

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION
The Director-General

Brussels,
Gestdem reference number: 2013/5621

Mr Sifis Raptis

ask+request-998-fd1e0d91@asktheeu.org
To be sent by email only

Dear Mr Raptis,

Subject: Your application for access to documents – Gestdem Ref. No: 2013/5621

We refer to your email dated 10/11/2013 in which you make a request for access to documents, registered on 12/11/2013 under the above mentioned reference number.

I. SCOPE OF APPLICATION

Your application concerns the following documents:

1. *The FP6 Audit Manuals (several documents), the parts of the documents laying down the instructions, directions, and guidelines, or equivalent, of DG RTD to the audit firms to process personal data in the context of the external financial audits of FP6 contractors and FP7 beneficiaries;*
2. *Concerning the FP7 Audit Manuals (several documents), the parts of the documents laying down the instructions, directions, and guidelines, or equivalent, of DG RTD to the audit firms to process personal data in the context of the external financial audits of FP6 contractors and FP7 beneficiaries;*
3. *The cover letters – or equivalent - accompanying the dispatch of the documents under (1) & (2) above;*

4. *The documents – or parts thereof – with which DG RTD imposed to the audit firms – signatories of the Framework Contracts - ‘security’ constraints and limitation as regards to the confidentiality of the FP6 and FP7 Audit Manuals. An example of such constraints and limitations might be (i) the limited and controlled disclosure of the documents to staff of the audit firm, and (ii) the prohibition of disclosure to third parties without the prior written consent of DG RTD.*
5. *The documents – or parts thereof – with which DG RTD imposed to the subcontractors of audit firms – signatories of the Framework Contracts - ‘security’ constraints and limitation as regards to the confidentiality of the FP6 and FP7 Audit Manuals. An example of such constraints and limitations might be (i) the limited and controlled disclosure of the documents to staff of the audit firm, and (ii) the prohibition of disclosure to third parties without the prior written consent of DG RTD.*
6. *The DG RTD internal documents – or parts thereof – analysing and establishing the ‘recommendations’ and ‘requirements’, or equivalent, of the International Standards on Auditing, according to which DG RTD was entitled to instruct and direct the external contractors – audit firms to process the personal data of third parties to the audited FP6 contracts and FP7 grant agreements.*
7. *The DG RTD internal documents– or parts thereof – analysing and establishing that according to Regulation 45/2001, Commission Decision 597/2008 of 3/6/2008, and Directive 95/46/EC, it has been lawful to instruct and direct the external contractors – audit firms to process the personal data of third parties to the audited FP6 contracts and FP7 grant agreements.*

Your application is considered to fall within the scope of Regulation (EC) N° 1049/2001¹.

II. IDENTIFICATION OF THE RELEVANT DOCUMENTS

1. As far as points 1 and 2 of your request are concerned, we have identified two corresponding documents: namely the FP6 and FP7 Audit Manuals respectively. In relation to the latter, please kindly note that there are four existing versions of this document. Having examined the aforementioned Audit Manuals (including their previous versions) under the provisions of Regulation (EC) No 1049/2001, we have come to the conclusion that they cannot be disclosed as they fall under the exceptions of Article 4 of the said Regulation, as detailed below.

Following careful review of the above mentioned documents, we decided, nevertheless, to grant you partial access to these documents in accordance with Article 4(6) Regulation (EC) No 1049/2001. This provision expressly states that “[I]f only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released”.

The expunged parts from both Audit Manuals (including their previous versions), shown as black marking in the documents provided, fall within the following two exceptions laid down in

¹ Regulation (EC) N°1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L145, 31.05.2001, page 43 (‘Regulation (EC) N°1049/2001’)

Article 4(2), third indent and Article 4(1)(a), fourth indent of Regulation (EC)N°1049/2001, as detailed below.

Pursuant to Article 4(2), third indent, “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (...) the purpose of inspections, investigations and audits”.

The expunged parts of the Audit Manual (including their previous versions) contain general standards and procedures related to on-the-spot audits as well as examples of specific problems encountered. Disclosure of the expunged procedures would enable a beneficiary to pre-empt the audit by making adaptations to the accounting and supporting documentation. This would lose the potential benefits derived from audits and would, therefore, undermine the purpose of future audits.

Moreover, the expunged parts in both audit manuals cannot be disclosed pursuant to Article 4(1)(a), fourth indent of Regulation (EC) N°1049/2001. Pursuant to this provision, “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: (...) – the financial, monetary or economic policy of the Community (...)”.

The Commission carries out audits with a view to protect the financial interests of the EU. Should it be disclosed, the withheld specific guidance drawn up as part of the policy to ensure a proper allocation of EU funds could result in deliberate attempts of auditees to circumvent or obstruct auditors’ findings. The financial policy of the Community would consequently and inevitably be undermined.

We have examined to which extent the exception laid down in Article 4(2), third indent of Regulation (EC) N°1049/2001 may be waived if there was an overriding public interest in disclosure. Such an interest must, firstly, be a public interest and secondly, outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any sufficient elements that could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exception stipulated in this provision of Regulation (EC)N°1049/2001. The disclosure of the redacted parts of the FP6 and FP7 Audit Manuals would reveal information on the way in which audit activities are concretely carried out in very specific cases. This would reduce the effectiveness of the audit capacity of the Commission. In this context, the arguments which you put forward in your application do not justify the existence of an overriding public interest in the sense of the regulation that would outweigh the negative impact on the EU Budget and on the audit capacity for this type of expenditure resulting from full public access to the two documents in question.

Consequently, we can only grant to you partial access to the documents requested under points 1 and 2 of your request.

2. With regard to points 3, 4, 5, 6 and 7 of your request, we regret to inform you that no corresponding documents exist. Your application is therefore devoid of purpose in relation to these points.

3. We would also like to bring to your attention that compliance with Regulation (EC) No 45/2001 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 data is covered in Article I.9 Data Protection of the Framework Contracts with the External Audit Firms. We recommend that you consult this provision as a guidance as to how personal data is processed and on the free movement of that data.

III. MEANS OF REDRESS

In conclusion, you were given partial access to two documents (including their previous versions) in respect to points 1 and 2 of your request.


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. 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: sg-acc-doc@ec.europa.eu

We thank you very much in advance for your kind understanding.

Yours sincerely,


For the Director General absent
W. BURTSCHER
Deputy Director General

CC: M. Bellens; S. Gruener (RTD M1); S. Bojinova; C. Moal-Nuyts; H. Kerr (RTD R5).