Subject: Your application for access to documents – Ref GestDem No 2013/4667 under Regulation 1049/2011 regarding public access to European Parliament, Council and Commission documents

Dear Sir,

We refer to your email dated 19 September 2013 wherein you make a request for access to documents, registered by us on 19 September 2013 with the above-mentioned reference number.

We understand that your request might be in relation with the processing of personal data by the Community institutions and bodies (Regulation (EC) Nº 45/2000 of 18.12.2000 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 (JO L 8 of 12.02.2001). Please note that you are entitled to ask clarifications and make requests only with respect to the processing of your own personal data. If this is the case, we must draw your attention to the fact that this is an issue which, in substance, cannot be addressed and dealt with within the scope of Regulation 1049/2001. This Regulation only relates to the public access of documents which are in the possession of the institution which are the subject of such specific application. If, as a data subject, you wish to activate a remedy procedure related to the processing of your personal data by the Commission, we need to refer you to the remedies foreseen by article 32 of Regulation (EC) 45/2001 (OJ L8/6 of 12.1.2001) according to which "every data subject may lodge a complaint with the European Data protection Supervisor if he or she considers that his or her rights under article 286 of the Treaty have been infringed as a result of the processing of his or her personal data by a community institution or body". The regulation also states that "the Court of Justice shall have jurisdiction to hear all disputes which relate to the provision of this regulation".

These means of redress would be the appropriate routes to take and they are fully available to you as a data subject.
1. The internal administrative 'act' or 'decision' or equivalent appointing the aforesaid two DG INFSO - DG CNECT officials as DG INFSO - DG CNECT Data Protection Coordinators

Please be informed that we have identified two documents corresponding to your request. You will find enclosed the documents requested. (Annexes 1 and 1b).

Please be aware that Ms Anne Troye was the Data Protection Coordinator in DG CNECT (as appointed by Mr Robert Madelin in his note of June 26th 2012) between June 2012 and December 2013. Ms Angela Marcos Figueruelo is the Deputy Data Protection Coordinator, and her appointment was communicated to the Data Protection Officer by Ms Anne Troye on February 18th, 2013. Please note that the appointment of a Deputy Data Protection Coordinator in a DG is facultative, and his/her appointment does not need to be done at Director General level.

Please also note that the document that was released on 19 September 2013 pursuant to the application GestDem 2013/3773 (Notification DPO-3338.1) is generated by the DPO Register and always indicates the names of the current Data Protection Coordinators, not the name of the person appointed as DPC at the time of the registration of the notification.

2. The document(s) with which DG INFSO - DG CNECT notified the Commission Data Protection Officer about the appointment of these two officials as Data Protection Coordinators.

Please refer to our answer under point 1 above.

3. The internal administrative 'act' or 'decision' or equivalent appointing as DG INFSO - DG CNECT Data Protection Coordinator the predecessor(s) DPC(s).

Please be informed that we have identified one document corresponding to your request. You will find enclosed the document requested. (Annex 2)

4. The internal document(s) notifying the predecessor DPC(s) the release from his/her duties as DG INFSO - DG CNECT Data Protection Coordinator.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

5. The document(s) drawn up by the DG INFSO - DG CNECT Data Protection Coordinators, other than DPO-3338.1 itself and the attached Privacy Statement, about the personal data processing operations in the context of the financial audits (both external and desk controls) of DG INFSO - DG CNECT and the compliance with Regulation No 45/2001.

You will find enclosed the document(s) requested (Annexes 3 and 3a).
You can also find the latest version of Notification DPO-3338.2 in the Public Register of the DPO by following this link [http://ec.europa.eu/dpo-register/details.htm?id=33543](http://ec.europa.eu/dpo-register/details.htm?id=33543).

Please be informed that the previous versions of the notification covering the system allowing DG CONNECT (former INFSO) to monitor the correct execution of the projects under its responsibility, albeit less detailed that the current one (DPO-3338.2, see attachment 3b), comply with Article 25 of Regulation 45/2001.

6. In view of the provisions of article 14(5) of Commission Decision 597/2008 (OJ 2008 L 193/7) and that 'statements' of DPO-3338.1 "This processing has been submitted to the EDPS who concluded that Article 27 is not applicable." and "3. Processors - " are entirely divorced from reality, the document (including emails, notes to file or equivalent) with which (i) the aforesaid two officials DPCs requested the permission of their superiors for the inclusion of false statements in a statutory instrument, and (ii) the granting of the permission or the issuance of instructions to those two DPCs to proceed with the entry into the article 26 of Regulation No 45/2001 register of a prior notification containing a willful and intentional misrepresentation of facts.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

However, please be informed that ex-post controls and audits do not require a prior checking by the EDPS. The statement in the Notification DPO-3338-1 is following from the fact that the EDPS had previously been consulted in a similar case and concluded that ex-post controls and audits were not subject to prior checks.

We would like to draw your attention to the fact that the EDPS himself has consistently taken the position that audits and ex-post controls do not require a prior check. Should the EDPS review his position regarding the need to submit some types of ex-post controls or audits to a prior check, the Commission would comply with such instruction and with any recommendation the EDPS would issue.

With respect to Article 27 of Regulation 45/2001, Article 27.2 (a) of the Regulation primarily concerns "processing operations whose main purpose is to process data relating to health and to suspected offences, offences, criminal convictions or security measures". The purpose of these audits and ex- post controls is not the processing of that data. In fact, the auditors' familiarisation with this type of data is accidental rather than systematic. The main aim of ex post controls is to curtail the risks related to the quality of management and control systems, provide recommendations to improve the situation and promote sound financial management.

Article 27.2 (b) refers to "processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct". This is by no means the purpose of audits and ex-post controls, which focus on the correctness of financial records on the basis of objective facts and documents.
Article 27.2 (c) refers to "processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes". Audits and ex-post controls make use of information and document specified in the contractual documentation.

Article 27.2 (d) refers to "processing operations for the purpose of excluding individuals from a right, benefit or contract". Once again, the purpose is the verification of the correct execution of a contract. The sole possible consequence of such verification is the triggering of some existing contractual provisions.

7. In view of the provisions of article 14(5) of Commission Decision 597/2008 and that 'statements' of DPO-3338.1 "This processing has been submitted to the EDPS who concluded that Article 27 is not applicable." and "3. Processors -" are entirely divorced from reality, and in case DPO-3338.1 was filed prior to the appointment of the aforementioned officials as DPCs, the document (including emails, notes to file or equivalent) with which (i) the predecessor DPCs requested the permission of his/her superiors for the inclusion of false statements in a statutory instrument, and (ii) the granting of the permission or the issuance of instructions to the predecessor DPC to proceed with the entry into the article 26 of Regulation No 45/2001 register of a prior notification with willful and intentional misrepresentation of facts.

Please refer to our answers under points 1 and 6 above.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position above.

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-4
BERL 5/327
B-1049 Bruxelles

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

Yours sincerely,

(eSigned)
Robert Madelin

Enclosure:
- Annex 1 and 1A: Appointments of Ms Anne Troye and Ms Angela Marcos Figueruelo as DPC and Deputy DPC.
- Annex 2: Appointment of Ms Isabelle Van Beers as DPC
- Annex 3 and 3A: Notification(s) used up to 31/1/2011