



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels,
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Mr Orestis BEKAS

per email only: ask+request-595-0a88b942@asktheeu.org

Subject: Your confirmatory application for access to documents – Gestdem 2013/3822

Dear Mr Bekas,

I am writing in reference to your email of 19 October 2013, registered on 21 October 2013, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter Regulation 1049/2001).

In your initial application of 04 July 2013, you requested access to the following documents:

- 1. The documents setting out the Commission's policy regarding the FP7 call for proposals in relation to the processing of personal data by the Research DGs, including the requirement in most Guide to Applicants to include a 'short profile' (i.e. a short CV) of the key researchers.*
- 2. The documents setting out the Commission's policy in relation to the personal data processing in the context of the FP7 negotiations aiming at the conclusion and signing of the FP7 grant agreement, including the requirement in most FP7 Negotiations Guide to submit a 'short profile' (i.e. a short CV) of the key researchers.*
- 3. The documents setting out the Commission's policy on the personal data processing in the context of the execution of the FP7 grant agreements and the processing of personal data by the Research DGs by way of the typical inclusion in the Annex I of the FP7 grant agreement of tens of 'short profiles' of key researchers.*
- 4. Referring to the "Guide to Financial Issues relating to FP7 Indirect Actions" (first was issued in 2007) and the 'recommendations' about the structure and content of researcher's time-sheets (e.g. page 57 of the Guide dated 18/3/2013), the documents setting out the Commission's policy on the personal data processing in*

¹ OJ L145, 31.05.2001 p.43

relation to the personal data processing those FP7 Guides 'encourage' FP7 beneficiaries to undertake.

5. Referring to the various 'recommendations' of the Research family DGs about what checks an auditor is supposed to carry out in issuing a certificate of financial statements according to article 34(2) of Regulation No 1906/2006, and in particular the need of the auditor to process personal data in the context of a private law contract (the FP7 grant agreement), the documents setting out the Commission's policy on the personal data processing in such a context and the compliance of both the contractor-beneficiary and the auditor with the national personal data protection legislation. [...]

6. The documents setting out the Commission's policy on the personal data processing in relation to the compliance with article 12(1) of Regulation No 45/2001 in the context of (i) FP7 calls for proposals, (ii) FP7 negotiations, (iii) external financial audits pursuant to article 29 of Annex II of the FP6 model grant agreement, (iv) external financial audits pursuant to articles FP6.II.29 and FP7.II.22.

7. Regarding contractual disputes before the Courts of the European Union between the Commission and FP4/FP5/FP6/FP7 contractors-beneficiaries, the documents setting out the Commission's policy on the personal data processing in relation to the submission by the Legal Services of personal data obtained by the Commission services in the context of external financial audits, and the Commission's reliance on such personal data to argue its case against a contractor-beneficiary. [...]

8. Regarding the field audits of FP6 contractors and FP7 beneficiaries on the territory of a Member State pursuant to article FP6.II.29 and FP7.II.22 and those conducted solely by Commission officials and servants, the documents setting out the Commission's policy with respect to the compliance with the national personal data protection legislation.

9. Regarding the field audits of FP6 contractors and FP7 beneficiaries on the territory of a Member State pursuant to article FP6.II.29 and FP7.II.22 and conducted by external contractors of the Research family DGs and pursuant to a private law contract between the external auditor and the Research family DGs, the documents setting out the Commission's policy with respect to the compliance with the national personal data protection legislation. Such compliance is essential in view of national legislation like the aforementioned U.K. Data Protection Act 1998.

10. Regarding the article 25 of Regulation No 45/2001 prior notifications concerning the FP6 & FP7 programmes, the documents setting out the Commission's policy in relation to (i) a late filing of a prior notification to the article 26 register (e.g. more than 2 year overdue), (ii) inaccuracies in prior notifications, such as the statements in DPO-3334.1, DPO-3338.1, DPO-3398.1, DPO-3420.1 and DPO-3455.1 "This processing has been submitted to the EDPS who concluded that Article 27 is not applicable. 3. Sub-Contractors —", (iii) reliance on EDPS opinions about audits pursuant to Union law (i.e. audits of structural funds and audits of expenditure concerning officials, servants and auxiliary staff of the Commission's delegations) to draw conclusions that article 27 of Regulation No 45/2001 is not applicable to the external financial audits pursuant to article FP6.II.29 and FP7.II.22 (e.g. current DPO-3338.2).

11. Regarding the article 28(1) of Regulation No 45/2001 and in view that the external financial audits pursuant to article FP6.II.29 and FP.II.22 are, arguably, administrative measures towards data subjects (not parties to the FP6 contract and FP7 grant agreement), the documents setting out the Commission's policy with respect to the compliance with article 28(1) in the FP6 and FP7 external financial audits.

12. Regarding the OLAF external investigations of FP6 contractors or FP7 beneficiaries pursuant to articles FP6.II.29.6 and FP.II.22.8, the documents setting out the Commission's policy with respect to the compliance of such "investigations" – contractual measures with Regulation No 45/2001, given the seemingly contractual provision nature of those two terms.

