



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels
SANTE.A.1/CF

***By registered mail with
acknowledgment of receipt¹***

ALVARO MERINO
Calle Jesús Goldero 19, planta 1
El Orden Mundial
28045 Madrid
Spain

Advance copy by email:
ask+request-8611-
f9ea4a0a@asktheeu.org

Dear Mr Merino,

Subject: Your application for access to documents – GESTDEM 2020/5893

We refer to your e-mail of 5 October 2020 in which you make a request for access to documents on the basis of Regulation (EC) No 1049/2001, registered on 6 October 2020 under the above-mentioned reference number.

We also refer to your email of 13 October 2020, replying to our request for clarification sent on 12 October 2020, according to Article 6(2) of Regulation (EC) No 1049/2001.

We furthermore refer to your email of 3 November 2020, replying to our fair solution proposal, sent on the same date, according to Article 6(3) of Regulation (EC) No 1049/2001.

Lastly, we also refer to our letter of 4 November 2020 extending the time limit to respond to your request, according to Article 7(3) of Regulation (EC) No 1049/2001.

¹ According to the standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 pandemic, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

1. Scope of your request

In your request, you ask, on the basis of Regulation (EC) No 1049/2001², access to:

- *Documentación de reuniones (actas, borradores, memorandos, invitaciones, cancelaciones...) que involucren a cualquier persona o institución en representación del Gobierno español, especialmente del Ministerio de Agricultura, pero sin excluir comunidades autónomas y ayuntamientos, y que esté relacionada con la estrategia De la Granja a la Mesa, productos fitosanitarios, uso de pesticidas y/o bienestar animal desde enero de 2018.*

- *Correspondencia (documentos de orientación, informes, cartas oficiales, emails, documentos adjuntos...) intercambiada con cualquier persona o institución en representación del Gobierno español, especialmente del Ministerio de Agricultura, pero sin excluir comunidades autónomas y ayuntamientos, y que esté relacionada con la estrategia De la Granja a la Mesa, productos fitosanitarios, uso de pesticidas y/o bienestar animal desde enero de 2018.*

In your reply to our clarification request, you specified the following:

Con respecto a su respuesta, quisiera aclarar que hago referencia a cualquier reunión en la que hayan participado representantes del Gobierno español, ya sea en exclusiva o con más gente. Sobre el nivel de representación del Gobierno, pueden limitar la búsqueda únicamente a representantes del Gobierno nacional (inclusive, por tanto, ministerios). Por último, con respecto a los temas tratados en los documentos, además de la estrategia De la Granja a la Mesa, les pediría que incluyeran el impacto ambiental de los pesticidas y el bienestar animal en las granjas.

Furthermore, in your reply to our fair solution proposal, you reduced the scope of your request to the following:

El objetivo de mi solicitud es poder analizar el cumplimiento de las directivas europeas por parte del Gobierno español en materia de bienestar animal y uso de pesticidas, así como conocer el razonamiento de las partes implicadas y las actuaciones que se van a cometer para subsanar las posibles deficiencias. Mi solicitud forma parte de una investigación periodística más amplia.

En cuanto a la necesidad de restringir el enfoque de mi solicitud, accedo a que esta incluya únicamente documentos relacionados con el bienestar animal y la estrategia De la Granja a la Mesa, esto es, las categorías uno y cuatro ("Farm to Fork" y "Animal welfare"). Al tratarse de documentos pertenecientes a tan solo dos categorías y estar relacionados entre sí, entiendo que el análisis de los 65 documentos resultantes es posible en el tiempo establecido.

2. Identification and assessment of the documents

We have identified 67 documents falling under the scope of your request.

You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

² Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Having examined these documents under the provisions of Article 4 of Regulation (EC) No 1049/2001 we have concluded that:

- documents Nos 5, 7, 8, 12, 28, 29, 66 and 67 are publicly available;
- full access can be granted to documents Nos 1, 9, 11, 15, 16, 17, 21, 22, 23, 26, 32, 48, 49, 53, 54, 55, 56;
- documents Nos 2 to 4, 6, 10, 13, 14, 18 to 20, 24, 25, 27, 30, 31, 33 to 47, 50, 51, 52, and 57 to 65 can be partially disclosed, as their full disclosure is prevented by one of the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

We enclose a copy of the non-publicly available documents, in full or redacted of the parts which cannot be disclosed.

