



EUROPEAN COMMISSION

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C(2018) 6704 final

Mr Arun DOHLE
Against Child Trafficking
c/o Crown Business Center
Schiphol-Hoofddorp
Planetenweg 5
NL 2132 HN Hoofddorp

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/3528**

Dear Mr Dohle,

I refer to your letter of 29 August 2018, registered on the same day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 30 June 2018, which you clarified on 13 July 2018, addressed to the Directorate-General for International Cooperation and Development, you requested access to '[a]ll documents, including mails, sms, whatsapp, audio and video recordings related the conference organised jointly by the European Commission and Lumos, which was held in Brussels on 15 June 2018'. On 13 July 2018, you clarified that your request concerned '[i]n particular, but not limited to, invitations, thank you letters/mails, correspondence related to partnership arrangements, financials, participants list.'

The European Commission has identified the following documents as falling under the scope of your request:

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 13 July 2018, ARES(2018)4710029(hereafter ‘document 1’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 11 July 2018 regarding the media report of the conference, ARES(2018)4710029 (hereafter ‘document 2’);
- Media Report on EU Summit Coverage, shared by Lumos with DEVCO B1 and CABINET MIMICA on 11 July 2018, ARES(2018)4710029 (hereafter ‘document 3’);
- E-mail exchange between DEVCO B1 and DEVCO DG, DEVCO 01, DEVCO 02, DEVCO B2, DEVCO B3, DEVCO B4, DEVCO B5, DEVCO B6, dated 2 July 2018 regarding the flash report concerning the conference, prepared by DEVCO B1, ARES(2018)4710029 (hereafter ‘document 4’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 14 June 2018 regarding the meeting with young leaders, including the following annex, ARES(2018)4710029:
 - 5.i. Annex to document 5, list of questions for the meeting of JK Rowling, George and Commissioner Mimica with the young leaders scheduled for the 15 June 2018 (hereafter ‘document 5’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 14 June 2018 regarding the seating plan, the run show describing what is happening during the day, the recommendations of the self-advocates and the young people’s profiles, including the following annexes, ARES(2018)4710029:
 - 6.i. Annex to document 6, seating plan;
 - 6.ii. Annex to document 6, run of show;
 - 6.iii. Annex to document 6, recommendations from young people;
 - 6.iv. Annex to document 6, young people’s profiles (hereafter ‘document 6’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 14 June 2018 regarding the document developed by DEVCO B1 and Lumos, including the following annex, ARES(2018)4710029:
 - 7.i. Annex to document 4 (hereafter ‘document 7’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 13 June 2018 regarding the documents to be distributed to interpreters, including the following annexes, ARES(2018)4710029:
 - 8.i. Annex to document 8, agenda with timings and languages;
 - 8.ii. Annex to document 8, conference film scripts;
 - 8.iii. Annex to document 8, draft concept note;
 - 8.iv. Annex to document 8, agenda and speaker biographies;
 - 8.v. Conference publication, Ares(2018)4229034 (hereafter ‘document 8’);
- E-mail exchange between Lumos, DEVCO B1, CABINET MIMICA and COMM 01, dated 12 June 2018 regarding the social media outline for the conference, including the following annex, ARES(2018)4710029:
 - 9.i. Annex to document 9, communications plan for social media developed by Lumos (hereafter ‘document 9’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 11 June 2018 regarding the conference publication, including the following annex, ARES(2018)4710029:
 - 10.i. Annex to document 10, final conference publication (hereafter ‘document 10’);

- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 11 June 2018 regarding the speakers brief prepared by Lumos for CABINET MIMICA, including the following annex, ARES(2018)4710029:
 - 11.i. Annex to document 11, speakers brief (hereafter ‘document 11’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 23 April to 5 June 2018 regarding the roll-up banner and the step & repeat board, including the following annexes, ARES(2018)4710029:
 - 12.i. Annex to document 12, artwork for the roll-up banner;
 - 12.ii. Annex to document 12, step & repeat board (hereafter ‘document 12’);
- E-mail exchange between DEVCO B1 and DEVCO R1, dated 23 May to 5 June 2018 regarding the order of food, including the following annex, ARES(2018)4710029:
 - 13.i. Annex to document 13 , catering order (hereafter ‘document 13’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 25 to 30 May 2018 regarding the *curricula vitae* of the Commissioner Mimica and Cabinet members, including the following annex, ARES(2018)4710029:
 - 14.i. Annex to document 14 , CVs of Commissioner Mimica and Cabinet member (hereafter ‘document 14’);
- E-mail exchange between Lumos, DEVCO B1, DEVCO 02, and CABINET MIMICA, dated 2 to 24 May 2018 regarding the communication before, during and after the conference, including the following annex, ARES(2018)4710029:
 - 15.i. Annex to document 15, concept note for the Global Leader’s Youth Summit (hereafter ‘document 15’);
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 24 April to 9 May 2018 regarding publication timeline and invitation letter, including the following annexes, ARES(2018)4710029:
 - 16.i. Annex to document 16, invitation letter;
 - 16.ii. Annex to document 16, draft version of the invitation letter in tack changes; (hereafter ‘document 16’);
- E-mail exchange between Lumos, DEVCO B1, DEVCO 02, and CABINET MIMICA, dated 25 April 2018 regarding agenda for meeting between Lumos and DEVCO, including the following annex, ARES(2018)4710029:
 - 17.i. Annex to document 17, draft version of the communications plan (hereafter ‘document 17’);
- Save the Date e-mail, sent out to the mailing list under document 19 below (hereafter ‘document 18’), ARES(2018)4710029;
- E-mail exchange between Lumos, DEVCO B1 and CABINET MIMICA, dated 22 March 2018 regarding mailing list for the Save the Date, including the following annex, ARES(2018)4710029:
 - 19.i. Annex to document 19 , mailing list reports (hereafter ‘document 19’);
- Briefing for Commissioner Mimica prepared by DEVCO services (hereafter ‘document 20’), ARES(2018)4710029;
- Closing speech of Commissioner Mimica https://ec.europa.eu/commission/commissioners/2014-2019/mimica/announcements/closing-remarks-conference-no-child-left-behind-families-not-institutions-eu-external-action_en (hereafter ‘document 21’);
- Video of the first panel <https://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I157024> (hereafter ‘document 22’);

- Video of the closing session
<https://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I157103>
(hereafter ‘document 23’);
- Official photos of the event :
<https://ec.europa.eu/avservices/photo/photoByReportage.cfm?sitelang=en&ref=037404> (hereafter ‘document 24’);
- Press release : https://ec.europa.eu/europeaid/news-and-events/european-union-prioritises-quality-care-children-its-external-action_en (hereafter ‘document 25’);
- Video clip :
<http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I157321>
(hereafter ‘document 26’);
- Videos displayed during the event:
 - Intro Animation <https://vimeo.com/275121065> , Password: S123
 - Film 1 (Moldova, Colombia, Bulgaria) <https://vimeo.com/274883369> and film 2 (Haiti, Nepal, Kenya) <https://vimeo.com/274880518> password MIMICACONFBRUSSELS (hereafter ‘document 27’).

In its initial reply of 13 August 2018, the Directorate-General for International Cooperation and Development granted full or wide partial access to the requested documents, subject only to the redaction of:

- personal data, in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual; and
- in one document, commercially sensitive information based on the protection of the commercial interests of Lumos, in accordance with Article 4(2), first indent (protection of commercial interests, including intellectual property) of Regulation 1049/2001.

Through your confirmatory application, you do not contest the redaction of parts of the documents, the disclosure of which would undermine the protection of interests protected by Regulation 1049/2001, or the justifications provided by the Commission. Therefore, the partial access already granted will not be reviewed.

You claim instead that the information provided was incomplete, in particular because you ‘did not receive the participants[‘] list, and details about the financials’ In addition, you request ‘the full streaming of the event’ and ‘the list of participants, as requested’. Consequently, the scope of your confirmatory application will consist of reviewing whether the Commission holds further documents falling within the scope of your request.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following your confirmatory request, the Commission conducted a thorough search for further documents falling within the scope of your request. It has identified the following documents:

- list of participants in the conference organised jointly by the European Commission and Lumos, which was held in Brussels on 15 June 2018, Ares(2018)4842384 (hereafter ‘document 28’);
- Addendum No.3 to Service Contract No. EIDHR/2017/384-899, Ares(2018)4053415 (hereafter ‘document 29’);
- unedited, unpublished raw footage from the closing session, amounting to 31 minutes (hereafter ‘document 30’). 14 minutes of this footage has been extracted and published on the Commission website at the following link: <https://vimeo.com/275268165>.

Following this review, I am pleased to inform you that:

- wide partial access is granted to document 28, subject only to the redaction of personal data, in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual);
- partial access is granted to document 29, subject to redaction of:
 - personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual);
 - those parts reflecting the offer of the successful tenderer, including the breakdown of the budget, as well as its VAT number, which are protected in accordance with Article 4(2), first indent (protection of commercial interests, including intellectual property);
 - large parts of document 29, which fall outside the scope of your request as they do not concern the event of 15 June 2018.

As regards document 30, I regret to inform you that access to the unpublished part of this document has to be refused, based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual).

Please find the detailed reasons for the application of the above-mentioned exceptions below.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that ‘the institutions shall refuse access to a document 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.’

Document 28 contains the names of natural persons who participated in the event of 15 June 2018 as well as their signatures. Document 29 contains the names, job titles and signatures of natural persons who signed the addendum to service contract no. EIDHR/2017/384-899. Among these natural persons, some are staff of the European Commission who do not belong to the senior management, while others are not the main representatives of the entities that they represent.

As regards document 30, which is audiovisual material, it contains images of the persons participating in the event, both speakers and public, as well as oral presentations, personal testimonies and comments. These are personal data, as they are linked to a particular person. As the Court of Justice has clarified, for information to be treated as ‘personal data’, there is no requirement that all the information enabling the identification of the data subject must be in the hands of one person. Any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.³

I would also like to underline that the event in question was not open to the public and participation was by invitation only. This decision was made by the co-organisers due to the participation of several young people, including children, who shared sensitive personal testimonies. The event was not live-streamed for the same reasons.

In its judgment in the *Bavarian Lager* case, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001⁴ (hereafter ‘Data Protection Regulation’) becomes fully applicable⁵.

Article 2(a) of the Data Protection Regulation provides that “‘personal data’ shall mean any information relating to an identified or identifiable person [...]; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.” According to the Court of Justice, “there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of ‘private life’”⁶. The names⁷ of the persons concerned, as well as the information from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

It follows that public disclosure of the above-mentioned information would constitute the processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001. According to Article 8(b) of that Regulation, personal data shall only be transferred to recipients 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.⁸ Only if both conditions are fulfilled and the processing constitutes lawful processing in accordance with the

³ Judgment of the Court of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling from the Supreme Court, EU:C:2017:994, paragraphs 33-35.

⁴ 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 Community institutions and bodies and on the free movement of such data, Official Journal L 8 of 12 January 2001, page 1.

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *Commission v Bavarian Lager*, EU:C:2010:378, paragraph 63.

⁶ Judgment of 20 May 2003 in Joined Cases C-465/00, C-138/01 and C-139/01, *Rechnungshof v Österreichischer Rundfunk and Others*, EU:C:2003:294, paragraph 73.

⁷ Judgment in *Commission v Bavarian Lager*, cited above, EU:C:2010:378, paragraph 68.

⁸ Ibid, paragraphs 77-78.

requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

In the judgment in the *ClientEarth* case, the Court of Justice ruled that ‘whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access’⁹.

I refer also to the *Strack* case, where the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data¹⁰.

In this regard, I would like to stress that you do not establish the necessity of having the data in question transferred to you.

In your confirmatory application, you indicate that, in your view, disclosure is ‘important and in the public interest, because there should be public awareness about the influence of campaigners, and the support given by the European Commission’. These indications, however, do not establish that, in order to attain these general and broad objectives for the purposes of which you are requesting disclosure of the documents concerned, it is necessary to obtain the disclosure of the names of the persons in question, their job titles, their signatures, or unpublished audio-visual material enabling others to deduce their identity¹¹. Nor do you express any specific interest in obtaining the names of natural persons, their job titles or signatures.

Furthermore, there are reasons to assume that the legitimate interests of the individuals concerned would be prejudiced by the disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

As for the signatures contained in the documents, which is biometric data, it is assumed that their disclosure would harm the privacy of the signatories and subject them to the risk of forgery.

Therefore, I have to conclude that the transfer of personal data through its disclosure cannot be considered as fulfilling the requirements of Regulation 45/2001.

