



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION AND HOME AFFAIRS

The Director-General

Brussels,
HOME/E1/PK

With acknowledgment of receipt

Mr Chris Jones
Statewatch c/o MDR
88 Fleet Street
London EC4Y 1DH
UK

Advance copy by email: ask+request-6220-60b864ba@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2019/0062

Dear Mr Jones,

We refer to your e-mail dated 19 December 2018, in which you make a request for access to documents, held by the Directorate-General for Migration and Home Affairs and registered on the same day under the above mentioned reference number. We also refer to the e-mail of 31 January 2019¹ via which the time limit for handling your request was extended by 15 working days, pursuant to Article 7(3) of Regulation (EC) No 1049/2001.

The present reply relates only to the documents held by the Directorate-General for Migration and Home Affairs (DG HOME). Please note that for the parts of your request attributed to the Directorate-General for International Cooperation and Development (DG DEVCO)² you will receive a reply by the respective Commission department in due course.

1. SCOPE OF YOUR REQUEST

In your application you request access to “*all documents generated by the Commission in relation to [...] projects*”:

¹ Ref. Ares(2019)555548- 31/01/2019.

² Ref. GestDem No 2018/6890 and Ref. GestDem No 2019/0062.

- 2001/HLWG/118: GED-DPG: technical equipment and training for border control, fighting illegal immigration and detection of falsified documents, funded in 2001 in the framework of the budget line B7-667 and,
- 2001/HLWG/103: French MoI/ National police: financial and technical assistance for combating illegal migration, funded in 2001 in the framework of the budget line B7-667.

Based on your application we have identified 20 documents pertaining to the two projects in reference above, listed in Annex 1 and attached to the present letter. The request concerns documents such as grant agreements as amended, progress and final reports and administrative notifications.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that some of them may be fully or partially disclosed, while access shall be fully denied to others, as exceptions under Article 4 of Regulation (EC) No 1049/2001 apply.

2.1. FULL DISCLOSURE OF DOCUMENTS UNDER YOUR REQUEST

Document (20) is publically available via the following links: http://ec.europa.eu/smart-regulation/evaluation/search/download.do;jsessionid=O_1GPeo9BbNzQYezF88CQNDf4DjeuI2Te-tzrJmyjea5b1KYFwKe!2131975131?documentId=1249 and <http://ec.europa.eu/smart-regulation/evaluation/search/download.do;jsessionid=1YBmTSxLKsHFxHGy2BJIGb3M2LwgWg1qWw0JkHX2xXnV2xQxp8Gj!1601440011?documentId=1253>.

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2.2. NON - DISCLOSURE OF DOCUMENTS UNDER YOUR REQUEST

We regret to inform you that your application cannot be granted for documents (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18) and (19) since disclosure is prevented by exceptions to the right of access.

The documents which you seek to obtain contain commercially sensitive business information of the Member State that submitted them.

Amendments to grant agreements, progress and final reports and administrative notifications contain information relating to methodologies, internal organisation, particular know-how, strategy and other country specific proprietary information with competitive value.

Examples of such proprietary information contained in these documents are the description of the planned and implemented activities, the elaboration of encountered implementation problems, the results obtained and their comparison with the initial objectives and/or reasoning how resources were spend for the activities carried out.

Given the competitive nature of the calls from which the above mentioned projects originate, disclosure of the documents requested would undermine the protection of the interests of the Member State that submitted it, as putting this information in the public domain would affect its future competitive position³.

Therefore, the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to these documents. Furthermore, after examining whether there is an overriding public interest in disclosure of these documents we came to the conclusion that no such interest that would outweigh the protection of the commercial interests of the Member State exists.

Moreover, some of the documents that you have requested access to such as progress and final reports, and various administrative notifications are meant to serve as an assessment of the progress, the achievement of final results and obligation of the Commission to ensure sound financial management of EU funds. Both by their nature and according to Union legislation in the field of grants award are founded on a relationship of trust between the contracting parties. Thus, the grantees must be able to communicate any relevant information to the contracting authorities without fear that the authorities will communicate to third parties items of information whose disclosure could be damaging to them.

Additionally, parts of the progress, description of the Action and final reports to which you are seeking access contain sensitive and confidential security information on border control, equipment and training, as the two actions into which you are interested are police cooperation projects.

The disclosure of the documents would undermine the protection of the public interest as regards public security as the documents in question provide details about activities in the area of border control, equipment and training provided to border police. Hence, the exception set out in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 also comes into application.

Finally, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC⁴ ('Regulation 2018/1725').

Some parts of the documents to which you request access contain personal data, in particular names and/or signatures of project staff, legal representatives, project activities' participants and Commission staff.

³ The exception relating to commercial interests can also be applied to non-commercial entities. Judgment of 21 October 2010, *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency (EACEA)*, T-439/08, ECLI:EU:T:2010:442, paragraphs 127-128.

⁴ Official Journal L 205 of 21.11.2018, p. 39.

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.⁵

Please note that in this respect that the names, signatures, functions, telephone number and/or initials pertaining to staff members of an institution are to be considered personal data.⁶

In its judgment in Case C-28/08 P (Bavarian Lager)⁷, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁸.

Pursuant to Article 9(1)(b) of Regulation 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 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of

⁵ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

⁶ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, [paragraphs 43-44](#), [ECLI:EU:T:2018:560](#).

⁷ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁸ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

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.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a 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.

As to the handwritten signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

We have considered whether partial access could be granted to the documents requested by providing an expunged version of the documents. However, the remaining parts after expunging the confidential information would be meaningless, as it would result in my services being able to provide you only with the information about the projects, which you can find in Annex 1.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to submit 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 Secretariat-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 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Paraskevi MICHOU
[e-Signed]

Enclosure: 1