



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

Director-General

Brussels,
GROW C4/SPR/cds(2020)4396700

Mr Peter Teffer
Ekko Voorkamer
Bemuurde Weerd WZ 3
3513 BH Utrecht
The Netherlands

Sent by email only to:

[ask+request-8212-](mailto:ask+request-8212-xxxxxxx@xxxxxxx.xxx)

xxxxxxx@xxxxxxx.xxx

Subject: Request for access to documents – GESTDEM No. 2020/3640

Dear Mr Teffer,

Thank you for your e-mail of 12 June 2020 which was registered at the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission on 15 June 2020, requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31 May 2001, page 43 and following).

1. SCOPE OF YOUR REQUEST

Your e-mail requested access to documents as follows:

“An overview of all letters and e-mails sent and received, including date, of the following infringement cases:

20162179

20162180

20162182

20162183

20172044

If any of these cases are closed, the content of those letters and e-mails.”

I confirm that all the above-mentioned infringement cases are currently open.

2. DESCRIPTION OF DOCUMENTS IDENTIFIED

We have identified 63 documents linked to the infringement cases you have listed. The list of these documents is in annex.

3. NON-DISCLOSURE OF THE DOCUMENTS

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that access to the identified documents cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4(2), third indent of this Regulation ("The institutions shall refuse access to a document where disclosure would undermine the protection of [...] - the purpose of inspections, investigations and audits").

The documents relate to five ongoing investigations regarding a possible infringement of EU law.

Disclosure of the documents requested would undermine the protection of the purpose of the ongoing investigation; indeed, disclosure of the documents at this point in time would affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice.

According to the ruling of the Court of Justice (Judgment of 14 November 2013, LPN and Finland v Commission; C-514/11 P and C-605/11 P, EU:C:2013:738) it can be presumed that the disclosure of the documents concerning an infringement procedure during its prelitigation stage risks altering the nature of that procedure and changing the way it proceeds and, accordingly, that disclosure would in principle undermine the protection of the purpose of investigations, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.

In addition to the above, the Court of Justice in Case T-306/12 also pointed out that EU Pilot procedures should be treated as an 'investigation' within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.

Therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to these documents.

According to Regulation (EC) No 1049/2001, an exception to the right of access must be waived if there is an overriding public interest in disclosing the document concerned, which outweighs the interest protected by the exception to the right of access. In this case the Commission has reached the conclusion that there appears to be no overriding public interest in their disclosure in the sense of the Regulation.

The possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has also been examined. However, this is not considered possible since the documents in question are covered in their entirety by the above-mentioned exception.

4. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its 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

Secretariat-General

Transparency, Document Management & Access to Documents (SG.C.1)

BERL 7/076

B-1049 Bruxelles,

or by email to: sg-xxxxxxx@xx.xxxxxx.xx

Yours sincerely,

Kerstin Jorna

Annexes: Document register