



EUROPEAN COMMISSION
INTERNAL AUDIT SERVICE

Director-General
The Internal Auditor

Brussels,
IAS/PT/cn

Sent by mail to:
Mr. Mike Stabenow:
[ask+request-849-
xxxxxxx@xxxxxxxx.xxx](mailto:ask+request-849-xxxxxxx@xxxxxxxx.xxx)

Subject: Your application for access to documents – Ref GestDem No 2013/4658

Dear Mr STABENOW,

We refer to your e-mail dated 17/09/2013 in which you make a request for access to a number of documents held by the European Commission's Internal Audit Service (IAS) as Internal Auditor of the Fundamental Rights Agency (FRA) which is a separate body from the European Commission. This request was registered on 18/09/2013 under the reference number GestDem No 2013/4658.

In your email you have requested the following:

1. Access to any relevant document showing if Internal Audit Service of the Commission (IAS) or OLAF looked into the matters of false accounting at DIHR, following the Parliamentary Question raised by Mr Morten Messerschmidt, a member of European Parliament.
2. In case IAS looked into the false accounting matters, access to the relevant documents, including to any written statement submitted to IAS by Mr Morten Kjærum, or Phone call Notes, or Minutes or similar showing Mr Morten Kjærum's explanations on the false accounting that happened at DIHR when he served as DIHR Director.
3. Any document related to the substance of the aforementioned Parliamentary Question
4. Any document relating to the grant competition organised by the European Commission in 2012 contributing to the clarification of false accounting in the Parliamentary Question.

Regarding points 1 and 2 of your request

The IAS has not undertaken any audit work at the Danish Institute of Human Rights (DIHR) and therefore is not in a position to grant access to any document.

Regarding point 3 of your request

The IAS performed in 2012 the audit of Procurement within the Fundamental Rights Agency.

We enclose a copy of the document Final Audit Report on Procurement within the Fundamental Rights Agency of 22 May 2012.

Regarding point 4 of your request

The IAS does not hold any document in this respect.

Furthermore, you request to understand if before awarding of the contracts cited in your email, the false accounting matter was solved by the Danish Authorities and if the current director of DIHR was aware about the parliamentary question.

These are no requests for access to documents, thus are not falling within the scope of Regulation 1049/2001.

Please note the following:

1. Access to the enclosed document is given under the provisions of Regulation (EC) No 1049/2001 and in applying the spirit of article 99.6 of the Financial Regulation¹ (which is not directly applicable to the agencies as a revised and harmonised Framework Financial Regulation has not yet entered into force). The IAS has validated the implementation of FRA's action plan that followed the audit.
2. The document to which you have requested access was prepared by the Internal Audit Service of the European Commission for the Fundamental Rights Agency, which holds a copyright on it.
3. The document to which you have requested access contains personal data, in particular the names of the audit team members. 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 Community legislation regarding the protection of personal data. The applicable legislation in this field is 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 data².

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

¹ OJ L298 OF 26/10/2012

² OJ L 8 of 12.1.2001, p.1

³ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position. In particular, if you wish to receive the personal data that have been deleted, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

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 unit SG-B-5
BERL 5/327
B-1049 Bruxelles
or by email to: xxxxxxxxxxxx@xx.xxxxxx.xx

[signed]

Philippe Taverne

Enclosures: Cover letter ref. Ares(2012)634950 of 29/05/2012
Final Audit Report on Procurement within the Fundamental Rights Agency
(IAS.A-2012-W FRA-001) of 22/05/2012