Subject: Your application for public access to documents, Ares(2019)6019391

Dear Mr Wabungo,

We refer to your message of 16 September 2019 submitted to the Secretariat General of the European Commission via AsktheEU website by which you made an application for public access to documents under Regulation (EC) No 1049/2001. The message was forwarded to OLAF which registered it on 27 September 2019 under Ares(2019)6019391 and to the European Commission’s DG DIGIT.

1. Scope of your application

In your message, you claim that, "according to the information released by the OLAF’s supervisory committee in its 2018’ activity report, the development of the IT system called OCM (OLAF Content Management) containing OLAF’s operational documents, not only was extremely costly, it was also subcontracted to IT private companies with extra muros IT specialists". In this regard, you requested documents which contain information about the following aspects:

(1) Can the Commission (OLAF and DIGIT) provide information (and disclose related documents) that one of these companies (European Dynamics) took the Commission and OLAF to Court about a tender procedure?

(2) Can the Commission and OLAF provide information (disclose related documents) that European Dynamics employees were involved in the development of OCM?

(3) Can the Commission / OLAF provide information (disclose related documents) that

the OCM developers have access, for testing purposes, to operational information related to companies or individuals?

(4) What were the measures taken to ensure the protection of the personal data of the individuals?

As you were informed by message of 26 September 2019, the first point of your request is dealt with by DG DIGIT of the Commission separately.

2. Preliminary remarks

We note that your assertions with regard to OCM do not reflect the content of the 2018' activity report of the OLAF Supervisory Committee. This document can be found under the following address:

https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1570802879408&uri=CELEX:52019XX1010(01)

3. Assessment under Regulation (EC) 1049/2001 - relevant applicable exceptions

Point 2 of your request

In relation to point 2 of your request, we can inform you that, to date, no documents have been identified indicating that European Dynamics' employees were involved in the development of OCM.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by OLAF, we are not in a position to fulfill your request.

Points 3 and 4 of your request

As regards points 3 and 4 of your request, we can inform you that OCM is a highly secure environment isolated from the rest of OLAF's and the Commission's networks. As OCM is a role based access control application, users receive the accesses matching their exact role/s in the system allowing them to access data on the 'need to know' basis. Entering the system requires authentication with the use of biometric (fingerprint) means. These measures ensure the protection of personal data hosted by OCM.

OCM developers in particular have access, for testing purposes, only to the "OCM development and integration environments" which are dedicated to unit and integration testing by the Development team. These environments contain only dummy cases and test data.

The above information is contained in documents defining the deployment process and the access control policy for OCM. These documents contain also considerable amounts of other information that does not fall under the scope of your request.

Having examined the documents in question under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we regret to inform you that public access to them cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4 of this Regulation, in particular under Article 4(2), third indent of Regulation 1049/2001 which stipulates that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.
The OCM system is designed and used for the operational activity of OLAF. OLAF is legally bound, pursuant to Article 339 of the Treaty on the Functioning of the European Union, Article 10 of Regulation (EU, Euratom) No 883/2013, and Article 17 of the Staff Regulations, to treat the information it obtains during an investigation as confidential and subject to professional secrecy. OLAF case files contain sensitive information, including but not limited to personal data, the unwarranted divulgation of which could seriously impact the reputation of individuals as well as economic operators.

Those parts of the deployment and access policies for the OCM, which fall in the scope of the present request pursue the aim to support OLAF’s commitment to the confidential treatment of the information in its case files and to implement the need-to-know principle for OLAF’s case-related information. This ensures that only authorised staff has access to the information needed to fulfil their tasks and for as long as necessary. This policy helps also protect the system against external threats. Public disclosure of specific information on the deployment process and the access control policy for OCM might weaken or undermine the protection of OLAF investigation files.

We have not identified an overriding public interest that would allow us not to apply the exception.

The disclosure of the documents at issue is also prevented by the exception of Article 4(1)(a), first indent of Regulation 1049/2001, which provides for the protection of the public interest as regards public security. The documents contain detailed rules and information on the deployment process of OCM and on the access policy for the application. This information, if disclosed, would undermine the protection of public security as it would put in the public domain detailed knowledge about the internal case management system of OLAF.

Article 4(1)(a) of Regulation 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

4. Confirmatory application

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting OLAF to review this position. Pursuant to Article 4 of Commission Decision 2001/937/EC, ECSC, Euratom, such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director General of OLAF.

Any confirmatory application to OLAF should be sent to the following address:

Mr Ville ITALÄ
Director General OLAF
European Commission
B-1049 BRUXELLES
BELGIUM

Your attention is drawn to the privacy notice below.

Yours sincerely,

Beatriz SANZ REDRADO

Privacy notice

Pursuant to Articles 15 and 16 of Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by Union Institutions, bodies, offices and agencies and of the free movement of such data, please be informed that your personal data are stored in OLAF’s electronic and paper files concerning
this matter for the purposes of ensuring conformity with the requirements of Regulation 1049/2001 and Commission Decision 2001/937/EC.

The categories of your personal data being processed are identification and contact data and any other personal data provided by or to you in relation to your request. Officials within OLAF and other Commission services responsible for dealing with requests for access to documents, and third parties, within the meaning of Articles 4(4) and 3(b) of Regulation 1049/2001, and Article 5 of Commission Decision 2001/937/EC, have access to your personal data. Personal data that appear on the requested document may only be disclosed to the applicant following an assessment under Article 9(b) of Regulation (EU) 2018/1725. There is no automated decision process by OLAF concerning any data subject.

All documentation concerning OLAF investigations are stored in the relevant OLAF investigation files and are retained for a maximum of 15 years. Thus personal data contained in requests for public access to documents concerning OLAF investigations are retained for a maximum of 15 years.

You have the right to request access to your personal data, rectification or erasure of the data, or restriction of their processing. Any request to exercise one of those rights should be directed to the Controller (OLAF-FMB-DATA-PROTECTION@ec.europa.eu). You may contact the Data Protection Officer of OLAF (OLAF-FMB-DPO@ec.europa.eu) with regard to issues related to the processing of your personal data under Regulation (EU) 2018/1725.

You have the right to have recourse to the European Data Protection Supervisor (edps@edps.europa.eu) if you consider that your rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of your personal data by OLAF.

The complete privacy statements for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud.