



EUROPEAN ANTI-FRAUD OFFICE

Directorate A: Expenditure - Operations &
Investigations
Director

Ms Corinne KATZ-DUCHOWSKI

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Via e-mail only

Brussels
olaf.d.2(2023)3803

Subject: Your application for public access to documents OCM(2023)2335

Dear Ms Katz-Duchowski,

We refer to your application of 8 January 2023 for public access to documents under Regulation (EC) No 1049/2001¹, registered in OLAF under reference number OCM(2023)2164. By email dated 9 January 2023, you indicated your postal address. This was necessary for registering and handling your request in line with the procedural requirements. By email dated 31 January 2023, we informed you that OLAF was not in a position to complete the handling of your application within the time limit of 15 working days and the deadline was extended until 21 February 2023.

1. Scope of your application

You have requested public access to the following documents:

- *"the number of OLAF cases opened between 2014 and 2022 concerning the European Court of Justice (segregated per General Court and Court itself) along with the field of investigation and Directorate General concerned for each one."*

2. Assessment of your application

I am pleased to inform you that partial access can be granted to the documents you requested.

According to EU case law, "in the event of an application for access designed to have the Commission carry out a search of one or more of its databases using search criteria specified by the applicant, the Commission is obliged, subject to the possible application of Article 4 of Regulation (EC) No 1049/2001, to accede to that request, if the requisite search can be carried out using the search tools which it has available for the database in question"².

¹ 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 documents, OJ L 145, 31.5.2001, p. 43–48.

² Judgment of 2 July 2015, Typke v European Commission, T-214/13, EU:T:2015:448, paragraph 56.



The General Court therefore confirmed that “anything that can be extracted from a database by means of a normal or routine search may be the subject of an application for access”³.

Furthermore, I would like to bring to your attention that the Court of Justice took the view that the routine character of an operation which determines whether information extracted from a database is a document, is determined by whether the operation has been made available to final users for general use⁴.

Based on the above, OLAF grants you access to what could be extracted from the OLAF Content Management System (OCM), which is the Office's software used for case and document management.

However, some of the requested information is contained in documents that are covered by the exception 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.

The General Court recognised⁵ the existence of a general presumption of non-accessibility under which the disclosure to the public under Regulation 1049/2001 of documents related to OLAF investigations could fundamentally undermine the objectives of the investigative activities both now and in the future.

The 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 gathered⁶. In the case at hand, Regulation 883/2013, 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.

In view of the foregoing, the documents in OLAF's investigation files, including the case number, fall under the presumption of confidentiality as documents containing information collected during an OLAF investigation and subject to confidentiality rules. Consequently, some of the information requested is contained in documents that are exempt, in principle and in full, from disclosure to the public.

3. 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

³ Judgment in *Typke v European Commission*, cited above, paragraph 59; Judgment of 22 October 2011, *Dufour v European Central Bank*, T-436/09, EU:T:2011:634, paragraph 153.

⁴ Judgment of 11 January 2017, *Typke v European Commission*, C-491/15P, EU:C:2017:5, paragraph 36.

⁵ Judgment of the General Court of 26 May 2016, *IMG v Commission*, T-110/15, ECLI:EU:T:2016:322, paragraphs 28-50.

⁶ 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.

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 BRUXELLES

or by email to: OLAF-FM-D2@ec.europa.eu

Your attention is drawn to the privacy notice below.

Yours sincerely,

Signed Electronically

Annex1: The identified information falling within the scope of your request

Privacy notice

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(1)(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-PROTxxxxxx@xx.xxropa.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.

Annex1: The identified information falling within the scope of your request

OLAF has identified the following information falling within the scope of your request:

OLAF opened four cases between 2014 and 2022 concerning the Court of Justice of the European Union. Two cases concern the administration of the Court of Justice of the European Union (Directorate General of Administration) and one the (former) Civil Service Tribunal. Two cases concerned conflict of interest and one case undeclared external activities.

The information concerning the fourth case cannot be disclosed for the reasons stated in the reply.

Case	Directorate General	Type of Court	Field investigation
1	NA	Civil Service Tribunal	conflict of interest
2	Directorate-General of Administration	NA	undeclared external activities
3	Directorate-General of Administration	NA	conflict of interest
4	- The information cannot be disclosed for the reasons stated in the reply.	-	-