Subject: Your application for public access to documents – Ref. 2024/2587

Dear Ms Baumgartner,

We refer to your email of 11 May 2024 in which you made a request for public access to documents under Regulation (EC) No 1049/2001, registered on 11 May 2024 under the above-mentioned reference number.

You request access to the following categories of documents:

1. Documentation confirming Mrs Diana Riochet’s membership in WWCDA;
2. Records of any disclosures made by Mrs Riochet to OLAF about her WWCDA membership, particularly those discussing potential or perceived conflicts of interest;
3. OLAF’s policies regarding employee affiliations with external organizations, especially in light of its investigative functions which might conflict with the aims of a defense-oriented organization like WWCDA;
4. Any communications discussing Mrs Riochet’s involvement with WWCDA and how it aligns with her investigative duties at OLAF;
5. Evaluations or reviews conducted by OLAF concerning conflicts of interest related to Mrs Riochet’s WWCDA membership.

1. Categories 1, 2 and 5

We regret to inform you that the Commission does not hold any documents that would correspond to the description given in categories 1, 2 and 5 of your application.

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

2. Category 3

Under category 3, you request public access to ‘OLAF’s policies regarding employee affiliations with external organizations, especially in light of its investigative functions which might conflict with the aims of a defense-oriented organization like WWCDA’.

The following documents fall within Category 3 of your request:

- the Staff Regulations of Officials and the Conditions of Employment of Other servants;  
- Commission’s Practical Guide to staff on Ethics and conduct;  
- the European Commission’s Ethics Guide of the European Commission;  
- OLAF’s Guide on Ethics and conduct of 1 April 2019.

The Staff Regulations, Commission Decision C(2018) 4048 and Commission’s Practical Guide to staff are available at the following links, respectively:


https://www.asktheeu.org/en/request/8376

You will find the Ethics Guide of the European Commission and OLAF’s Guide on Ethics and conduct of 1 April 2019 in attachment to this letter.

As regards OLAF’s Guide on Ethics and conduct of 1 April 2019, please note that, for the reasons explained hereafter, the complete disclosure of the document is prevented by several exceptions in Regulation (EC) No 1049/2001. Therefore, OLAF has given you partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001.

2.1. Article 4(2), third indent

Article 4(2), third indent of Regulation (EC) No 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

OLAF’s Guide on Ethics and conduct contains information on OLAF’s investigative activities, working methods and internal procedures. The disclosure of these information could jeopardise the effectiveness of future OLAF investigations.

OLAF’s investigations aim at protecting the financial interests of the Union and at fighting against fraud, corruption and any other illegal activity affecting those interests and OLAF’s responsibility, as expressly stated in recital 6 of Regulation (EU, Euratom) No 883/2013, also extends beyond the protection of financial interests to include all activities relating to safeguarding Union interests against irregular conduct of EU Members or staff members, liable to result in administrative or criminal proceedings. Undermining OLAF’s ability to gather evidence and conduct investigations would be in contradiction to the role of OLAF and the purpose for which it conducts investigations, while the effectiveness of an OLAF investigation is of public interest, derived from the more general public interest of protecting the EU’s financial interests and the reputation of the EU IBOAs.

Therefore, the disclosure of that information is precluded by the exception foreseen in the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

2.2. Article 4(3) of Regulation (EC) No 1049/2001

OLAF’s Guide on Ethics and conduct of 1 April 2019 is a document drawn up for internal use protected by the specific exception in Article 4(3), first indent of Regulation (EC) No 1049/2001. According to that provision, access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding

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2 Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.

public interest in disclosure.

In addition, the Guide on Ethics and conduct contains information on OLAF’s investigative activities, working methods and internal procedures, including in relation to OLAF’s IT project management practices. As a result, OLAF’s internal decision-making process could be seriously affected not only concerning the application of ethics rules, but also with regard to future investigations. Public disclosure of such information would seriously jeopardize the full independence of future OLAF investigations.

Therefore, the disclosure of that information is also precluded by the exception foreseen in Article 4(3) second subparagraph of Regulation (EC) No 1049/2001.

2.3. 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, it firstly, has to be a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access.

According to the settled case-law, the applicant must, on the one hand, demonstrate the existence of a public interest likely to prevail over the reasons justifying the refusal of access to the documents concerned and, on the other hand, demonstrate precisely in what way disclosure of the documents would contribute to assuring protection of that public interest to the extent that the principle of transparency takes precedence over the protection of the interests which motivated the refusal⁴.

In your request, there is no specific reference to circumstances which would show an overriding public interest in the disclosure of the redacted parts of OLAF’s Guide on Ethics and conduct of 1 April 2019.

As regard your reference to the risk of conflict between the affiliation of OLAF’s staff, with investigative functions, to WWCDA and the aims of a defense-oriented organization like WWCDA, please note that to OLAF’s knowledge, no OLAF staff has membership in WWCDA.

In conclusion, OLAF considers that there are no elements that demonstrate the existence of an overriding public interest in disclosing the redacted parts of OLAF’s Guide on Ethics and conduct of 1 April 2019.

3. Category 4

Under category 4, you request public access to ‘any communications discussing Mrs Riochet’s involvement with WWCDA and how it aligns with her investigative duties at OLAF’.

Having examined point 4 of your request under Regulation (EC) No 1049/2001 and Regulation (EU) 2018/1725⁵ (hereafter, Data Protection Regulation), I regret to inform you that its handling, including the confirmation of the existence of documents falling under the scope of your request or not, and any identification of (a) document(s) covered by your request (if any), it is prevented by the Data Protection Regulation. Therefore this point of your request cannot be handled.

Information about the existence of documents falling under the scope of your request, formulated in relation to an identified or identifiable natural person, and their identification, if any, constitutes processing of personal data within the meaning of the relevant provisions


of Article 3 of Regulation (EU) 2018/1725 and reveals information relating to an identified or identifiable natural person (personal data).

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if "[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.” Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, the transmission of personal data can occur.

In this respect, please note that the General Court held that abstract and generic arguments are not sufficient to establish the necessity of the transmission of personal data. The Court of Justice also held that the objective of transparency of Regulation (EC) No 1049/2001 does not automatically prevail on the protection of personal data.

In addition, supposing that such interest would exist, quid non, weighing the public interest in disclosure against the data subject’s legitimate interests, OLAF considers that the transmission of the personal data would be disproportionate.

Consequently, to the extent that it relates to Category 4 of your request formulated in relation to an identified, or identifiable, natural person, your request cannot be handled, pursuant to Article 9(1)(b) of the Data Protection Regulation, as the need to obtain access to the personal data resulting from the handling of your request, for a specific purpose in the public interest, has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

4. 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

Your attention is drawn to the privacy notice below.

Yours sincerely,

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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). You may contact the Data Protection Officer of OLAF (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) 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://anti-fraud.ec.europa.eu