Dear Sir / Madam,

Subject: Your application for access to documents – GESTDEM 20xx/xxxx

We refer to your letter / e-mail / fax of dd Month 20yy in which you make a request for access to documents, registered on dd Month 20yy under the above mentioned reference.

You request access to: [please copy or paraphrase the initial request].

If the temporal scope of the request is formulated in a broad manner without an end date (e.g. 'all documents on a specific topic'), please indicate:

I consider your application to cover documents held up to the date of registration of your initial application, i.e. [dd Month 20yy].

For Multi-DG requests: Please note that due to the wide scope of your request, covering also areas falling under the responsibility of other Directorates-General, parts of your request have been attributed to other Directorates-General¹. This reply relates only to the documents held by Directorate-General for xxx. You received/will receive the replies from the other respective Directorates-General in due course.

The following document/documents fall(s) within the scope of your application:

– Title, author, addressee (if applicable), date, reference Ares(20xx)xxxx (hereafter ‘document 1’), which includes the following annexes:

¹ Please add GESTDEM references and names of the Directorates-General to which parts of the application was attributed.

Advance copy by email: XXXXX
Having examined the document/documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exception/exceptions to the right of access laid down in Article 4 of this Regulation.

The document/documents which you seek to obtain…

Describe the type of information contained in the document(s) without revealing its/their actual content.

Examples:

• contains commercially sensitive business information of the company that submitted it;
• relates to an ongoing investigation regarding a possible infringement of EU law (give the infringement case number);
• relates to an ongoing audit concerning (describe the matter); or
• relates to a decision which has not yet been taken by the Commission.

Disclosure of the document/documents requested would undermine the protection of

Mention the applicable exception and describe how disclosure would affect the interest protected under this exception.

Examples:

• the commercial interests of the company that submitted it, as putting this information in the public domain would affect its competitive position on the market. Therefore the exception laid down in in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 applies to this document.
• the purpose of the ongoing investigation; indeed, disclosure of the document 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 the third indent of Article 4(2) of Regulation (EC) No 1049/2001 applies to this document.;
• the purpose of the ongoing audit, as it would put in the public domain preliminary findings which have not yet been confirmed and which may be rebutted by the
persons / entities being audited; disclosure at this point in time would unduly interfere with the contradictory procedure and may undermine the rights of the persons / entities concerned. Therefore the exception laid down in the third indent of Article 4(2) of Regulation (EC) No 1049/2001 applies to this document.

- the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration; the Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. Therefore the exception laid down in the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 applies to this document.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the documents requested.

However, for the reasons explained above, no meaningful partial access is possible without undermining the interest described above or creating a disproportionate administrative burden in light of the fact that the documents to be redacted are very voluminous and the information contained therein which could be made public would be of no substantial value as it is already of public knowledge.

I am aware that if a document contains information which is already in the public domain, this does not in principle justify a refusal of partial access, but instead requires its partial disclosure. However, pursuant to settled case-law, in exceptional circumstances:

‘a derogation from the obligation to grant partial access might be permissible where the administrative burden of blanking out the parts that may not be disclosed proves to be particularly heavy, thereby exceeding the limits of what may reasonably be required’.

The General Court further held in the same judgment that:

‘[...] The principle of sound administration requires that the duty to grant partial access should not result in an administrative burden which is disproportionate to the applicant's interest in obtaining that information’.

In this instance, I note that, in the framework of your application, you do not contest the particularly heavy workload which would be entailed by partial disclosure of the documents requested, nor the fact that the information that would be disclosed would not be of any substantial value as it is already publicly known.

---

Consequently, I have come to the conclusion that, in order to safeguard the principle of sound administration, the documents cannot be partially disclosed under Regulation (EC) No 1049/2001. Indeed, the administrative burden engendered by implementing such partial access would not weigh up against your possible interest in obtaining the (already public) information contained in the parts that would remain unredacted.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

State, where applicable, that you have examined whether there could be an overriding public interest in disclosure, but that you have not been able to identify such an interest.

If the applicant refers to an alleged overriding public interest: explain, where applicable, why the public interest in making the content of the document(s) public does not outweigh the harm disclosure would cause to the interest(s) protected by the invoked exception(s).

Point out, where applicable, that the fact that other documents regarding the same subject matter have already been made publicly available [for instance, in application of the Better Regulation rules and guidelines], only reinforces this conclusion.

This section should not be included when exceptions under Article 4(1) are invoked. However, please include a reference to the fact that the exceptions of Article 4(1) are absolute exceptions and do not include the possibility for the exceptions defined therein to be set aside by an overriding public interest (see example below).

In your application, [you do not put forward any reasoning pointing to an overriding public interest in disclosing the documents requested] [you argue that…………….

However,…………………………]

[The General Court acknowledged that “the individual interest which may be asserted by a requesting party in obtaining access to documents concerning him personally cannot generally be decisive for the purposes both of the assessment of the existence of an overriding public interest and of the weighing up of interests under […] Article 4(2) of Regulation No 1049/2001” 5].

Nor have I been able to identify any public interest capable of overriding the public and private interests protected by Article xxxx and xxxx of Regulation (EC) No 1049/2001.

---

[The fact that the documents relate to an administrative procedure and not to any legislative act, for which the Court of Justice has acknowledged the existence of wider openness \(^6\), provides further support to this conclusion.]

[Please note also that Article 4(1)(a) and 4(1)(b) of Regulation (EC) No 1049/2001 do not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.]

[Point out, where applicable, that the fact that other documents regarding the same subject matter have already been made publicly available (for instance, in application of the Better Regulation rules and guidelines), only reinforces this conclusion.]

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.

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
Unit C.1. ‘Transparency, Document Management and Access to Documents’
BERL 7/076
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu.

Yours faithfully,

XXXXXXXXXXX
Director-General or Director in the Secretariat-General

[On the level of signature see: Who signs an initial reply on access to documents]

---