



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Director-General

Brussels, 07 AOUT 2013
DG JUST/A4/TS/sec Ares(2013)

David Nicholson
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Dear Sir,

**Subject: Your application for access to documents
Ref GestDem No 3361/2013 – point 4**

We refer to your e-mail dated 20/06/2013 in which you make a request for access to documents, registered on 24/06/2013 under the above mentioned reference number. This reply concerns point 4 of your request.

Your application concerns the following document:

- Evaluation Report and its annexes for the contract awarded to DIHR in 2013, i.e. Evaluation Report Restricted Call for Proposals for Action Grants JUST/2012/PROG/AG/AD - Support to national activities aiming at combating discrimination and promoting equality

Having examined the document requested under point 4 of your request under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that it may be partially disclosed. Some 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 this Regulation.

The expunged parts of the document are:

- The names and signatures of the members of the evaluation committee and assessors, including their individual declarations of absence of conflict of interest and of confidentiality (the template of the Declaration of absence of conflict of interest and of confidentiality is included for your information);
- The assessment of financial capacity of applicants, except for the Danish Institute, and accessorially, any text that would allow identification of applicants with financial capacity assessed as weak.

Disclosure of these parts would undermine the protection of

- **privacy and the integrity of the individual:**

Please note that pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation

regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to make a confirmatory application requesting the Commission to review this position.

- **commercial interests of a legal person, including intellectual property:**

For two applicants, the financial capacity was assessed as weak, and precautionary measures were recommended, without excluding these two applicants. Putting this information in the public domain would affect the applicants' reputation on the market.

Moreover, there is no overriding public interest justifying the disclosure of this information. The financial capacity assessment of the Danish Institute, which you may be interested in as the application concerns the Danish Institute, has not been expunged.

I have also examined the Evaluation Report in order to determine whether revealing the scores and comments of the evaluators' comments would harm the commercial interests of the applicants. Taking into account the nature of the comments included in this report, as well as the fact that the ranking of the proposals (which is the results of the scores allocated to them) is already public in the relevant award decision, I have decided that the exception on the basis of the "commercial interests, including intellectual property" does not apply in this case.

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.

¹ OJ L 8 of 12.1.2001, p. 1.

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, OJ C 234 of 28.8.2010, p. 3.

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

Yours faithfully,



Françoise LE BAIL