Subject: Your application for public access to documents

Dear Mr Harris,

We refer to your request for public access to documents, under Regulation (EC) 1049/2001, made by e-mail dated 2 May 2016 and registered in OLAF on 4 May 2016 under reference Ares(2016)2227957.

Scope of your application

You requested, under Regulation 1049/2001 public access to the following:

"Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

I am looking for details of investigations by OLAF into MEPs for the last five years. For all completed investigations, please tell me the name of the MEP, what he/she was investigated for, the outcome and which authority the case file was passed to (and when)".

Assessment of the application

Having examined the information requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, OLAF regrets to inform you that it cannot provide you with documents within the meaning of that Regulation and reflecting the information you required, as such documents do not exist.
As explained in the replies\(^1\) to the similar initial\(^2\) and confirmatory\(^3\) applications you sent to OLAF on 10 July 2015 and 4 August 2015 respectively, although the information you request might be found in OLAF's case files, it cannot be retrieved in the requested format by means of a normal and routine search, as the database is not set up to retrieve such information by such a search. This applies also for the period covered by the present request (i.e. 'last five years'). Your application for access would thus require the creation of new documents, for which, according to the case-law, access cannot be requested on the basis of Regulation (EC) 1049/2001.\(^4\)

Regulation 1049/2001 only covers existing documents\(^5\) and does not oblige the institutions to produce documents for the purpose of an application\(^6\). Indeed, the Commission is not obliged to extract the information from a database through an operation that will require new computer instructions. According to Article 2(1) of Regulation 1049/2001 it "...shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union". Article 10 further states that "...documents shall be supplied in an existing version and format... "

Confidentiality of information contained in documents in OLAF files

As set out in the replies mentioned above, OLAF's case management system is organised by investigation file, not by persons concerned. OLAF investigations are conducted with the purpose of detecting fraud, corruption, and any other illegal activity affecting the financial interests of the European Communities; including serious matters relating to the discharge of professional duties. The subject matter of an investigation is circumscribed by a set of facts and allegations, not by the persons investigated or their status or position (MEP). Any investigation may involve several natural or legal persons. Moreover, during the lifecycle of an investigation, the status of the persons investigated may evolve, depending on the evidence gathered at one point, from witness to person concerned.

Furthermore, the information you request relates to OLAF's internal investigations, as defined by Article 4 of Regulation (EU, Euratom) No 883/2013: internal investigations are administrative investigations within the European Union institutions and bodies for the purpose of detecting fraud, corruption, and any other illegal activity affecting the financial interests of the European Communities; including serious matters relating to the discharge of professional duties. OLAF is legally bound to treat all information it obtains during its investigation 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 of Regulation (EU, Euratom) No 883/2003 and Article 17 of the Staff Regulations.

To a very large part, this information is contained in the Final Reports of OLAF investigations. As you were informed in the above-mentioned OLAF's replies to your

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\(^1\) Please see documents registered under Ares(2015)3248298 sent to you on 3 August 2015 and Ares(2015)3557338 sent to you on 28 August 2015.

\(^2\) In your e-mail dated 10 July 2015 (THOR(2015)24366), you requested: '(...) please tell me how many MEPs have been investigated by OLAF over the past three years. Of these please tell me how many were cleared and how many were recommended for action to be taken. Of those where action has been recommended, please tell me: the MEPs nationality, his/her political grouping, the charges they faced and OLAF's findings in relation to them, who the case was referred to and the result of the prosecution/final action.'

\(^3\) Your e-mail dated 4 August 2015 (Ares(2015)3306118).


applications from 2015, as well as in the reply to your initial application in 2016\(^7\), the Final Reports of OLAF investigations, which form part of OLAF investigation files, cannot be disclosed as they are covered by the general presumption of applicability of the protection of the purpose of inspections, investigations and audits as referred to in Article 4(2) third indent of the Regulation (applicable for both on-going and closed investigations)\(^8\), as well as by the exception foreseen in Article 4(1)(b)\(^9\) of that Regulation.

**Overriding public interest in disclosure**

You did not indicate arguments which will sustain the existence of a public interest which would overturn the application of exceptions provided in Article 4(2) of Regulation (EC) 1049/2001. For such an interest to exist, firstly, it has to be a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access. Given the nature of the investigations conducted by OLAF, and the confidential nature of information collected, such as sources of information, content of case files and reputation of natural persons, OLAF considers there are no elements that would show the existence of an overriding public interest in disclosing the requested documents.

Please also note that the requested documents involve the protection of privacy and integrity of individuals (Article 4(1)(b) of Regulation (EC) No 1049/2001) where overriding public interest in disclosure is not applicable.

**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 Giovanni KESSLER  
Director-General OLAF  
European Commission  
Rue Joseph II, 30  
B-1000 BRUXELLES  
BELGIUM.

Your attention is drawn to the privacy statement below.

Yours sincerely,

\[\text{Beatriz SANZ REDRADO}\]

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\(^7\) Please see document registered under Ares(2016)696078 sent to you on 09 February 2016. In your application sent on 19 January 2016, you requested: 'Please provide case files for all investigations carried out by OLAF in 2015, where the institution equals European Parliament'.


\(^9\) Final Reports include individual personal data, such as informants, witnesses, persons concerned, private individuals, officials from the national and international competent authorities and officials of OLAF, which if disclosed, would clearly undermine the privacy and integrity of the individuals concerned in accordance with Regulation (EC) No 45/2001 which specifically applies to the processing of personal data by the EU Institutions.
Privacy statement

Pursuant to Article 11 of Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on 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.

The categories of your personal data being processed are identification and contact data (name, address, e-mail, telephone, fax) 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 have access to your personal data.

All documentation and communications 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 access those data and to correct and complete them. On request and within three months from its receipt, you may obtain information concerning your personal data which we have processed. Any such request should be addressed to the Controller (OLAF-FMB-Data-Protection@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.

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