

**From:** SG DOSSIERS ACCES  
**Sent:** Wednesday 31 October 2012 12:17  
**To:** [REDACTED] (SG)  
**Subject:** FW: last opportunity to avoid Ombudsman/Court of Justice -  
Re: Confirmatory application - GESTDEM 2012-3258 - [REDACTED]  
**Attachments:** OmbudsmanEPSOaccesstodocuments.pdf

Chère Isabel,

Tu trouveras, ci-après, un courriel envoyé par M. [REDACTED] nous informant de l'introduction d'une plainte auprès du Médiateur concernant le traitement apporté à sa demande confirmative – Gestdem 2012/3258.

Bien à toi,

[REDACTED]

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**From:** [REDACTED] [[mailto:\[REDACTED\].com](mailto:[REDACTED].com)]  
**Sent:** Wednesday, October 31, 2012 12:04 PM  
**To:** SG ACCES DOCUMENTS; [REDACTED] (EPSO); [REDACTED] (SG)  
**Cc:** BEARFIELD Nicholas David (EPSO)  
**Subject:** Re: last opportunity to avoid Ombudsman/Court of Justice - Re: Confirmatory application - GESTDEM 2012-3258 - [REDACTED]

Dear Mr [REDACTED], dear [REDACTED],

as announced in our previous communication, I have just filed an Ombudsman complaint because we haven't reached an agreement on when and how you will hand over the data which I requested on Aug. 21 until Oct. 31, noon. I am attaching the complaint to this mail to give you the opportunity to read it ahead of time, before the Ombudsman contacts you.

I still hope that your re-examination, which I assume is still ongoing, will lead to your decision to grant my confirmatory request from August 21, 2012 without court proceedings becoming necessary. However, as I said, I will discuss the option of court proceedings with my lawyer next Thursday. I have already given her the contents of the Ombudsman complaint and its attachments.

With best regards,

[REDACTED]

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Dr. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** "Rainer Typke" <[REDACTED].com>  
**To:** @xx, "[REDACTED]"  
<[REDACTED]@ec.europa.eu>, "[REDACTED]"  
<[REDACTED]@ec.europa.eu>  
**Sent:** Friday, 26 October, 2012 4:46:29 PM  
**Subject:** Re: last opportunity to avoid Ombudsman/Court of Justice -  
Re: Confirmatory application - GESTDEM 2012-3258 - [REDACTED]

Dear Mr. [REDACTED],

1. I did not say that I don't want to wait for the outcome of your re-examination; I only said that your re-examination cannot take forever if you want the process to be simple, cost-effective, and with minimal public embarrassment.
2. You already confirmed in your reply to my initial request that the electronic documents in question indeed do exist (on August 9, someone called RK or RKD wrote to me on behalf of the director, Bearfield: "EPSO does indeed possess the information referred to in your request, in the form of data stored electronically in its various IT systems and databases." - EPSO/RKD(2012) 1130795) That is, you confirmed that there are indeed existing electronic documents which are in the scope of Regulation 1049/2001 and contain the requested information. They are split into several documents instead of being present as one single table. Because of this, I requested parts of those separate existing documents which do not trigger an exception under Art. 4 in my confirmatory request for access to information. Your sudden change of mind about the existence of the requested documents comes as a bit of a surprise to me.

I am certain that the approximately 4 months you have spent on this issue would have been more than enough time for very thoroughly analyzing the request and responding appropriately, that is, releasing the requested subsets of documents. Even the remaining one and a half weeks until I meet my lawyer should be more than enough time for doing what you are obliged to do under Regulation (EC) 1049/2001, and the time until Oct. 31 should be enough time for deciding on your course of action. As a computer scientist, I have a pretty good idea of the technical effort needed on your side. If I worked for EPSO and was familiar with the databases, it would take me less than an hour to export the required subsets of documents. Without prior knowledge, it would probably still take me less than 3 days, assuming that EPSO processes data according to normal practices. Coming to the conclusion that granting the request is necessary is also a relatively straightforward process.

I hope you will understand that there is a strong public interest in the disclosure of the requested data as early as possible, and that I therefore should not wait passively for indefinite amounts of time. If the data show flaws in the ongoing competition, it would be much better for everyone involved, especially for EPSO, to correct any such flaws before the end of the competition rather than inventing complicated, costly corrective actions after the reserve lists have been drawn up. If the data, on the other hand, show that

EPSO performed flawlessly, EPSO should be interested in this fact to become publicly known sooner rather than later. Either way, acting fast is in everybody's interest.

I still hope that you will be able to finish your internal consultations in time for a simple, cost-effective process of handing over the requested data without Ombudsman or court involvement.

