



EUROPEAN ANTI-FRAUD OFFICE

The Director-General

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Via e-mail only

Brussels

Subject: **Your confirmatory applications for public access to documents**

Dear Ms Pelo,

We refer to your e-mail dated 30 January 2021, submitted via AsktheEU website to the Secretariat-General of the Commission and registered under reference number Ares(2021)1015800. The request has been reattributed to me for replying.

1. Scope of your request and supporting arguments

By the above-mentioned e-mail you made a confirmatory application for public access to the exhaustive lists of travel expenses of OLAF Directors-General, for the period 1 January 2015 until 19 November 2020.

By e-mail of 19 November 2020 addressed to the Office for the Administration and Payment of Individual Entitlements of the European Commission, reattributed to OLAF for replying, registered on 23 November 2020 under reference Ares(2020)7015271, GestDem 2020/7154, you introduced an initial application for public access to those documents.

In your message, you first pointed to the decision of the European Ombudsman 1061/2019/FP, issued following your complaint concerning refusal of public access to documents containing mission costs of the Director-General and Directors of OLAF. You invoked that the European Ombudsman suggested that OLAF takes steps to review its policy and consider implementing a more transparent approach in relation to travel expenses, which are not incurred in the course of investigatory activities. In particular, consideration should be given to regular proactive disclosure of the Director-General's expenses.

You, therefore, requested under the right of access to documents in the EU Treaties, as developed in Regulation 1049/2001, access to the exhaustive lists travel expenses of OLAF Directors-General, for the period of 1 January 2015 until 19 November 2020.

In particular you asked for documents that contain, for each of the trips, the following

information:

- place of origin and destination, and the amount spent on travel or transportation;
- exact dates and duration of the trip;
- amount spent on accommodation;
- amount spent on subsistence;
- other information, such as possible miscellaneous costs.

If the travel was by air taxi and a team of people were travelling, you also asked for documents with details on other travellers, at minimum their names and job titles.

You further remarked that you seek only names and surnames of the relevant persons, something that, as you say, is already in the public domain. You do not seek bank accounts, office addresses, signatures or telephone numbers.

By letter of 12 January 2021, registered under reference number Ares(2021)249350, OLAF has not granted your application as disclosure is prevented by exceptions to the right of access laid down in Article 4 of 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 documents¹. Nevertheless, OLAF referred you to information available to the public on meetings held by the Director-General with organisations or self-employed individuals on issues relating to policy-making and implementation in the Union, which are not related to investigations and provided you with the link to the information published on OLAF's website: <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=e1df1b18-cb0f-47e6-bd6b-9643b9eb5c5c>.

In your confirmatory application of 30 January 2021, Ares(2021)1015800, you put forward that your request was not properly considered and OLAF published only part of the information requested without appropriate reasons for refusal to publish all the information requested about the missions from 2015. You indicate that OLAF did not specify particular reasons for refusal concerning specific aspects of information that you asked in case of each mission that the Director-General performed. You explain that your inquiry concerns amounts, calculations and/or statistics. You further explicate that these data are transferred to accounting department or for payment so they are outside of confidential investigation; rules of confidentiality do not concern handling of administrative elements outside procedural files. You further claim that the Director-General is not involved in confidential cases or audits.

You further allege that OLAF did not give specific reasons for refusing granting you access to part of the information that you requested. You consider that the missions like meetings of the Director-General are public, announced openly towards other persons, the public and the media. In your opinion, the full list of missions of the Director-General of OLAF should be published covering all aspects of your request within the dates that you requested. In your view, OLAF did not specify provisions in favour of OLAF's conclusion that the functions of Director-General during missions are fully covered by confidentiality. OLAF also did not specify, in your opinion, what is the basis for OLAF's statement that there is a lack of established practices in favour of such publications.

You further point out that OLAF has not explained why it disregarded the European

¹ OJ L 145, 31.5.2001, p. 43-48.

