



EUROPEAN ANTI-FRAUD OFFICE

Directorate C: Investigation Support
Director

Mr. Tasos NTETSIKAS

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bda97ebd@asktheeu.org

Brussels
Ares/C4/HC/fd/(2014)472949

Subject: Your request for access to documents 20 December 2013

Dear Mr Ntetsikas,

I refer to your e mail of 20 December 2013 at 09.35, registered in OLAF on 3 January 2014, in which you request OLAF to provide you with access to documents pursuant to Regulation (EC) 1049/2001.

You include remarks that relate to an earlier access to documents request in relation to OLAF's reply of 18 December 2013 THOR 32635. OLAF awaits your reply to the outstanding questions and that subject is not part of this request which OLAF is treating as a separate request in accordance with Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents.

1. SCOPE OF THE REQUEST

You have requested disclosure of the following documents:

- 1. OLAF's own internal rules that apply to the identification of natural and legal persons as regards applications under Regulation 1049/2001.*
- 2. OLAF's own internal rules that apply to the powers of representation of the signatories of legal persons that lodge applications under Regulation 1049/2001 (e.g. power of attorney, resolution of management board authorising the legal representative and so on).*
- 3. For all applications under Regulation 1049/2001 lodged so far, and for which an applicant-natural person was requested by OLAF to provide proof of identity, the documents with OLAF's request to the applicant, as well as any documents with remarks or objections of the applicant about the request to provide proof of identity. This request does NOT concern the application the letter THOR 32635.*
- 4. The article 25 of Regulation 45/2001 prior notification covering the personal data processing of applicants-natural persons for applications under Regulation 1049/2001 lodged to OLAF. This request concerns all previous versions of the prior notification, as well as the Privacy Statement (article 11 of Regulation 45/2001).*
- 5. Any documents drawn up by the OLAF Data Protection Officer regarding the lawfulness of the transfer of personal data requesting an applicant under Regulation 1049/2001 to provide OLAF with a certified copy of a national identity document.*

¹ OJ L145, 31.05.2001, page 43.

In response to your request points 1, 2, and 5, OLAF has not identified any documents. There are no specific documents in relation to OLAF internal rules for applications under Regulation 1049/2001. It is important to note that applications could only be made to existing documents. It means that within the legal framework of Regulation 1049/2001, OLAF does not have to create new documents to meet a given request, nor reply to requests for information, rather than to documents *per se*².

In the context of requesting the verification of identity in confirmatory requests for access to documents of the institutions, OLAF notes that Article 2.1 and 2.2 of Regulation (EC) No 1049/2001, states that the beneficiary is "any natural or legal person..."

Within this framework, OLAF needs to verify, first, whether the applicant of a confirmatory request is a real person and, second, whether he is the same person who made the initial request. You will appreciate that only this person is entitled to make the confirmatory request (Article 7.2 of the Regulation). The rationale of verifying the applicant's identity for a confirmatory request is, in fact, that the applicants of a confirmatory request have the right to remain anonymous except when disclosure of identity is essential in order to process the request.

OLAF applies this principle with the greatest care, requesting identity verification only when there are a number of elements which render such verification necessary. Among those elements is the fact that the applicant has supplied only an e-mail address and not a postal address. OLAF's intention is merely to sight a copy of the applicant's identity document and not to retain a copy of it. Given this assurance, OLAF's action could not be considered intrusive or unduly restrictive of his rights.

In response to your request at point 3, OLAF has applied this principle with at least one other application in a similar manner.

In response to your request at point 4, I draw your attention to OLAF's data protection registry at http://ec.europa.eu/anti_fraud/dataprotectionofficer, where you will find the notification for DPO 54 "Processing of requests for access to documents under Regulation 1049/2001" and in addition I attach the relevant privacy statement. This informs you of the type of data processed by OLAF in this context, for example, identification and contact data.

2. APPLICABLE EXCEPTIONS

Having carefully considered your request for access to documents related to your request at point 3, OLAF has come to the conclusion that this/these document(s) cannot be disclosed since its/their content is covered by the following exception laid down in Article 4 (1)(b) of Regulation 1049/2001 and for the reasons explained below.

- *The protection of privacy and integrity of individuals in accordance with Union legislation regarding the protection of personal data.*

The document(s) concerned include the personal data of individuals, such as identification and contact information of the applicant, and persons whose names are mentioned in the request, such as agents of OLAF and of the Commission, or other information relating to persons who can be identified, directly or indirectly, in particular by reference to one or more specific factors, which if disclosed, would clearly undermine the privacy and the integrity of the individuals concerned in accordance with Regulation (EC) No 45/2001 which specifically applies to the processing of personal data by the Institutions. Such

² See Case T-264/04 *WWF European Policy Programme v Council*, p. 75 to 77.

information qualifies as personal data since it identifies the individuals. In this regard, your attention is particularly drawn to Article 8(b) of this Regulation. On the basis of the information available, OLAF considers that the necessity to disclose personal data has not been established.