With best regards (and wishing you a pleasant weekend),

[REDACTED]

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**From:** [Sg-Acc-Doc@ec.europa.eu](mailto:Sg-Acc-Doc@ec.europa.eu)

**To:** [REDACTED].com

**Sent:** Friday, 26 October, 2012 4:08:18 PM

**Subject:** RE: last opportunity to avoid Ombudsman/Court of Justice -  
Re: Confirmatory application - GESTDEM 2012-3258 - [REDACTED]

Dear Mr [REDACTED],

I refer to our holding reply of 23 October 2012 and your e-mail of 25 October 2012.

As you correctly state, your e-mail was dated 17 September 2012. The date of 4 October 2012 was mentioned by mistake. I apologise for having referred to a wrong date.

I have carefully examined your comments regarding the handling of your application.

In this regard, I confirm that the Secretariat General has not yet taken a decision regarding your request pursuant to Regulation 1049/2001. As I explained in the above-mentioned holding reply, the document(s) to which you requested access, does not exist. On this basis, we replied to your confirmatory application informing you it was considered as being devoid of purpose. In light of your insistence, in your e-mail of 17 September 2012, that the requested document(s) exist(s), we have launched an internal consultation with the responsible service.

I am sorry to hear that you do not wish to wait for the outcome of our re-examination. I initiated this re-examination with your interests in mind and with the intention to take due account of your rights.

Unfortunately, as the subject of your request concerns issues of a technical nature and of great complexity, we have not been able to reply

in a shorter time limit to your e-mail and at this stage I am not in a position to comment on the results of the re-examination.

Nonetheless, I expect to be able to reply to your e-mail shortly.

Your sincerely

On behalf of



European Commission - Secretariat General  
Unit SG.B.5, Transparency



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**From:** Rainer Typke [[mailto: \[REDACTED\]@ec.europa.eu](mailto: [REDACTED]@ec.europa.eu)]  
**Sent:** Thursday, October 25, 2012 2:29 PM  
**To:** SG ACCES DOCUMENTS; [REDACTED] (EPSO); [REDACTED] (SG)  
**Cc:** BEARFIELD Nicholas David (EPSO)  
**Subject:** last opportunity to avoid Ombudsman/Court of Justice - Re: Confirmatory application for access to documents pursuant to Regulation 1049-2001 - GESTDEM 2012-3258 - [REDACTED]

Dear Mr. [REDACTED], dear Mr. [REDACTED]

I did not send you any mail on October 4, 2012, so I assume you are referring to my e-mail to you from September 17, 2012.

As you probably know, your "third way" of neither granting nor rejecting a confirmatory application for access to documents which is older than 15 working days is not foreseen under Article 8 of Regulation (EC) 1049/2001. I am pasting the text of this article below for your convenience. A confirmatory application can only be either granted or refused. Not granting it after 15 working days counts as rejection. In case of a rejection, the reasons must be stated and the applicant must be informed about the remedies.

Because you are not doing what you are obliged to do under Regulation (EC) 1049/2001, I have prepared (but not yet submitted) an Ombudsman complaint and scheduled a meeting with my lawyer.

However, it is not my goal to make this procedure unnecessarily complicated for you or for myself, or to acquire fame as some sort of "Pachtitis II.". Therefore, I am willing to hold off with the Ombudsman complaint until the end of October 2012.

If, by Wednesday noon next week (Oct. 31), we have reached an agreement on when my confirmatory request for access to information will be granted, and if the information requested in the confirmatory application will be made available to me no later than November 7, 2012, I will not submit this complaint to the Ombudsman and also not talk to my lawyer about this case. I currently plan to meet my lawyer on November 8 for the purpose of discussing court proceedings. To be honest, so far you have given me the impression that court proceedings are inevitable, but since choosing this route is not an ideal solution, neither for you nor for me, I would like to suggest this last possibility of saving you and me a lot of hassle. Please feel free to call me on my cell phone [REDACTED] you would like to discuss when and how to deliver the requested data.

With best regards,

[REDACTED]

#### Article 8

##### Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.
2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
3. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

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[REDACTED]

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**From:** [Sg-Acc-Doc@ec.europa.eu](mailto:Sg-Acc-Doc@ec.europa.eu)

**To:** [REDACTED].com

**Sent:** Tuesday, 23 October, 2012 7:57:43 AM

**Subject:** Confirmatory application for access to documents  
pursuant to Regulation 1049-2001 - GESTDEM 2012-3258 -  
[REDACTED]

Dear Mr [REDACTED],

Kindly find herewith a letter concerning your e-mail dated 04/10/2012  
(**GESTDEM 2012-3258**).

Yours sincerely,

[REDACTED]  
Unit SG.B.5, Transparency  
European Commission