13. Regarding the OLAF external investigations of FP6 contractors or FP7 beneficiaries pursuant to Regulation No 2185/96 and in view of that OLAF is not a distinct legal person from the Commission itself, the documents setting out the Commission's policy with respect to the compliance of such Union law 'external investigations' with Regulation No 45/2001. [...]

14. Regarding the practice of DG INFSO to check for 'double booking' of a researcher's time in two distinct contractors-beneficiaries (two or more distinct external financial audits) and the divulging of such 'double booking' to at least one of them in order to rely on it to conclude about the 'unreliability of the time recording system' of the contractor-beneficiary (e.g. DG INFSO final audit report dispatched as annex to the letter Ares(2013)73917 - 22/01/2013, http://www.asktheeu.org/en/request/fp7_audit_11_bal35_006_compliance), the documents setting out the Commission's policy with respect to such practices in the personal data processing by the Research family DGs. Ostensibly, the 'double booking' disclosure is justified by the Commission services on the grounds of 'protecting the Commission's financial interest', even though it is not immediately obvious (i) which contractual provision has been breached by the wholly uninformed and unsuspecting two contractors-beneficiaries, (ii) which provision of Union law has been infringed by either the wholly uninformed and unsuspecting two contractors-beneficiaries or even the 'double booker', (iii) whether such 'double booking' disclosure is in compliance with article 339 TFEU and article 7(2) of Regulation No 45/2001.

15. Regarding the practice of the Research family DGs to collect in several external financial audits pursuant to FP6.II.29 and FP.II.22 copies of documents with personal data (e.g. signed time-sheets, employment or service contracts, pay-slips, bank transfer records) that end up in the offices of the Research family DGs in Brussels, the documents setting out the Commission's policy with respect to such practices which necessarily entail personal data processing.

16. Regarding the practice of the Research family DGs to collect in several external financial audits pursuant to FP6.II.29 and FP.II.22 copies of documents with personal data (e.g. signed time-sheets, employment or service contracts, pay-slips, bank transfer records), the documents setting out the Commission's policy with respect to the compliance of such practices with the national personal data protection legislation.

17. Referring to the Commission-organised conference on 13/10/2009 'Finding the frontier for internal audit', the presentation entitled 'The EU Model' (http://ec.europa.eu/dgs/internal_audit/pdf/conference_2009/thierry_cretin.ppt), slide 13 «Pluto» is an intelligence database storing all information about the 15,000 beneficiaries and 5,000 research projects funded by DG Infso. [...] the documents setting out the Commission's policy with respect to the compliance of the DG INFSO Pluto 'system' with the Union law governing personal data processing by Institutions.

18. Referring to the documents containing personal data in the possession of the Research family DGs that were obtained from the external financial audits pursuant to FP6.II.29 and FP7.II.22 ('the PDCD' for Personal Data Containing Documents), and the disclosure of the personal data to the European Court of Auditors in the context of Court's audits of FP6 and FP7 programmes (either by making the PDCD directly available to the Court's official while at the Commission's premises, or by dispatching copies of PDCDs to the Court) the documents setting out the Commission's policy with respect to the compliance with Regulation No 45/2001 of the disclosure or transfer of such personal data to another Institution. [...]

19. The documents setting out the Commission's overall policy with respect to personal data processing pursuant to a private law contract, i.e. the FP6 contract and the FP7 grant agreement.

20. Referring to the personal data processing by the Research family DGs in the context of the entire FP6 and FP7 programmes (calls for proposals, negotiations, execution of project, external financial audits), the documents setting out the Commission's policy with respect to handling requests for personal data pursuant to article 13 of Regulation No 45/2001.

Your initial reply was attributed to Directorate General for Research and Innovation (DG RTD), except for part no. 7 which was attributed to the Legal Service and parts no. 14 and 17 attributed to DG CNECT. Part no. 12 and 13 have been dealt by OLAF.

I note that DG CNECT and the Legal Service already replied to you.

Since DG RTD had to conduct a thorough search you were offered a fair solution in the meaning of Article 6(3) of Regulation 1049/2001. The deadline for handling your above mentioned application has been extended until 30 September 2013.

By its letter of 30 September 2013, DG RTD provided you with an answer to your initial request. In this answer, DG RTD identified 25 documents as falling under the scope of your request. Full access was granted to all these documents.

In your confirmatory application, you claim: "[...] that DG RTD has not been completely frank with the outcome of its search for documents, and second, that DG RTD has released for several requests irrelevant documents, instead of frankly stating that the requested documents are not held. [...] In view of the remarks of sections 1.1 and 1.2 above, the applicant suggests that DG RTD might have not undertaken a diligent search for documents. [...] In the light of all the foregoing considerations, a confirmatory is absolutely necessary such that the Secretariat-General reviews the initial reply of DG RTD".

Against this background, we have asked DG RTD to inspect their files again in order to verify your statement above. The latter, after a detailed search, confirmed that there are no documents covered by your confirmatory request for access, other than the ones which were already disclosed to you.

In light of these elements, I consider that your confirmatory application has become devoid of purpose.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Catherine Day". The signature is written in dark ink and is positioned above the printed name.

Catherine Day