



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director-General

Brussels,
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*By registered letter with acknowledgment
of receipt*

Alberto Alemanno
Avenida Zugazarte 8
48992 Getxo, Spain

Advance copy by e-mail:

ask+request-6659-4afdda50@asktheeu.org

Subject: Your application for public access to documents – GestDem Ref No 2019/2176

Dear Mr Alemanno,

We refer to your letter dated 21 March 2019 in which you submitted, within the framework of Regulation (EC) 1049/2001¹, an application for access to documents, registered on the 08 April 2019 under the above-mentioned GestDem reference number.

You requested access to the following:

“documents which contain the following information:

- list of rejected Horizon 2020 proposals.

For each proposal I would like to know ALL the following information:

- Proposal title

- Abstract

- Consortium composition

In addition, if possible:

- Call and topic

- Funding requested

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’.

- Allocation of the funding requested by partner. ”

After having consulted the services in charge of data management within our DG, we are pleased to inform you that we can grant you partial access to what is requested, as explained below. In particular, we can provide you with the following data, from the beginning of the Horizon 2020 until the 28 May 2019, for each H2020 rejected proposal: (i) the proposal title, (ii) the abstract, (iii) the call and topic and (iv) the funding requested.

Please consider that the above-mentioned data will be provided to you by regular mail on a USB stick, given the size of the document.

1.1 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"*.

You requested access to the *consortium composition* and to the *allocation of the funding requested by partner* for each H2020 rejected proposal.

The public disclosure of this information might undermine the commercial interests of the participants to the unsuccessful consortium, within the meaning of Article 4(2), first indent, of Regulation (EC) 1049/2001.

The data concerning the consortium composition allow to identify the unsuccessful applicants and it is therefore commercially relevant as the rejection of their proposals could adversely affect the applicant's public image towards potential commercial partners. Its disclosure may therefore be detrimental to their legitimate interests.

Furthermore, the information concerning the allocation of funding among the partners refers to the methodology and rationale as to how the Consortium proposed to deliver the project. This is proprietary information of a commercially relevant value.

There is therefore a real and non-hypothetical risk that public access to the abovementioned information would undermine the commercial interests of the Consortium members. Consequently, the abovementioned information is covered by the exception laid down in Article 4(2), first indent of Regulation 1049/2001 and cannot be disclosed.

In your access to documents request, you also raised different arguments in favour of disclosure of data concerning non-funded projects, mainly related to a general principle of transparency of the Institutions and to the circumstance that those data would be help future applicants in evaluating their partnerships. However, while we do understand the reasons of your suggestion, we would like to highlight that Regulation 1049/2001 obliges the Institutions to protect the commercial interests of a natural or legal person (in this case the applicants whose proposal has been rejected), refusing public access to documents when deemed necessary for this purpose.

As per Article 4(2), first indent, of Regulation (EC) 1049/2001, the protection of commercial interests' exception applies unless there is an overriding public interest in disclosure of the documents requested. In your initial application, you did not bring forward any arguments to justify the existence of an overriding public interest in releasing the requested document. In any way, we have found no elements that 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 present letter.

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:

European Commission

Secretary-General

Transparency, Document Management & Access to Documents (SG.C.1)

BERL 7/076

B-1049 Brussels

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

Yours faithfully,

Jean-Eric Paquet