Ombudsman's decisions that recommended to OLAF such publications and that OLAF did not explain why it published some meetings of the Director-General although the European Ombudsman required OLAF to publish the list of his missions. You recall that the European Ombudsman's decision recommended to OLAF to consider proactive publications concerning the missions whereas information published by OLAF is different because it concerns only meetings of the Director-General.

You claim that the details that you requested by your application are not confidential and you raise that analogous details were already received on this website concerning top EU Commissioners with sensitive functions. You remind that there is already a practice to publish such data on website and therefore the European Ombudsman asked OLAF to consider them regularly.

2. Assessment of the documents and relevant applicable exceptions

Having carefully considered your confirmatory application, OLAF regrets to inform you that your application cannot be granted, as the disclosure of the documents containing the information requested is prevented by several exceptions to the right of public access to documents, laid down in Article 4 of Regulation 1049/2001.

I also note that you have requested partly the same documents as in your confirmatory application of 27 April 2019, OCM(2019)13936, by which you requested public access i.a. to documents with mission costs of Director-General of OLAF within the period from 1 January 2015 to 31 December 2018. Access to those documents was refused by confirmatory reply of 4 July 2019, OCM(2019)14976.

Your previous application in 2019 was subject to the inquiry of the European Ombudsman 1061/2019/FP, in which the European Ombudsman decided that there was no maladministration on the part of OLAF.

The European Ombudsman suggested that OLAF takes steps to review its policy and consider implementing a more transparent approach in relation to travel expenses which are not incurred in the course of investigatory activities. In particular, consideration should be given to regular proactive disclosure of the Director-General's expenses, in line with the practice of some EU institutions and agencies.

We wish to inform you that, after having duly considered that suggestion, OLAF informed the European Ombudsman that whilst it is true that OLAF is independent insofar as its investigative function is concerned, the Office remains nevertheless one of the Commission's Directorates-General from an administrative point of view. The European Commission has not adopted such a practice as regards its Directors-General and other staff members. Nonetheless, should the Commission decide in the future to adopt a more proactive approach to the disclosure of such expenses, OLAF will consider adapting its practice.

It was also pointed out that, in accordance with Commission Decision of 25 November 2014 on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals², OLAF already makes information available to the public on meetings held by the Director-General with organisations or self-employed individuals on issues relating to policy-making and implementation in the Union, which are not related to investigations. This information, which is published on OLAF's website, is easily accessible to the public³.

² OJ L 343, 28.11.2014, p. 19

³ <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=e1df1b18-cb0f-47e6-bd6b-9643b9eb5c5c>

The European Ombudsman has accepted OLAF's reply without further comments/recommendations.

After careful examination of your confirmatory application, I confirm that the legal and factual circumstances justifying the refusal of public access to documents of 4 July 2019, OCM(2019)14976 have not changed. Therefore, the earlier refusal to grant access remains justified in the light of the current legal and factual situation and applies to all documents falling within the scope of this request for access to documents.

Consequently, I can only refer you to the decision of 4 July 2019, OCM(2019)14976, which concluded that access to the documents you request cannot be granted, based on the exceptions of Article 4 of Regulation (EC) No 1049/2001.

With regard to documents with mission costs of Director-General of OLAF for the period 1 January 2019 until 19 November 2020, I note that your application concerns the same type of documents and that the legal or factual circumstances have not changed since the previous reply by letter of 4 July 2019, OCM(2019)14976.

