

Directorate A Expenditure -
Operations and Investigations

The Director

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Via e-mail and registered mail

Brussels
olaf.d.2(2020)31350

Subject: Your application for public access to documents

Case No OF/2016/0462/A2

Dear Ms BESWICK,

We refer to your request of 10/09/2020, by which you submitted, via AsktheEU.org website, an application for access to documents under Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents.

1. Scope of your application

You have requested public access to the following documents:

"documents which contain the following information:

What NGO is being referred to on page 14/15 of the OLAF Report 2019 (<https://ec.europa.eu/anti-fraud/sites/an...>) in the section SIPHONING OFF MONEY FROM SYRIA?

OLAF describes a "high-profile case" concerning "a well-known non-governmental organisation (NGO) involved in supporting EU humanitarian aid efforts in Syria" where "investigators found evidence of corruption by two former staff members of the NGO". "

In light of Regulation (EC) No 1049/2001 and based on your description, we interpret your application as referring to all documents containing the above-mentioned information and related to an OLAF investigation.

The requested documents constitute the case file of OLAF investigation no OF/2016/0462/A2.

¹ OJ L145, 31.05.2001, page 43.

2. Preliminary remarks

OLAF wishes to clarify from the outset that it is legally bound to treat all information it obtains during its investigation as confidential and subject to professional secrecy, in particular 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.

However, the purpose of Regulation (EC) No 1049/2001 is to give access to documents to the public at large. Any document disclosed to an individual under this Regulation then becomes automatically available to any other member of the public whenever there is a subsequent request. Consequently, attention is drawn to you to the fact that documents disclosed under this Regulation enter the public domain.

3. Assessment of the documents and relevant applicable exceptions

Having carefully considered your request, we regret to inform you that it is not possible to grant access to the documents requested. The documents which you seek to obtain are part of the investigation file no OF/2016/0462/A2 and cannot be disclosed since their content is covered by several exceptions to the right of access to documents.

The requested documents are covered by the exceptions under Article 4(2) third indent and Article 4(3) second paragraph of Regulation (EC) No 1049/2001, which stipulate that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, or would seriously undermine the institution's decision-making process.

OLAF has concluded the above-mentioned investigation. OLAF's Final Report has been transmitted to competent authorities accompanied by recommendations indicating possible further action in accordance with Article 11 of Regulation (EU, Euratom) No 883/2013.

The General Court has recognised a general presumption of non-accessibility for documents in OLAF case files². The Court considers that the disclosure to the public under Regulation (EC) No 1049/2001 of documents related to OLAF investigations could fundamentally undermine the objectives of the investigative activities, as well as the decision making process, both now and in the future.

The presumption is based on the consideration that, to determine the scope of Regulation (EC) No 1049/2001, account must be taken of relevant sectoral rules governing the administrative procedure under which the documents requested under Regulation (EC) No 1049/2001 were gathered³. In the case at hand, Regulation (EU, Euratom) No 883/2013⁴, which governs OLAF's administrative activity provides for the obligation of confidentiality with regard to all information gathered during investigations.

The protection of confidentiality of information in the legal framework applicable to OLAF investigations aims, on the one hand, at safeguarding the successful conduct of an investigation in the public interest and, on the other hand, at safeguarding the legitimate interests of the individuals, so that the information they provide is used only for the purposes of the investigation. The protection of confidentiality extends to closed cases⁵.

² See judgments of the General Court of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, paragraphs 150 to 162 and Judgment of the General Court of 26 May 2016, *IMG v Commission*, T-110/15, ECLI:EU:T:2016:322, paragraph 36.

³ Judgment Court of Justice of 28 June 2012, *Agrofert Holding v Commission*, C-477/10 P, EU:C:2012:394, paragraphs 50-59; judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraph 55 ff.; judgment of the General Court of 26 May 2016, *IMG v Commission*, T-110/15, ECLI:EU:T:2016:322, paragraphs 29-34.

