



## EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

The Director-General

Brussels,  
DG CONNECT/RM/AS/pef

Mr. Nastas

Email: [ask+request-1083-9a1b0f79@asktheeu.org](mailto:ask+request-1083-9a1b0f79@asktheeu.org)

**Subject: Your application for access to documents – Ref GestDem No 2014/490 under Regulation 1049/2011 regarding public access to European Parliament, Council and Commission documents – partial reply**

Dear Sir,

We refer to your email dated 11/12/2013 wherein you make a request for access to documents, registered by us on 30/01/2014 with the above-mentioned reference number.

*For the sake of clarity we reply according to the numbering in your email.*

*T-489/12 Planet v Commission*

**1. The documents DG INFISO/CONNECT drew up as contractual correspondence with the litigants. This refers to signed letters bearing a document reference number such as an Ares number.**

Please note that we were not able to identify the documents you are asking for. Therefore, you are kindly asked to provide more information on the documents you want to obtain in order for us to identify them.

Please be aware that this point of the request will be answered as soon as the Commission has received the clarifications needed.

**2. The annexes and appendices to documents under (1) above.**

Please refer to our answer under point 1.

**3. In case DG CONNECT (former INFISO) instructed the audit firm to conduct an external financial audit to the litigants, the correspondence with the audit firm (letters and emails), as well as notes to the file.**

Please note that your request is very broad and consequently we were not able to identify the documents you are asking for. Therefore, you are kindly asked to provide more information on the documents you want to obtain in order for us to identify them.

Please be aware that this point of the request will be answered as soon as the Commission has received the clarifications needed.

#### **4. The flash report of the audit firm.**

Pursuant to Article 4(2) second indent *"the institution shall refuse access to a document where disclosure would undermine the protection of court proceedings and legal advice."*

Please note that there is an ongoing litigation before the European Court of Justice that prevents the disclosure of the documents requested.

We have examined to which extent the exception laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in full disclosure. Such an interest must firstly be a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2) mentioned above.

Therefore, we have concluded that access to the aforementioned document(s) cannot be granted.

#### **5. The final audit report, names of individuals are to be redacted, but hours worked are to be disclosed.**

Pursuant to Article 4(2) second indent *"the institution shall refuse access to a document where disclosure would undermine the protection of court proceedings and legal advice."*

Please note that there is an ongoing litigation before the European Court of Justice that prevents the disclosure of the documents requested.

We have examined to which extent the exception laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in full disclosure. Such an interest must firstly be a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2) mentioned above.

Therefore, we have concluded that access to the aforementioned document(s) cannot be granted.

#### **6. The recovery orders.**

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

## **7. The debit notes, including the letters accompanying them.**

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

## **14. For each single audit, two sample time-sheets. The identification of the data subject is to be redacted, but hours worked in research projects to be disclosed.**

Please note that we have timesheets for 3 staff members only. This is due to the fact that the audit work was performed by an external audit firm on behalf of the Commission. In these cases, the Commission usually does not have copies of the documents gathered by the external auditors during the audit fieldwork.

However, the timesheets cannot be disclosed as they fall within one or more of the exceptions laid down in Article 4 of Regulation 1049/2001.

Pursuant to Article 4(1) b *"the institution shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."*

The timesheets contain personal data such as names as well as the individuals' performance of work/research. Public disclosure of these data would undermine the protection of the privacy of these individuals.

The exception in Article 4(1) is an absolute exception not balanced by an overriding interest.

Pursuant to Article 4(2) second indent *"the institution shall refuse access to a document where disclosure would undermine the protection of court proceedings and legal advice."*

Please note that there is an ongoing litigation before the European Court of Justice that prevents the disclosure of the documents requested.

We have examined to which extent the exception laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in full disclosure. Such an interest must firstly be a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2) mentioned above.

Therefore, we have concluded that access to the aforementioned document(s) cannot be granted.

Please note that in accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position above.

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  
Secretary-General  
Transparency Unit SG-B-4  
BERL 5/327  
B-1049 Bruxelles

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

Yours sincerely,

(e-Signed)  
Robert Madelin