2.1 Protection of the privacy and integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that the EU institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, which provision must be implemented in accordance with the relevant EU law on the protection of personal data.⁴

According to the definition provided for in Article 3(1) of Regulation 2018/1725⁵, personal data means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

The information that you have requested is included in the cost statements relating to the official assignments (business trips) of the Director-General of OLAF. It is obvious that the documents requested contain information concerning identified natural person. Consequently, the information requested, by its very nature, constitutes personal data within the meaning of the provision quoted above. The fact that data concerning the person in question are closely linked to public data on that person, *inter alia* as they are listed on the Commission's and OLAF's internet sites, and are, in particular, his name, does not mean at all that those data can no longer be characterised as 'personal data' within the meaning of the EU data protection rules.⁶

Therefore, public disclosure of the above-mentioned personal data, through the release of the documents (i.e. the cost statements) containing them, or through disclosure of a general description, would constitute processing (transfer) of personal data within the meaning of Article 3(3) of Regulation 2018/1725.

⁴ Judgement of the General Court of 25 September 2018, *Psara et al. v European Parliament*, Joined Cases T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, par. 44.

⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L295, 21.11.2018, page 39.

⁶ See, to that effect, judgement of the General Court of 25 September 2018, *Psara et al. v European Parliament*, cited above, par. 52; judgement of the Court of 16 July 2015, *ClientEarth and PAN Europe v EFSA*, C-615/13 P, EU:C:2015:489, par. 31.

In its judgment in case C-28/08 P, *Bavarian Lager*⁷, the Court of Justice ruled that, when a request is made for access to documents containing personal data, Regulation 45/2001 (now replaced by Regulation 2018/1725 referred to above) becomes fully applicable.

Article 9(1)(b) of Regulation 2018/1725 provides that personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.

The processing (transfer) of personal data can occur only if the conditions set out under Article 9(1)(b) of Regulation 2018/1725 are fulfilled and if the transfer constitutes lawful processing in accordance with the requirements of Article 5 of that Regulation.

In that context, whoever requests such a transfer must first establish that it is necessary for a specific purpose in the public interest. If it is demonstrated to be necessary, it is then for the Institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject⁸. Where there is any reason to assume that the data subject's legitimate interests might be prejudiced, the controller of personal data (i.e. the Institution concerned) then establishes whether it is proportionate to transmit the personal data for that specific purpose, after having demonstrably weighed the various competing interests.⁹ In the *Strack* case, the Court of Justice clarified that the Institution does not have to examine itself whether a need for the transfer of personal data exist¹⁰.

OLAF has carefully examined the reasons you put forward in your confirmatory application to explain why, in your view, it is necessary to disclose the requested documents. In fact, neither in your initial application nor in the confirmatory application have you put forward any arguments to establish the necessity to have the personal data transmitted for a specific purpose in the public interest. Therefore, OLAF does not have to examine whether there is a reason to assume that the data subjects' legitimate interests might be prejudiced.

Contrary to your assertion that OLAF did not specify any reasons for refusal concerning specific aspects of information that you asked in case of each mission that the Director-General performed, OLAF provided you with extensive explanation of the nature of the requested documents as containing information concerning identified natural person and therefore subject to exception from public access to documents under Article 4(1)(b) of Regulation 1049/2001. This applies by their very nature to all requested documents.

You put forward that the missions like meetings of Director-General are public, announced openly towards other persons, public and the media. In your opinion, the full list of missions of the Director-General of OLAF should be published covering all aspects of your request within the dates that you requested. OLAF also did not specify, in your opinion,

⁷ Judgement of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378, par. 59.

⁸ Ibidem.

⁹ In the *ClientEarth* case, the Court of Justice ruled that "whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access", judgement of the Court of 16 July 2015, *ClientEarth and PAN Europe v EFSA*, C-615/13 P, cited above, par. 47.

¹⁰ Judgement of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, par. 106.

what is the basis for OLAF's statement that there is a lack of established practices in favour of such publications. You claim that details that you requested by your application are not confidential and you raise that analogous details were already received on this website concerning top EU Commissioners with sensitive functions.

It should be noted in this regard that this does not point to any specific purpose in the public interest for processing of personal data.

