Subject: Your application for public access to documents

Case No OC/2017/0451 (EASE 2023/1979)

Dear Mr Dohle,

We refer to your e-mail dated 18 February 2023, in which you make a request for access to documents related to the court case T-658/17, Stichting Against Child Trafficking v European Commission.

Please note that due to the wide scope of your request, your request has been attributed to different Directorates-General. This reply relates only to the documents held by OLAF. You received or will receive a reply from the other competent services in due course.

Having carefully considered your application, OLAF has identified three documents that fall within the scope of your request. These documents are internal notes that describe OLAF’s selection case OC/2017/0451/01. OLAF will deal with your request in accordance with the relevant provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

1. Preliminary remarks

OLAF wishes to clarify from the outset that it is legally bound to treat all information it obtains during its investigations as confidential and subject to professional secrecy, in particular pursuant to Article 339 of the Treaty on the functioning of the European Union, Article 10(1) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and Article 17 of the Staff Regulations.

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1 OJ L 145, 31.05.2001, p. 43.
However, the purpose of Regulation (EC) No 1049/2001 is to give access to documents to the public at large. Any document disclosed to an individual under this Regulation then becomes automatically available to any other member of the public whenever there is a subsequent request. Consequently, your attention is drawn to the fact that documents disclosed under this Regulation enter the public domain.

2. Assessment of the documents under Regulation (EC) No 1049/2001

Having carefully examined the documents you request, OLAF regrets to inform you that your application cannot be granted, as disclosure is prevented by the exceptions to the right of access laid down in Article 4 of this Regulation.

The requested documents describe in detail OLAF’s activities in the selection case OC/2017/0451/01. They contain information gathered using OLAF’s investigative powers and the analysis and assessments of that information by OLAF. As such the disclosure is precluded by the exception foreseen in the third indent of Article 4(2) of Regulation 1049/2001, on the protection of the purpose of inspections, investigations and audits, and Article 4(3), second subparagraph of Regulation 1049/2001, which provides that access shall be refused where disclosure would seriously undermine the institution’s decision-making process.

The General Court has recognised a general presumption of non-accessibility for documents of OLAF’s case files. It considers that the disclosure to the public under Regulation 1049/2001 of documents related to OLAF investigations could fundamentally undermine the objectives of the investigative activities of OLAF, as well as the decision making process of OLAF, both now and in the future.

The presumption is based on the consideration that, to determine the scope of Regulation 1049/2001, account must be taken of relevant sectoral rules, in the case at hand, Regulation (EU, Euratom) No 883/2013 which governs OLAF’s administrative activity. OLAF’s legal framework, provides for the obligation of confidentiality with regard to all information gathered during investigations, which aims at safeguarding the successful conduct of an investigation in the public interest.

This case was dismissed at the selection phase, which is an intrinsic part of the investigation process. The protection of confidentiality extends to this phase in the same way it applies to the investigation strictly speaking and follow-up phase. Therefore, the above considerations are also applicable to selection cases, such as the one at hand.

Moreover, disclosure would also run the risk of discouraging potential witnesses and informants to cooperate with OLAF. Such persons must be reassured that their statements and the information they provide to OLAF will be kept confidential, otherwise they might be inclined to censor the information they give or to hold back sensitive information. As a result, OLAF’s internal decision-making process with regard to other investigations could be seriously affected and OLAF’s effectiveness undermined.

In view of the foregoing, the documents requested fall under the presumption of non-accessibility as documents containing information collected during an OLAF investigation and subject to professional secrecy. Consequently, they are exempt, in principle and in full, from disclosure to the public.

3. Partial Access


OLAF has examined the possibility of granting partial access to the requested documents in accordance with Article 4(6) of Regulation (EC) No 1049/2001.

Partial access is not possible, given that the information the documents fall entirely under the above-mentioned general presumption.

4. **Overriding public interest in disclosure**

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. For such an interest to exist, firstly, there has to be a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access. No such interest has been indicated in your application.

In addition, the requested documents also involve the protection of privacy and integrity of individuals (Article 4(1)(b) of Regulation (EC) 1049/2001) where overriding public interest in disclosure is not applicable.

5. **Confirmatory application**

In accordance with Article 7(2) of Regulation 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 upon receipt of this letter to the Director-General of OLAF.

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

Mr Ville ITÄLÄ  
Director General OLAF  
European Commission  
B-1049 BRUXELLES  
BELGIUM  
or by e-mail to: [OLAF-FM-D2@ec.europa.eu](mailto:OLAF-FM-D2@ec.europa.eu)

Your attention is drawn to the privacy statement below.

Yours sincerely,

Signed Electronically

on 14/04/2023 at 12:36 by VON BARDELEBEN Eleonore, by delegation of KNEUER Petra, Director

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**Privacy notice**

Pursuant to Articles 15 and 16 of Regulation No 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 or in relation to the activities carried out in order to fulfil OLAF’s tasks referred to in Article 2 of Decision 1999/352/EC, ECSC, Euratom and Regulation (EU, Euratom) 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). The categories of your personal data being processed are contact data, identification data, professional data, and case involvement data. Your data may originate from various sources, including publicly accessible information. Your data may be transferred to other EU institutions, bodies, offices and agencies, competent Member State and third country authorities and international
organisations. There is no automated decision process by OLAF concerning any data subject. Your data will be stored for a maximum of 15 years.

You have the right to request access to, rectification or erasure, or restriction of processing of your personal data and to object to their processing on grounds relating to your particular situation. If you wish to request access to your personal data processed in a specific file, please provide the relevant reference or description in your request. Any such request should be addressed to the Controller (OLAF-FMB-Data-Protection@ec.europa.eu).

The complete privacy statement for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud. If you have questions as regards the processing of your personal data or your rights you may contact the OLAF Data Protection Officer (OLAF-FMB-DPO@ec.europa.eu).

You may lodge a complaint concerning the processing of your personal data with the European Data Protection Supervisor (edps@edps.europa.eu) at any time.