Dear M,

We refer to your request of 8/10/2012 in which you make a request for public access to documents, registered under the above mentioned reference number.

Your application is currently being handled and will be dealt with as quickly as possible. However, we need additional time to consult the relevant services in respect of the 1st and 2nd document request by you. Therefore we need to extend the prescribed period by other 15 working days, in accordance with Regulation 1049/2001. The new time limit will expire on 22/11/2012.

We apologize for this delay and for any inconvenience this may cause.

Yours sincerely,

Silvia BOJINOVA
Head of Unit

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Dear [Name],

We refer to your e-mail of 8/10/2012 in which you make a request for public access to documents, registered under the above mentioned reference number.

You have requested 3 documents,

2. *Ex-post Audit Strategy of FP7 common to the Research DGs*, which defined the Framework Programme Seven ex-post audit strategy

We enclose the document requested by you under point 3: SEC(2008)3054 of 16/12/2008 entitled 'Commission Staff Working Document, Accompanying document to the Communication from the Commission to the European Parliament, the Council and the European Court of Auditors: Towards a common understanding of the concept of tolerable risk of error'.

I hope this document will meet your needs. I must, however, remind you that they cannot be reproduced or disseminated for commercial purposes unless the Commission has first been consulted.

Concerning point 1 and 2, please note that the Access to Documents Team is currently working on them to provide you a reply as soon as possible.

Yours sincerely,

**Silvia BOJINOVA**
Head of Unit

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http://ec.europa.eu/research
Subject: Your request for access to documents – Reference: Gestdem 2012/4586

Dear

I would like to thank you for your e-mail of 8 October 2012 in which you make a request for access to documents, registered on 9 October 2012 under the above mentioned reference number.

In your e-mail you requested access to the three following documents:
2. Document 2: Ex-post Audit Strategy of FP7 common to the Research DGs, which defined the Framework Programme Seven ex-post audit strategy

Your request is considered to fall within the scope of Regulation No 1049/20011 regarding public access to European Parliament, Council and Commission documents.

Please note that DG RTD gave access to the document requested under point 3 on 12 November 2012.


(a) The FP6 Audit Strategy is an internal Commission document defining the overall objectives and targets and the related resources, specific actions and instruments of the DG Research & Innovation ex-post audit activities for the 6th Framework Programme. Attached to the FP6 Audit Strategy are implementing guidelines addressing the same issues at more technical level.

The aim of the external audits of FP6 beneficiaries is to ensure that public funding, which has been awarded to FP6 beneficiaries in the form of FP6 contracts, is properly spent, i.e. contractors are in compliance with the financial terms of the contracts. By performing financial compliance audits, ex-post controls contribute to the legality and regularity of the transactions and to the protection and safeguarding


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of the EU’s financial interests and research budgets in order to prevent abuse of public funds.

(b) Subsequent to the thorough analysis of the FP6 Audit Strategy, it has been concluded that the document can be partially released to you. Therefore, a publishable version of the FP6 Audit Strategy has been prepared in which parts of the document have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of the above mentioned Regulation.

The expunged parts of the document contain information on audit targets, methods, procedures, including internal organisation aspects, personal data, and reference to framework contracts.

(c) The disclosure of sensitive information for instance on the quantitative audit targets, audit populations, audit selection and auditing methods would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Community or a Member State. For the above mentioned reasons DG RTD cannot disclose the sensitive information blanked out in this document as it falls under the exception to the right of access laid down in Article 4.1 (a), fourth indent of the Regulation No 1049/2001:

"The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards ... the financial, monetary or economic policy of the Community or a Member State."

(d) Moreover, disclosure of the expunged information would also undermine the protection of the purpose of inspections, investigations and audits. Therefore, disclosure of the blanked out information is prevented by the exception to the right of access laid down in Article 4.2 third indent of the Regulation No 1049/2001:

"The institutions shall refuse access to a document where disclosure would undermine the protection of - the purpose of inspections, investigation and audits, unless there is an overriding public interest in disclosure."