However, the EU Courts have confirmed that a mere *interest* of members of the public in obtaining certain personal data cannot be equated with a *necessity* to obtain the said data in the meaning of Regulation 45/2001¹¹. Furthermore, if the condition of necessity laid down in Article 8(b) of Regulation 45/2001, which is to be interpreted strictly, is to be fulfilled, it must be established that the transfer of personal data is the most appropriate means for attaining the applicant's objective, and that it is proportionate to that objective¹². The requirement for necessity requires from the applicant to show that the transfer of personal data is the most appropriate of the possible measures for attaining the applicant's objective and that it is proportionate to that objective, which requires the applicant to provide express and legitimate reasons to that effect.¹³

You have not put forward a specific objective of disclosure. In that regard, first, it must be held that there must be a specific objective able to establish the need for the transfer of the personal data in question.¹⁴ It should also be recalled that no automatic priority can be conferred on the objective of transparency over the right to protection of personal data.¹⁵

You have also not submitted any express and legitimate reasons proving that the transfer of personal data at issue is the most appropriate of the possible measures in order to achieve the objective you pursue and that it is proportionate to that objective.¹⁶

In this respect, it is observed that the travel costs of Commission staff members, including OLAF Staff, are regulated by Articles 11 - 13 of Annex VII to the Staff Regulations¹⁷ and are subject to a detailed legal and technical framework. There is careful scrutiny of all declared mission costs for all staff of the Commission, including the staff of OLAF, at all levels. It takes place in form of checks of mission orders as well as of declarations of costs incurred. In addition to internal checks, the costs are also subject to budgetary controls, and can be subject to audits carried out by the Internal Audit Service and the European Court of Auditors.

Moreover and importantly, the person whose travel costs you are seeking access to is a member of staff. He exercises supportive functions allowing the EU Institutions to perform their mission. Even if the travel costs are incurred in his professional functions, the information requested nevertheless constitutes personal data.¹⁸

There is also no generalised practice to publish travel costs of EU institutions' officials,

¹¹ Ibidem, par. 107 and 108.

¹² Judgement of the General Court of 15 July 2015, *Dennekamp v European Parliament*, T-115/13, EU:T:2015:497, par. 77.

¹³ Ibidem, para 54 and 59; see also judgement of the General Court of 25 September 2018, *Psara et al. v European Parliament*, cited above, par. 72.

¹⁴ See, in that regard, judgement of the General Court of 25 September 2018, *Psara et al. v European Parliament*, cited above, par. 73 - 76.

¹⁵ Ibidem, par. 91.

¹⁶ Ibidem, par. 93.

¹⁷ Staff Regulations of Officials and conditions of employment for other Servants of the EU.

¹⁸ Judgement of 16 July 2015, *ClientEarth and PAN Europe v EFSA*, cited above, par. 31.

including high-ranking officials of the European Commission.

For these reasons, OLAF considers that the necessity to make the travel costs of Director-General of OLAF public has not been established. In any event, the disclosure of the documents requested is not the most appropriate means for attaining the assumed objective of public scrutiny as extensive controls already apply. The disclosure of personal data is also not proportionate to that objective. Moreover, the data subjects' legitimate interests might be prejudiced.

In the light of the above, the transfer of personal data through the public disclosure of the personal data included in the relevant costs statements cannot be considered as fulfilling the requirements of Regulation 2018/1725. In consequence, the exception under Article 4(1)(b) of Regulation 1049/2001 applies, as no need to publicly disclose the personal data included therein is established and, in addition, it can be assumed that the legitimate rights of the data subjects concerned would be prejudiced by such disclosure.

2.2 General presumption of confidentiality of OLAF investigation documents

As your application concerns also travels related to missions taking place in the course of OLAF investigations, disclosure of the information contained in those documents undermines the interest protected by the exception from public access to documents 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 as well as the protection of the decision-making process as referred to Article 4(3) second sentence of the Regulation, unless there is an overriding public interest in disclosure.

