



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director-General

Brussels, **16 MAY 2018**
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*By registered letter with acknowledgment
of receipt*

Jesús Escudero
Vía de las Dos Castillas, 33. Ática
7. Planta 1. Oficinas E, F, G y H.
28224 Pozuelo de Alarcón (Madrid)
Spain

Advance copy by e-mail:

ask+request-5183-c47edcc4@asktheeu.org

Subject: Your application for public access to documents – GestDem Ref No 2018/1178

Dear Mr Escudero,

We refer to your letter dated 26/02/2018 and your clarification reply dated 28/02/2018 in which you submitted and further clarified, within the framework of Regulation (EC) 1049/2001¹, an application for access to documents.

1. SCOPE OF YOUR REQUEST

You requested access to the following documents:

- All correspondence (including reports, official letters, emails, accompanying documents, meeting documents and meeting minutes, or any other type of public document not mentioned hereby) sent or received by the Directorate-General for Research and Innovation (DG RTD) to or from representatives of the companies RELX Group and Elsevier, from 1 November 2014 to the present day; [...] 3 entities are linked to the search 'Elsevier': RELX Group, EuroFIR AISBL and Schuman Associates. In addition, Elsevier B.V. editorial based in the Netherlands, linked to RELX Group, is among the Horizon 2020 experts group, represented by Anne Kitson.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) , hereinafter referred to as 'Regulation (EC) 1049/2001'.

(‘*Toda la correspondencia (incluyendo informes, cartas oficiales, emails, documentos adjuntos, actas y memorandos de reuniones, además de cualquier otro tipo de documento público no mencionado en la enumeración anterior) enviada o recibida por la Dirección General de Investigación e Innovación (DG RTD) con representantes de las empresas RELX Group y Elsevier desde el 1 de noviembre de 2014 hasta la actualidad*’; ‘[...] *aparecen tres entidades ligadas a la búsqueda 'Elsevier': RELX Group, EuroFIR AISBL y Schuman Associates. Además, la editorial neerlandesa Elsevier B.V., ligada a RELX Group, forma parte del grupo de expertos 'Horizonte 2020', representada por Anne Kitson*’).

We have identified 86 documents falling under the scope of your request (hereinafter the 'requested documents'), namely:

1. Reports delivered under Horizon 2020 INFRADEV-1-2014 project ‘*Research Infrastructure on Consumer Health and Food Intake for E-Science with Linked Data Sharing*’ (RICHFIELDS, n° 654280) (3 documents):
 - 1.1. Report from first Stakeholder Platform meeting
 - 1.2. Report from first Stakeholder Platform workshop
 - 1.3. Report from second Stakeholder Platform workshop
2. Financial statements - Forms C, with annexes (44 documents)
 - 2.1. Forms C (35 documents)
 - 2.2. ‘Use of resources’ annexes (9 documents)
3. Replies to applications for access to documents requested by a representative of Schuman Associates (2 documents)
4. Contract with Elsevier (3 documents):
 - 4.1. Licence subscription agreement
 - 4.2. Related e-mail exchange with Elsevier (2 documents)
5. Documents related to participation in public procurement procedure (3 documents):
 - 5.1. Letter to Elsevier - Request to submit missing declaration on honour
 - 5.2. Incoming e-mail from Elsevier – Declaration on honour submitted
 - 5.3. Letter to Elsevier - Outcome of procurement procedure
6. Incoming e-mail from EuroFIR AISBL related to FP7 Project No 311788 ‘Study on the need for food and health research infrastructures in Europe’ (EuroDISH), with annexes (9 documents)
7. Documents related to audit SAEA000011/BAEA282003 (20 documents):
 - 7.1. Letter of Announcement of Audit with Annex (2 documents)
 - 7.2. Letter of Conclusion of Audit
 - 7.3. Final Audit Report
 - 7.4. E-mail from auditee