(e) In addition, the disclosure of the technical details blanked out in the FP6 Audit Strategy, by which beneficiaries are targeted would seriously weaken the efficiency and effectiveness of the overall audit and control system but could also have an impact on individual audit assignments.

As far as information on the framework contracts with External Audit Firms, who carry out a large part of the audits, is concerned, the disclosure of detailed information on the volume of audits, procedures and monitoring of the performance of the External Audit Firms would undermine the protection of commercial interests of a natural or legal person, including intellectual property.

For the reasons mentioned above, disclosure of the blanked parts of the document is also prevented by the exception laid down in Article 4.2 first indent of the Regulation No 1049/2001:

"The institutions shall refuse access to a document where disclosure would undermine the protection of - commercial interests of a natural or legal person, including intellectual property."

(f) The exception laid down in Article 4.2 of Regulation 1049/2001 may be waived if there is an overriding public interest in disclosure, which must, firstly, be a public
interest and, secondly, outweigh the harm caused by the disclosure. There are, however, no elements in your request for access to documents which could justify the existence of an overriding public interest in the sense of the Regulation, or which would outweigh the exception stipulated in Article 4.2 mentioned above.

As a consequence, please find attached a version of the Ex-post Audit Strategy of FP6, (period 2007-2010, revised version of 13/02/2007) expunged of all non-public information.

Document 2: Ex-post Audit Strategy of FP7 common to the Research DGs, which defined the Framework Programme Seven ex-post audit strategy, 11/05/2012 First revision

(a) The FP7 Audit Strategy is an internal Commission document defining the overall objectives, principles, targets and implementation of the DG Research & Innovation ex-post audit activities for the 7th Framework Programme.

The aim of the external audits of FP7 beneficiaries is to ensure that public funding, which has been awarded to FP7 beneficiaries in the form of FP7 grants, is properly spent, i.e. beneficiaries are in compliance with the provisions of the FP7 grant agreement. By performing financial compliance audits, ex-post controls contribute to the legality and regularity of the transactions and to the protection and safeguarding of the EU’s financial interests and research budgets in order to prevent abuse of public funds.

(b) Subsequent to a thorough analysis of the document DG RTD came to the conclusion that the document requested by you cannot be made public to you for the following reasons:

(c) The 7th Framework Programme is the current financial framework used for funding European research and innovation activities. As a consequence, the FP7 audit campaign has reached its full implementation phase. Internal decision making processes referring to the actions under the strategy are on-going and will continue to be applicable for a considerable period of time in the future, until all grant agreements under the current framework programme are closed and the period for carrying out financial audits has elapsed.

For the above reasons, the disclosure of the document falls under exceptions described in Article 4.3, first indent of the Regulation 1049/2001:
"Access to any document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure."

(d) Moreover, the disclosure of sensitive information for instance on the quantitative audit targets, audit populations, audit selection and auditing methods would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Community or a Member State. Therefore, please be informed that the requested document cannot be made public to you because it falls under the exceptions to the right to access laid down in Article 4.1 (a), fourth indent, stating that:
"The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards ... the financial, monetary or economic policy of the Community or a Member State."

(e) Further, disclosure of the FP7 Audit Strategy would also undermine the protection of the purpose of inspections, investigations and audits. In particular, disclosing the technical details of the Audit Strategy by which beneficiaries are targeted would seriously weaken the efficiency and effectiveness of the overall audit and control system but could also impact on individual audit assignments. In this sense, disclosure is also prevented by the exceptions to the right to access laid down in Article 4.2 third indent of Regulation No 1049/2001, setting out that:

"The institution shall refuse access to a document where disclosure would undermine the protection of ... the purpose of inspections, investigation and audits, unless there is an overriding public interest in disclosure."

(f) I have also examined the possibility of granting partial access to the requested information in accordance with Article 4.6 of the Regulation. However, given the exceptions listed under Article 4.1 (a), 4.2 and 4.3, a further partial access cannot be envisaged either.