The General Court recognised a general presumption of non-accessibility for documents in OLAF case files¹⁹. The Court considered that public disclosure of documents related to OLAF's investigations could fundamentally undermine the objectives of its investigative activities, as well as its decision making process, both now and in the future.

That presumption is based on the consideration that, to determine the scope of Regulation 1049/2001, account must be taken of relevant sectoral rules governing the administrative procedure under which the documents requested under Regulation 1049/2001 were gathered²⁰. In this case, Regulation 883/2013, which governs OLAF's administrative activity, provides for the obligation of confidentiality with regard to all information gathered during investigations.

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.

Moreover, the following provisions of Regulation 883/2013 regulate and restrict the use of information in OLAF investigation files, before, during and after an OLAF investigation: Article 4 (internal investigations), 5 (opening of investigations), 6 (access to information in database prior to the opening of an investigation), 7 (investigations procedure), 8 (Duty to inform OLAF), 9 (procedural guarantees), Article 10 (confidentiality and data protection); 11 (investigation report and action to be taken following investigations), 12 (Exchange of information between OLAF and the competent authorities of Member States), 13 (cooperation between OLAF and Eurojust and Europol), 14 (cooperation with

¹⁹ Judgment of the General Court of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, par. 162.

²⁰ Judgment of the Court of Justice of 28 June 2012, *Agrofert Holding v Commission*, C-477/10 P, EU:C:2012:394, par. 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, par. 55 ff.

third countries and international organisations), 15 (Supervisory Committee) and 16 (exchange of views with the institutions), 17 (Director-General).

In view of that regulatory context, the Court held that allowing public access to documents containing information about OLAF investigations would be particularly detrimental to OLAF's ability to fulfil its mission of fight against fraud in the public interest. The disclosure of the documents concerned would seriously affect the decision-making process of OLAF, creating risks in particular by revealing travelling places, people met, etc. It would also seriously jeopardise the full independence of future OLAF investigations and their objectives by revealing OLAF's strategy and working methods.²¹ The disclosure of documents containing information about OLAF investigative activities, such as the details of the missions of the Director-General of OLAF in connection with specific mission concerning OLAF investigations, is therefore prevented by the exceptions under Article 4(2) third indent and 4(3) second subparagraph of Regulation (EC) 1049/2001.

3. Analysis of other arguments provided in the confirmatory application

OLAF has carefully examined the reasons you put forward in your confirmatory applications to explain why, in your view, it is necessary to disclose the requested documents.

Contrary to your assertion that OLAF did not specify particular reasons for refusal concerning specific aspects of information that you asked in case of each mission that the Director-General performed, OLAF provided you with extensive explanations of the nature of the requested documents as containing information concerning identified natural person and therefore subject to exception from public access to documents under Article 4(1)(b) of Regulation 1049/2001. This applies by their very nature to all requested documents.

You explain that your inquiry concerns amounts, calculations and/or statistics and put forward that these data are transferred to accounting department or for payment, so they are outside of confidential investigation. You assert that rules of confidentiality do not concern handling of administrative elements outside procedural files and that the Director-General is not involved in confidential cases or audits.

You further allege that OLAF did not give specific reasons for refusing part of the information that you requested. You put forward that the missions like the meetings of the Director-General are public, announced openly towards other persons, public and the media. In your opinion, the full list of missions of the Director-General of OLAF should be published covering all aspects of your request within the dates that you requested. In your view, OLAF did not specify provisions in favour of OLAF's conclusion that the functions of the Director-General during missions are fully covered by confidentiality.

