Dear Mr Henning,

I refer to your letter dated 29 March 2022, registered in OLAF under reference number ARES(2022)2987465, by which you introduced a confirmatory application for public access to documents under Regulation (EC) No 1049/2001<sup>1</sup>.

### **1. Scope of your application**

By email of 23 February 2022, registered under reference Ares(2022)1539068, you requested public access to the following document:

*"A list of all investigations OLAF has conducted against companies contracted by the European Union for providing security services, for example for EU delegations abroad or as part of the Common Security and Defence Policy, between 2015 and 2021."*

By letter of 17 March 2022, registered under reference Ares(2022)1958775, OLAF indicated that no documents were found that would correspond to the description given in your application.

By email of 18 March 2022, you made a request for information regarding the "possibilities to access" OLAF Content Management System (OCM) in order to make a more accurate request. In particular, you asked OLAF the following:

*"Would an OCM search for investigations begun 2015-2021 for which the recipient was the European Union External Action Service be considered a routine search? If yes, I would be glad if you could consider my request to concern this document. If not, I would be glad about any further information you might be willing to provide regarding possibilities to access the database."*

By email dated 29 March 2022, registered in OLAF under reference number ARES(2022)2987465, that is, before OLAF had time to treat your previous request for information, you introduced this confirmatory application, in which you asked OLAF to

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48.



reconsider its decision regarding your request for access to documents. You alleged that OLAF did not provide you with assistance to specify your request, according to Regulation 1049/2001. In that regard, you stated that: "As [you are] *not familiar with the operation of OCM*, [you] *cannot formulate [your] request in such a way that it conforms with the search capabilities of the database*". In your view, "OLAF did not elaborate on the search capabilities of OCM in a way that assisted [you] in specifying [your] request. [...] In this message, [you] inquired about information about how OCM can be searched and offered to clarify [your] request in a way that would conform with OCM's capabilities.[...] [you are] still willing to clarify [your] request in such a way that it conforms with the search capabilities of OCM, which would allow [OLAF] to perform a routine search, the results of which could, as a document, be identified as the subject of [your] request."

In addition, you proposed new ways to search in OCM, in order to help OLAF to find your document:

*"a list of investigations for which the recipient was the EEAS.*

*- Alternatively, I would also be willing to specify my request to concern a list of investigations concerning some private security companies, for example containing one of their names: Page Protective Services, GardaWorld, Amarante International, G4S and Securitas.*

*- Another alternative would be a list of investigations concerning events outside of the EU, since I am interested in contracts given out by the EEAS to private security companies regarding EU delegations outside of Union territory.*

*All of these would be for a timespan from 2015 to 2021."*

OLAF took into account your aim to make a request in a way that would conform with "OCM's capabilities" and has considered your new search proposals and any other search criteria or way of searching that could be relevant for your request. Accordingly, your email of 18 March 2022 by which you have requested access to information stored in OCM by using certain identified search criteria will not be treated as a new initial application, as OLAF previously informed.

Therefore, by this decision, OLAF is replying to your request for access to documents concerning the extraction of information from the OCM database on the basis of the search criteria that you have made both in your initial application of 23 February 2022 as well as in your confirmatory application, including your email of 18 March 2022.

## **2. Assessment of the requested document**

According to Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

In this case, I herewith confirm OLAF's position as expressed in its initial reply, that no documents drafted or received by OLAF were identified, which would correspond to the following description, as indicated in your initial application of 23 February 2022, that is, "A *list of all investigations OLAF has conducted against companies contracted by the European Union for providing security services, for example for EU delegations abroad or as part of the Common Security and Defence Policy, between 2015 and 2021*". Moreover, OLAF arrived to the same conclusion when using the new search criteria proposed by you and other search criteria and ways of searching that were considered relevant for your request.

In that regard, the Court of Justice has already held that the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and that Regulation (EC) No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist. An application for access that would require an institution to create a new document, even if that document were based on

information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001<sup>2</sup>.

Admittedly, by using the search criteria you have identified it is not possible to extract the information requested from OCM, which is the Office's software used for case and document management. In this context, please let me explain that the possibility that a document may be theoretically created from using partially information contained in such a database does not lead to the conclusion that the document concerned must be regarded as an existing document for the purposes of Regulation No 1049/2001<sup>3</sup>.

In fact, according to EU case law, *"in the event of an application for access designed to have the Commission carry out a search of one or more of its databases using search criteria specified by the applicant, the Commission is obliged, subject to the possible application of Article 4 of Regulation (EC) No 1049/2001, to accede to that request, if the requisite search can be carried out using the search tools which it has available for the database in question"*<sup>4</sup>.

The General Court therefore confirmed that *"anything that can be extracted from a database by means of a normal or routine search may be the subject of an application for access"*<sup>5</sup>.

Furthermore, I would like to bring to your attention that the Court of Justice took the view that the routine character of an operation which determines whether information extracted from a database is a document, is determined by whether the operation has been made available to final users for general use<sup>6</sup>.

In the case at hand, having regard to your confirmatory application of 29 March 2022 and your request for information of 18 March 2022, OLAF has taken into account your proposals for searching in the relevant database (that is, from OCM) and any other criteria of searching that OLAF considered useful in order to find a document that would be relevant to your request.