3. PARTIAL ACCESS

OLAF has also examined the possibility of granting partial access to the document in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, for the type of document in question (document requesting an identity document), its very nature leads OLAF to consider that any part of it is constituted by information at least indirectly related to an identifiable person, and, therefore, a "version with personal data expunged" cannot be redacted. All the information the requested document contains falls entirely under the exception invoked related to protection of privacy and integrity of individuals, and, consequently, all this information having been expunged, granting partial access to the document is not possible,

4. CONFIRMATORY APPLICATION

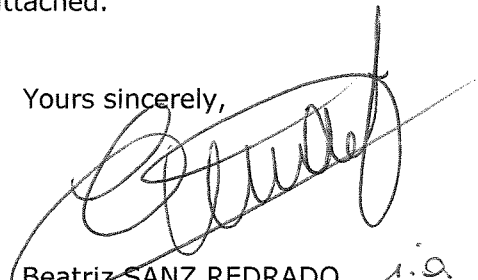
In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting OLAF to review this position. Pursuant to Article 4 of Commission Decision 2001/937/EC, ECSC, Euratom, such a confirmatory application should be addressed within 15 working days of receipt of this letter to the Director General of OLAF. You will be informed of the result of this review and, if necessary, of how you can take further action within 15 working days from the registration of your request.

Any confirmatory application to OLAF should be sent to the following address:

Mr Giovanni KESSLER
Director-General, OLAF
European Commission
Rue Joseph II, 30
B-1000 BRUSSELS

Your attention is drawn to the privacy statement attached.

Yours sincerely,



Beatriz SANZ REDRADO *s.a*
J. Ph. C. de WENARD

The complete privacy statements for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud.



EUROPEAN COMMISSION

March 2012

**PRIVACY STATEMENT FOR
PROCESSING OF REQUESTS FOR
ACCESS TO DOCUMENTS UNDER REGULATION 1049/2001
(OLAF DPO-54)**

1. DESCRIPTION OF THE PROCESSING OPERATION

The processing of personal data in relation to requests from the public for access to OLAF documents pursuant to Regulation 1049/2001 consists of preparing and sending the replies, and maintaining files of requests and replies and related documents.

The legal basis for this processing operation is Regulation (EC) 1049/2001 and Commission Decision 2001/937/EC, ECSC, Euratom and the Commission document management rules.

2. WHAT PERSONAL INFORMATION DO WE COLLECT, FOR WHAT PURPOSE, AND THROUGH WHICH TECHNICAL MEANS?

The personal data collected consists of identification and contact information of the applicant's (name, address, e-mail, telephone, fax), and personal data relating to persons whose names are mentioned in the request or in the documents that are the subject of the request; the personal data concerning them included in the documents.

The purpose for collecting this data is to ensure conformity with the requirements of Regulation 1049/2001 and the Commission document management rules.

The data are received from the applicant and from related OLAF files.

Each request and each reply is registered in the European Commission's advanced records system (ARES) (European Commission DP registry DPO-1530) or in THOR (The OLAF Registration system) (OLAF DP registry DPO-168).

3. WHO HAS ACCESS TO YOUR INFORMATION AND TO WHOM IS IT DISCLOSED?

Officials within OLAF and other Commission services responsible for dealing with requests for access to documents have access to the data. Regarding persons whose names are mentioned in the documents that are the subject of the request, the applicant (and therefore the public) may receive this personal data.

4. HOW DO WE PROTECT AND SAFEGUARD YOUR INFORMATION?

In order to protect your personal data, a number of technical and organisational measures have been put in place. Concerning unauthorised access to equipment and data, the OLAF secure premises, protected by OLAF-specific physical security measures, host all



hardware; network firewalls protect the logic perimeter of the OLAF IT infrastructure; and the main computer systems holding the data are security hardened. Administrative measures include the obligation of all personnel having access to the system to be security vetted, and service providers maintaining the equipment and systems to be individually security cleared and to have signed non-disclosure and confidentiality agreements.

5. HOW LONG DO WE KEEP YOUR DATA?

Your data will be kept for 5 years unless they form part of OLAF's investigative and operational tasks and will therefore be stored for a maximum of 20 years.

6. HOW CAN YOU VERIFY, MODIFY OR DELETE YOUR INFORMATION?

You have the right to access the personal data we hold regarding you and to correct and complete them. Upon request and within three months from its receipt, you may obtain a copy of your personal data undergoing processing. Any request for access, rectification, blocking and/or erasing your personal data should be directed to the Controller (olaf-fmb-data-protection@ec.europa.eu). Exemptions under Article 20 (1) (a) and (b) of Regulation 45/2001 may apply.

7. RIGHT OF RECOURSE

You have the right to have recourse to the European Data Protection Supervisor (edps@edps.europa.eu) if you consider that your rights under Regulation 45/2001 have been infringed as a result of the processing of your personal data by OLAF.