I would also like to underline that, contrary to the exceptions of Article 4(2), Article 4(1)(b) of Regulation 1049/2001 is an absolute exception that does not require the institution to balance the exception defined therein against a possible public interest in disclosure.

⁹ Judgment of 16 July 2015 in Case C-615/13 P, *ClientEarth v EFSA*, EU:C:2015:489, paragraph 47.

¹⁰ Judgment of 2 October 2014 in Case C-127/13 P, *Strack v Commission* EU:C:2014:2250, paragraph 106.

¹¹ Judgment of 23 November 2011 in Case T-82/09, *Dennekamp v Parliament*, paragraph 34.

Therefore, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to disclose publicly the personal data contained in documents 28-30, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

2.1. Protection of commercial interests

Article 4(2), first indent of Regulation No. 1049/2001 stipulates 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 29 is an addendum to service contract no. EIDHR/2017/384-899 and it concerns the organisation of a set of events for the European Instrument for Democracy and Human Rights, including the event of 15 July 2018. The parts of the document containing details regarding events other than the event of 15 July 2018 for which you request access, do not fall within the scope of your request and have been redacted. However, the details concerning the event of 15 July 2018 are disclosed.

The document contains the offer of the contractor concerning globally the whole set of events to be organised for the European Instrument for Democracy and Human Rights, including the event of 15 July 2018. Please note that document 29 does not contain specific financial details concerning only the event of 15 July 2018. It is therefore considered to fall outside the scope of your request.

Had it, however, been considered to fall within the scope of your request, which is not the case, the withheld parts of the document cannot be disclosed, as it is covered by a general presumption of non-disclosure¹². According to the EU Court, access to the bids submitted by the other tenderers would, in principle, undermine the commercial interests of the successful tenderer.

In this particular case, the redacted parts contain the detailed financial offer of the tenderer for the organisation of the set of events for the European Instrument for Democracy and Human Rights, including information regarding the planned breakdown of the budget, the costs components, organisation and strategy underlying the implementation of the contract. Public disclosure of such financial data would distort competition in the specific market in which the contractors operate, insofar as the released confidential data could be used by tenderers in future calls for tender in the same sector to submit manipulated offers.

In addition, the VAT number of the contractor is withheld, as this is sensitive commercial information, the disclosure of which would undermine the contractual interests of the contractor.

¹² Judgment of the General Court of 29 January 2013 in Joined Cases T-339/10 and T-532/10, *Cosepuri Soc. Coop. pA v European Food Safety Authority (EFSA)*, EU:T:2013:38, paragraph 98.

Consequently, there is a real and non-hypothetical risk that public access to the above-mentioned sensitive commercial information in document 29 reflecting the methodology, technical know-how and the budget strategy of the contractor would seriously undermine the commercial interests of the latter, including its intellectual property, within the meaning of Article 4(2), first indent of Regulation 1049/2001.

This conclusion is reinforced by Article 103(1) of the Financial Regulation¹³, which stipulates that the '[p]ublication of certain information after the contract has been awarded may be dispensed with where it would hinder application of the law, would be contrary to the public interest, would harm the legitimate business interests of public or private undertakings or would distort fair competition between them'.

Against this background, the financial offer of the contractor and its VAT number are withheld in accordance with Article 4(2), first indent of Regulation 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(2), first indent, of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your confirmatory application, you do not give any precise reasons as to why the disclosure of the documents would benefit the general public.

In its *Sviluppo Globale v Commission* judgment, the General Court also clarified that 'the transparent conduct of public tenders procedures, which aims to make possible the monitoring of compliance with the relevant rules and principles does not require the publication of documents or information relating to the know-how, methodology or business relationships of the tenderers'¹⁴.

I therefore consider that in this case, the public interest is better served by keeping the withheld parts undisclosed in conformity with the interests protected by the exception of Article 4(2) first indent of Regulation 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,¹⁵ provides further support to this conclusion.

As explained above, Article 4(1)(b) does not provide for a possibility for the interests protected to be overridden by a public interest in disclosure.

¹³ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p. 1) as amended.

¹⁴ Case T-6/10, ECLI:EU:T:2012:245, paragraph 88.

¹⁵ Judgment of the Court of 29 June 2010 in Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau GmbH*, EU:C:2010:376, paragraphs 53-55 and 60.

4. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission
Martin SELMAYR
Secretary-General

Enclosures: (2)