(g) The exception laid down in Article 4.2 of Regulation 1049/2001 may be waived if there is an overriding public interest in disclosure, which must, firstly, be a public interest and, secondly, outweigh the harm caused by the disclosure. There are, however, no elements in your request which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exception stipulated in Article 4.2 mentioned above.

As a conclusion, the FP7 Audit Strategy cannot be made public to the applicant. However, in order to be as transparent as possible, DG RTD would like to refer to the information on the FP7 Audit Strategy publicly available on CORDIS (Community Research and Development Information Service) on the following link:


Should you wish the position of the Commission to be reviewed, you should send a confirmatory application to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen working days to do this as from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General would then inform you of the result of this review within 15 working days from the date of registration of your request. You would either be given access or your request would be rejected, in which case you would be informed of how you can take further action.

All correspondence should be sent to the following address:
The Secretary-General
European Commission
B-1049 BRUSSELS
Email: SG-ACC-DOC@ec.europa.eu

Yours sincerely,

[Signature]

Robert-Jan SMITS
For the Director General absent
W. BURTSCHER
Deputy Director General

Cc: S. BOJINOVA (RTD.R5), M. BELLENS (RTD.M1)
Subject: Confirmatory application for access to documents under Regulation (EC) No 1049/2001 – Ref.: GestDem 2012/4586

Dear M

I refer to your letter of 4 December 2012, in which you request, pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents\(^1\), a review of the position taken by DG RTD, in reply to your initial application of 8 October 2012.

Your application is currently being handled. Unfortunately, we are not in a position to reply to your confirmatory request within the prescribed time limit expiring on the 7 of January 2013, as the internal consultations on the draft decision are still ongoing. Consequently, we need to extend this period by another 15 working days in accordance with Article 8(2) of Regulation 1049/2001. The new deadline expires on 28 January 2013.

Yours sincerely,

Marc Maes  
Deputy Head of Unit

\(^1\) OJ L145, 31.05.2001, p.43.
Subject: Confirmatory application for access to documents under Regulation (EC) No 1049/2001 – Ref.: GestDem 2012/4586

Dear M,

I refer to your letter of 4 December 2012, in which you request, pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, a review of the position taken by the Directorate-General for Research and Technical Development in reply to your initial application of 8 October 2012.

On 7 January, the time limit for handling your application was extended until 28 January 2013. Unfortunately, we will not be in a position to send you the reply at this date. Although your application is currently being handled, we have not yet been able to gather all the elements we need to carry out a full analysis of your request in order to take a final decision.

I can assure you that we are doing our utmost to provide you with the final reply on your application as soon as possible. I regret this additional delay and sincerely apologize for any inconvenience this may cause.

Yours sincerely,

[Signature]

Marc Maes
Deputy Head of Unit

¹ OJ L145, 31.05.2001, p.43.
Subject: Confirmatory application for access to a document under Regulation 1049/2001 - Gestdem 2012/4586

Dear M,

I refer to your e-mail of 5 December 2012, in which you request, pursuant to Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, a review of the position taken by the Directorate-General for Research and Innovation (hereafter DG RTD) on 12 and 29 November 2012, in reply to your initial application of 9 October 2012 for access to documents concerning the audit strategy.

I also refer to our letter of 25 January 2013 and your reply of 27 February 2013, regarding the extension of the time-limit for handling your application. Due to the nature of the documents, their analysis with the view to grant you the widest possible access has taken some time.

1. **Scope of your Request**

In your initial request you ask for the following three documents:

- "Ex-post audit strategy of FP6 common to the research DGs – 14/2/2007- D((2007) 3094"

- "Ex-post audit strategy of FP7 common to the research DGs, which defined the framework programme Seven ex-post audit strategy"

- "Towards a common understanding of the concept of tolerable risk of error – SEC (2008)3054 of 16/12/20008."

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1 OJ L145, 31.05.2001, p.43.
I note that DG RTD already granted full access to the third document and partial access to the first one. Access to the second one was fully denied.