⁴ OJ L 248, 18.9.2013, page 1, as amended OJ L 317, 23.11.2016, page 1.

⁵ Judgment of the General Court of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, paragraph 162.

According to the case-law, to grant access to OLAF's investigation file, even partially, could compromise the effective use of those elements by the follow-up authorities, given that the persons suspected of irregularities could act in such a way as to prevent the proper conduct of the various procedures or investigations which those authorities might decide to initiate.

In addition, having regard to the nature of the information processed in the context of OLAF investigations, the publication of the sensitive information contained in the OLAF case file might harm the protection of personal data and/or the integrity of persons involved in the investigation, as sources of information, witnesses, persons concerned, officials of the competent authorities and OLAF officials. Therefore, the exception of Article 4(1)(b) of Regulation (EC) No 1049/2001 also applies.

In view of the foregoing, the documents requested fall under the presumption of **non-accessibility** as documents containing information collected during an OLAF investigation and subject to professional secrecy. Consequently, they are exempt from disclosure to the public.

4. Partial access

OLAF has also examined the possibility of granting partial access to the requested documents, in accordance with Article 4(6) of Regulation (EC) No 1049/2001.

However, the general presumption referred to above indicates that the documents covered by these exceptions do not fall within an obligation of disclosure, in full or in part, of their content.⁶ There is therefore no need for OLAF to examine the possibility of granting partial access to the requested documents.

In any event, partial access is not possible, given that the information they contain falls entirely under general presumption of applicability of Article 4(2), third indent of Regulation 1049/2001 in the context of inspections and audits, and of Article 4(3) second paragraph of Regulation (EC) No 1049/2001.

5. Overriding public interest in disclosure

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. For such an interest to exist it firstly has to be a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access.

In your application, you did not put forward any argument establishing the existence of an overriding public interest in disclosing the requested documents.

OLAF understands the importance of transparency of the functioning of the EU institutions and particularly of the European Commission. However, given the nature of the anti-fraud investigations conducted by OLAF, and the confidential nature of information collected, such as sources of information, content of case files and reputation of natural persons, OLAF considers there are no elements that would show the existence of an overriding public interest in disclosing the requested documents.

In addition, the requested documents also involve the protection of privacy and integrity of individuals (Article 4(1)(b) of Regulation (EC) No 1049/2001) where overriding public interest in disclosure is not applicable.

6. Confirmatory application

In accordance with Article 7(2) of Regulation (EC) No 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

⁶ Judgment in *Commission v Odile Jacob*, C-404/10 P, (EU:C:2012:393), paragraph 133.

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 ITÄLÄ
Director-General OLAF
European Commission
Rue Joseph II, 30
B-1049 BRUSSELS.

Your attention is drawn to the privacy notice below.

Yours sincerely,

Signed Electronically

Privacy notice

Pursuant to Articles 15 and 16 of Regulation No 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 or in relation to the activities carried out in order to fulfil OLAF's tasks referred to in Article 2 of Decision 1999/352/EC, ECSC, Euratom and Regulation (EU, Euratom) 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). The categories of your personal data being processed are contact data, identification data, professional data, and case involvement data. Your data may originate from various sources, including publicly accessible information. Your data may be transferred to other EU institutions, bodies, offices and agencies, competent Member State and third country authorities and international organisations. There is no automated decision process by OLAF concerning any data subject. Your data will be stored for a maximum of 15 years.

You have the right to request access to, rectification or erasure, or restriction of processing of your personal data and to object to their processing on grounds relating to your particular situation. If you wish to request access to your personal data processed in a specific file, please provide the relevant reference or description in your request. Any such request should be addressed to the Controller (OLAF-FMB-Data-Protection@ec.europa.eu).

The complete privacy statement for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud. If you have questions as regards the processing of your personal data or your rights you may contact the OLAF Data Protection Officer (OLAF-FMB-DPO@ec.europa.eu)

You may lodge a complaint concerning the processing of your personal data with the European Data Protection Supervisor (edps@edps.europa.eu) at any time.