- 7.5. Letter from auditee
 - 7.6. Letter from auditee - Statement on implementation of audit findings
 - 7.7. E-mail to auditee
 - 7.8. Letter from auditee - Statement on implementation of audit findings
 - 7.9. E-mail exchange with auditee
 - 7.10. E-mail to auditee
 - 7.11. E-mail to auditee
 - 7.12. Pre-information letter on intended recovery within the framework of the extension of audit, with 2 annexes
 - 7.13. Acknowledgment of Receipt of the pre-information letter
 - 7.14. Recovery order with Annex (2 documents)
 - 7.15. Acknowledgment of Receipt of the recovery order
 - 7.16. Debit note
 - 7.17. Pre-information letter concerning recovery
 - 7.18. Acknowledgment of Receipt of the pre-information letter
8. Mission report related to workshop "Open Science in Development" and enclosed agenda (2 documents)

2. EXAMINATION UNDER REGULATION (EC) NO 1049/2001

For your convenience, a table with the list of documents containing the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001 is attached at the end of this letter.

2.1. Full access to project deliverables and some Forms C (documents No 1 and some of the documents No 2.1.)

Having examined the requested documents under the provisions of Regulation (EC) 1049/2001, and taking account of the legitimate interests of any third party concerned, we are pleased to inform you that full access can be granted to **Documents No 1** (3 project reports) **and some of the Documents No 2.1.** (23 Financial forms C, without the annexes to them).

2.2. Partial access to all the remaining documents (remaining documents No 2.1., documents from No 2.2. to No 8)

Partial access can be granted to all the remaining documents, since some information has been withheld, as it concerns the commercially sensitive information and the personal data, as explained below.

2.2.1. Protection of commercial interests of a natural or legal person, including intellectual property

Article 4(2), first indent, of Regulation (EC) 1049/2001 provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure".

Document No 4.1. (licence agreement)

The Licence subscription agreement contains commercially sensitive information, such as subscription fees and authentication data allowing access to the services under the contract. These are commercial conditions of the agreement which are protected by a contractual confidentiality clause. Therefore, disclosure of such information in the public domain may jeopardise the contractors' competitive positions on the market.

Document No 5.3. (public procurement)

This document contains sensitive information related to the outcome of public procurement procedure, such as prices and technical and methodological information of the bid reflected in the comments and assessment made by the evaluators, which may be used by competitors in future similar procedures to the detriment of the entities concerned. The disclosure of such financial and technical information may be detrimental to the legitimate commercial interests of the third parties concerned.

Documents No 7 (audit)

The requested documents under this category refer to an **audit** and contain information related to the name of the auditee, the internal business of the auditee, appreciations of auditors and the auditee on the audit findings and the procedure, detailed information on costs declared by the auditee for the implementation of the projects, and information on other files involving the auditee. The public disclosure of this information might undermine the auditee's reputation, as it might expose it to outside criticism. Moreover, such disclosure might undermine the relationship of the auditee with its stakeholders and partners. For this purpose, the auditee's name and elements permitting its identification are redacted in all documents.

Furthermore, some of the requested documents under this category refer to the External Audit Firm, in particular to its name and manner in which it has carried out the audit. The **Document 7.3.** (Final audit report) also refers to the know-how of the External Audit Firm and the methodology it applied when carrying out the audit. This information has commercial value for the External Audit Firm and its public disclosure might undermine the External Audit Firm's commercial interests, in particular as regards its intellectual property.

In light of this, we have redacted the parts of the relevant documents, the disclosure of which might undermine the protection of the commercial interests of the auditee and of the External Audit Firm within the meaning of Article 4(2), first indent, of Regulation (EC) 1049/2001. In addition, please note that the two annexes to **Document 7.12.** (Pre-

information letter) and all annexes of **Document 7.3.** (Final audit report (pages 21-46)), are fully covered by the above exception and are therefore not provided.

Article 4(2), first indent, of Regulation (EC) 1049/2001 (protection of commercial interests) applies unless there is an overriding public interest in disclosure of the documents requested. In this instance, we have found no elements which could indicate the existence of an overriding public interest in the sense of Regulation (EC) 1049/2001 that would outweigh the need to protect the commercial interests identified in the above mentioned documents (listed under No 4.1., No 5.3., and No 7) and described in the present letter.

2.2.2. Protection of privacy and the integrity of the individual

According to Article 4(1)(b) of Regulation (EC) 1049/2001, access to documents is refused where disclosure would undermine the protection of "*privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*".

60 of the requested documents contain personal data such as names, surnames, telephone numbers, fax numbers, signatures, e-mails, and office numbers of staff members of the Commission and/or third parties. This information clearly constitutes personal data in the meaning of Article 2(a) of Regulation (EC) 45/2001².

According to Article 8(b) of Regulation (EC) 45/2001, personal data shall only be transferred to a recipient in the EU/EEA if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative. In the present case, you have not put forward any arguments to substantiate a need to obtain these personal data. Furthermore, it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

Therefore, personal data have been withheld from 60 of the requested documents, except the names of individuals forming part of senior management staff of the Commission and the names of the main representatives of the third parties, in conformity with the Commission usual practice.

3. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation (EC) 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:

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12.01.2001, p.1), hereinafter referred to as 'Regulation (EC) 45/2001'.

European Commission

Secretary-General

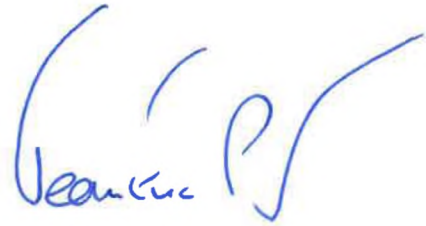
Transparency unit SG-B-4

BERL 5/282

B-1049 Brussels

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

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Jean-Eric Paquet', with a large, stylized flourish extending from the end.

Jean-Eric Paquet

Summary table of the redactions and the exceptions applied

Document reference	Type of disclosure	Exception(s) applied in Regulation 1049/2001
Document 1.1. - Report from first Stakeholder Platform meeting	Full disclosure	n/a
Document 1.2. - Report from first Stakeholder Platform workshop	Full disclosure	n/a
Document 1.3. - Report from second Stakeholder Platform workshop	Full disclosure	n/a
Documents 2.1. - Financial forms C (35 documents)	Full disclosure (23 documents)	n/a
	Partial disclosure (12 documents)	Article 4(1)(b) (privacy and the integrity of the individual)
Documents 2.2. – Use of resources (9 documents)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual)
Documents 3 - Replies to application for access to documents (2 documents)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual)
Document 4.1. - Licence subscription agreement	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Documents 4.2. – E-mail exchange with Elsevier (2 documents)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual)
Document 5.1. – Letter	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual)
Document 5.2. – E-mail	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual)
Document 5.3. – Letter	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Documents 6 – E-mail with 8 annexes (9 documents)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual)

Document reference	Type of disclosure	Exception(s) applied in Regulation 1049/2001
Document 7.1. – Letter of Announcement with Annex (2 documents)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.2. – Letter of Conclusion of Audit	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.3. – Final audit report	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.4. – E-mail from auditee	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.5. – Letter from auditee	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.6. – Letter from auditee (Statement on implementation of audit findings)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.7. – E-mail to auditee	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.8. – Letter from auditee (Statement on implementation of audit findings)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.9. – E-mail exchange with auditee	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.10. – E-mail to auditee	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.11. – E-mail to auditee	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.12. – Pre-information letter on intended recovery	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.13. – Acknowledgement of receipt of pre-information letter	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)

Document reference	Type of disclosure	Exception(s) applied in Regulation 1049/2001
Document 7.14. – Recovery order with Annex (2 documents)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.15. – Acknowledgement of receipt of the recovery order	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.16. – Debit note	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.17. – Pre-information letter concerning recovery	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 7.18. – Acknowledgement of receipt of pre-information letter	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual); Article 4(2), first indent (commercial interests)
Document 8 – Mission report and enclosed workshop agenda (2 documents)	Partial disclosure	Article 4(1)(b) (privacy and the integrity of the individual)