The reasons given by DG RTD to grant partial access to the first document and to fully refuse access to the second document are based on the following exceptions set out in Regulation 1049/2001:

- Article 4(1) (a) fourth indent (protection of the financial interest of the Community);
- Article 4(2), first and third indents (protection of the commercial interest and of the purpose of the investigations respectively); and
- Article 4(3) first subparagraph (protection of the decision-making process).

These exceptions were applied equally to all the parts of the documents for which access was denied.

2. **EXAMINATION AND CONCLUSIONS**

After a thorough examination of the document concerned, I am pleased to inform you that partial access can be granted to document number 2 and that a wider partial access can be granted to document number 1.

The expunged parts of the documents are the ones containing key technical figures and definitions like materiality threshold or confidence rate (pages 4, 9 and annex 2), risky areas, intensity of the control effort pages 6, 7 and 8 and annex 1), internal key organisation measures (pages 10, 11, 12, 13 and 18).

The grounds for this decision are set out below.

As regards the arguments put forward in the comments made in your confirmatory application, I can confirm to you that the document number 1, dated 13/2/2013 is indeed the document covered by your request.

3. **REASONS FOR GRANTING PARTIAL ACCESS**

Pursuant to Article 4(1) a) forth indent of Regulation 1049/2001 "The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards the financial... policy of the Community..."

It is absolutely clear that a financial or fiscal public administration, and particularly an audit service, cannot reveal (by whatever means) where it will in any circumstances carry out a control mission and in which cases it will not or is unlikely to proceed to controls. Any leakage of information in this field would have a direct or/and indirect negative financial impact on the Union’s budget.

Pursuant to Article 4(2) third indent of Regulation 1049/2001 [t]he institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigation and audits unless there is an overriding public interest in disclosure.
The purpose of the audit at stake is to clear the EU expenditure against legality, regularity and sound financial management. It is also important to constitute a deterrent tool against any misuse or fraud of public money. The audit policy or strategy cannot unveil very concrete and operational measures that would be otherwise devoid of purpose. That is also part of a deterrence strategy towards any temptation of deriving from the assigned objective.

Thus, to be fully operational and, above all, credible, an audit strategy cannot unveil the concrete way it applies and all the criteria at use for the described means and tools. If it was not the case the purpose of any audit would be substantially affected and its results, in global terms would make it largely ineffective.

Referring specifically to the second document, the parts that are being expunged are the ones containing key technical figures and definitions like materiality threshold or confidence rate (pages 4, 9 and annex 2), risky areas, intensity of the control effort pages 6, 7 and 8 and annex 1), internal key organisation measures (pages 10, 11, 12, 13 and 18). Partial access to the first document follows by analogy, the same pattern.

This is exactly the difference between the original documents and the expunged versions that are being disclosed. This also leads to granting a wider partial access to the first document than was initially granted by DG RTD.

Under the case law of the General Court "[t]he institutions are obliged to refuse access to documents related to [article 4, paragraph 1], when the proof of the indicated relevant circumstances is put forward", as it is the case above.

I consider that, in this case, general public access to the two referred documents would have a negative impact on the Union budget and on the audit capacity of the Commission. Therefore, the requested documents should be expunged in order to protect the Union’s financial interests and to preserve the Commission’s ability to carry out audits.

Consequently, the disclosure of the data referred to above has to be refused pursuant to Articles 4(1) a) fourth indent and 4(2) third indent of Regulation 1049/2001.

4. **Overriding Public Interest**

The exception laid down in Article 4(2), first indent of the Regulation must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure.

In your confirmatory application you have not put forward any arguments attesting the existence of such an overriding public interest. In the present case, considering that large parts of the documents concerned are being disclosed, there are no elements at my disposal which could indicate the existence of an overriding public interest in the sense of the Regulation that would outweigh the need to protect the purpose of the investigations and the audits of the Commission by withholding the remaining parts of the requested document, as explained above.

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5. **Means of Redress**

Finally, I draw your attention to the means of redress available against this decision insofar as it refuses access to certain parts of the requested contract. You may either bring proceedings before the General Court 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.

Yours sincerely,

[Signature]

Catherine Day

Enclosures: (2)