I regret to inform you that the data range concerned cannot be extracted from OCM by means of a routine search operation using the search tools available.

The search system of OCM is designed in a way that does not allow to combine certain search criteria which form an inseparable whole of your request. As a result, in this case, the unit in charge would have to match manually the different outcomes of each of the search criteria you have indicated and to analyse and assess some of the documents and the context of each investigation to match in the relevant way one list to the other. Even so, the final list would not be conclusive enough to be certain if it includes all cases, some of them or none of them.

In addition to that, the design of OCM does not allow searching documents by using some search criteria that could be relevant to this kind of request. Consequently, a manual analysis of each investigation would be necessary to get certain information and thus documents relevant for your request.

While searching by number of investigation or by text is possible, the system is not designed for the kind of searches like the one that has to be done in your request. As an example, the group of words "security companies" gives thousands of hits from different documents and in different investigations, not allowing identifying the relevant investigations that fall within the scope of your request.

In this sense, a search based on concrete names of companies is more likely to generate more relevant results, without prejudice of the confidentiality of OLAF files. Moreover, in any case, such a request would constitute a new request.

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<sup>2</sup> Judgment of 11 January 2017, *Typke v European Commission*, C-491/15P, EU:C:2017:5, paragraph 31 and the case law cited; judgment of 2 October 2014 in case C-127/13, *Strack v Commission*, paragraph 46.

<sup>3</sup> *Ibidem*, paragraph 30.

<sup>4</sup> Judgment of 2 July 2015, *Typke v European Commission*, T-214/13, EU:T:2015:448, paragraph 56.

<sup>5</sup> Judgment in *Typke v European Commission*, cited above, paragraph 59; Judgment of 22 October 2011, *Dufour v European Central Bank*, T-436/09, EU:T:2011:634, paragraph 153.

<sup>6</sup> Judgment of 11 January 2017, *Typke v European Commission*, C-491/15P, EU:C:2017:5, paragraph 36.

For these reasons, the information requested is not included in any existing document and could not be retrieved from the OCM database by means of a normal or routine search.

Given that no such documents, corresponding to the description given in your application, are held, OLAF is not in a position to fulfil your request.

Also, I would like to recall that according to article 6(4) of Regulation (EC) No 1049/2001, "the institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made." In this case, OLAF considers that there was no ambiguity or lack of clarity in the documents you requested, nor in the specific search criteria you proposed. OLAF assisted you when searching in OCM in all possible ways using the search tools available. Therefore, providing you more information about search capabilities of OCM will not change the fact that the document you requested does not exist.

Finally, the request you brought in your application, registered in OLAF under reference number THOR(2016)23979 cannot be compared to the one at hand in terms of availability to extract information from OCM because at that time, there was another registration system called Case Management System (CMS), which was in place until October 2016. This previous system had different search capabilities that allowed OLAF to find those particular documents requested. Moreover, the scope of that request was limited to a more easily identifiable list of cases. In the case at hand, as it was already explained above, the most relevant search criterion to identify the list you requested ("security companies") is not compatible with how OCM is designed.

### **3. Means of redress**

I draw your attention to the possible means of redress available against this decision. You may either bring proceedings before the General Court of the European Union or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Your attention is drawn to the privacy statement below.

Yours sincerely,

Ville ITÄLÄ

### **Privacy notice**

Pursuant to Articles 15 and 16 of Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by Union Institutions, bodies, offices and agencies and of the free movement of such data, please be informed that your personal data are stored in OLAF's electronic and paper files concerning this matter for the purposes of ensuring conformity with the requirements of Regulation 1049/2001 and Commission Decision 2001/937/EC.

The categories of your personal data being processed are identification and contact data and any other personal data provided by or to you in relation to your request. Officials within OLAF and other Commission services responsible for dealing with requests for access to documents, and third parties, within the meaning of Articles 4(4) and 3(b) of Regulation 1049/2001, and Article 5 of Commission Decision 2001/937/EC, have access to your personal data. Personal data that appear on the requested document may only be disclosed to the applicant following an assessment under Article 9(b) of Regulation (EU) 2018/1725. There is no automated decision process by OLAF concerning any data subject.

All documentation concerning OLAF investigations are stored in the relevant OLAF investigation files and are retained for a maximum of 15 years. Thus personal data contained in requests for public access to documents concerning OLAF investigations are retained for a maximum of 15 years.

You have the right to request access to your personal data, rectification or erasure of the data, or restriction of their processing. Any request to exercise one of those rights should be directed to the Controller ([OLAF-FMB-DATA-PROTECTION@ec.europa.eu](mailto:OLAF-FMB-DATA-PROTECTION@ec.europa.eu)). You may contact the Data Protection Officer of OLAF ([OLAF-FMB-DPO@ec.europa.eu](mailto:OLAF-FMB-DPO@ec.europa.eu)) with regard to issues related to the processing of your personal data under Regulation (EU) 2018/1725.

You have the right to have recourse to the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)) if you consider that your rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of your personal data by OLAF.

The complete privacy statements for this and all other OLAF personal data processing operations are available at [http://ec.europa.eu/anti\\_fraud](http://ec.europa.eu/anti_fraud).