First of all, it should be stressed that OLAF has not claimed all functions of the Director-General to be fully confidential. OLAF explained that only those documents that are related to investigations are covered by the general presumption of confidentiality. It should be borne in mind that according to Article 7 of Regulation 883/2013 the Director-General shall direct the conduct of investigations on the basis, where appropriate, of written instructions.²² Investigations shall be conducted under his direction by the staff of the Office designated by him. The staff of the Office shall carry out their tasks on production of a written authorisation showing their identity and their capacity. The Director-General shall issue such authorisation indicating the subject matter and the purpose of the investigation, the legal bases for conducting the investigation and the

²¹ See judgement of the Court of Justice of 28 June 2012 *Agrofert Holding v Commission*, cited above, par. 66.

²² Judgement of the Court of Justice of 25 February 2021, *Agrofert Holding v Commission*, ECLI:EU:C:2021:133, par. 113-116.

investigative powers stemming from those bases.

In any event, access to documents containing detailed information about missions are refused, as explained above under point 2.1, on the basis of the exception of Article 4(1)(b) of Regulation 1049/2001 as their disclosure would undermine the protection of privacy and the integrity of the individual.

In your opinion, OLAF also did not specify the basis for OLAF's statement that there is a lack of established practices in favour of such publications. With this regard, OLAF explained to you that OLAF is equated from an administrative point of view to Commission's Directorates-General. It is administratively linked with the Commission. It is not a separate entity from N organisational perspective. Its distinct position is linked with its independence with regard to its investigative functions. We can therefore confirm that the European Commission has not adopted a practice of disclosure of all documents concerning the Directors-General expenses.

You further point out that OLAF has not explained why it disregarded the European Ombudsman's decisions that recommended to OLAF such publications and that OLAF did not explain why it published some meetings of the Director-General although the European Ombudsman required OLAF to publish the list of his missions. You recall that the European Ombudsman's decision recommended OLAF to consider proactive publications concerning the missions whereas information published by OLAF is different because it concerns only meetings of the Director-General. You remind that there is already a practice to publish such data on website and therefore the European Ombudsman asked OLAF to consider them regularly.

In this relation, I must strongly emphasise that OLAF has not disregarded the European Ombudsman decision. I have to recall that your previous application for public access to mission costs was subject to the inquiry of the European Ombudsman 1061/2019/FP, in which the European Ombudsman decided that there was no maladministration on the part of OLAF. The European Ombudsman suggested that OLAF takes steps to consider implementing a more transparent approach in relation to travel expenses, which are not incurred in the course of investigatory activities. In particular, consideration should be given to regular proactive disclosure of the Director-General's expenses, in line with the practice of some EU institutions and agencies.

I can reiterate, what has already been explained in OLAF's reply to your initial application, that OLAF has duly considered that suggestion of the European Ombudsman and informed her that should the Commission decide in the future to adopt a more proactive approach to the disclosure of such expenses for all high-ranking public officials, OLAF will consider adapting its practice.

In view of all those reasons, I conclude that your application for public access to documents was properly considered.

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 No 1049/2001.

No meaningful partial access to the cost statements concerned is possible, as the entirety of the information falling under the scope of your application and included therein is covered by the exception in Article 4(1)(b) of Regulation 1049/2001, and in part additionally fall entirely under the general presumption of applicability of Article 4(2), third indent and Article 4(3) of Regulation 1049/2001 in the context of inspections and audits.

5. Overriding public interest in disclosure

The exception laid down in Article 4(1)(b) of Regulation 1049/2001 is an absolute exception, i.e. its applicability does not need to be balanced against any possible overriding public interest in disclosure.

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. For such an interest to exist it has to be, firstly, a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access.

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, an application for public access to OLAF's documents under Regulation 1049/2001 would have to contain clear elements to indicate the existence of an overriding interest to justify putting internal OLAF documents and other information related to its investigations into the public domain. In this case, OLAF considers there are no elements that would show the existence of an overriding public interest in disclosing the requested documents.

6. Means of redress

I draw your attention to the possible means of redress available against this decision. You may either bring proceedings before the Court of Justice of the European Union or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Your attention is drawn to the privacy statement below.

Yours sincerely,

Ville ITÄLÄ

Privacy statement

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.