Please note that document No 63 includes parts falling out of the scope of your request, which have been redacted accordingly.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that some of the identified documents were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Directorate-General for Health and Food Safety. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the document refers, which was not consulted on its content. They do not reflect the position of the Commission and cannot be quoted as such.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

3. Reasons for partial disclosure

Article 4(1)(b) of Regulation (EC) No 1049/2001 –Protection of privacy and the integrity of the individual.

With regard to documents Nos 2 to 4, 6, 10, 13, 14, 18 to 20, 25, 27, 30, 31, 33 to 47, 50, 51, 52, 57, 58, 60 to 65, their complete disclosure is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001 because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- handwritten signatures/abbreviated signatures of natural persons;

- other information relating to an identified or identifiable natural person such as office/phone numbers or email addresses.

Article 9(1)(b) of the Data Protection Regulation³ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Therefore, the documents listed above are disclosed redacted of the parts containing personal data.

Article 4(2), third indent of Regulation (EC) No 1049/2001—Protection of the purpose of inspections, investigations and audits

Pursuant to Article 4(2) third indent of Regulation (EC) No 1049/2001, access to a document has to be refused in order to protect the purpose of investigations and audits, unless there is an overriding public interest in disclosure.

Documents Nos 18, 24, 52, 57 and 59 contain an exchange between Spain and the Commission of detailed information on Spain's action plan to prevent tail-biting and avoid tail-docking. The Commission is collecting this information within the framework of the ongoing DG SANTE investigation throughout the Union on the implementation of Council Directive 2008/120/EC laying down minimum standards for the protection of pigs⁴. It must be noted that Spain is at the moment not subject to investigations concerning the effective implementation of Directive 2008/120/EC. However, new individual investigations regarding the implementation of this Directive could eventually be opened in the near future on the basis of the evaluation of Spain's action plan, as this is a prerogative of the Commission, which enjoys discretionary power in deciding whether or not, and when, to start an infringement procedure or to refer a case to the Court of Justice⁵.

The aim of the exception in question is not to protect the investigations as such, but rather their purpose, which is to encourage the Member States concerned to comply with Union law. According to settled case law, various acts of investigation remain covered by

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p.39.

⁴ Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs (*OJ L 47, 18.2.2009, p. 5–13*).

⁵ See in particular: judgment of 6 December 1989 in Case C-329/88, *Commission v Greece* [1989] ECR 4159; judgment of 1 June 1994 in Case C-317/92, *Commission v Germany* [1994] ECR I 2039; judgment of 6 October 2009 in Case C-562/07, *Commission v Spain* [2009] ECR I-9553; judgment of 14 September 1995 in Case T-571/93, *Lefebvre and others v Commission* [1995] ECR II 2379; judgment of 19 May 2009 in Case C-531/06, *Commission v Italy* [1009] ECR I 4103.

the exception so long as that goal has not been attained. This is so even if the particular investigation or inspection which gave rise to the documents to which access is sought has been completed⁶.

Further to this, disclosure of the documents requested is likely to jeopardise the willingness of Member States to cooperate in the current and future investigations. Therefore, the details of the exchanges between the Commission and Spain on the action plan must remain undisclosed at this point in order to create and maintain a climate of mutual trust between the Commission and the Spain.

Consequently, we conclude that, pursuant to Article 4(2), third indent of Regulation (EC) No 1049/2001, access cannot be granted to such information, as its disclosure would undermine the protection of investigations and audits.

Therefore, documents Nos 18, 24, 52, 57 and 59 are disclosed redacted of the parts covered by the above-mentioned exception.

4. Overriding public interest

The exceptions to the right of access provided for in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested document. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

5. Means of redress

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076B-1049 Bruxelles/Brussel

or by email to: sg-acc-doc@ec.europa.eu.

⁶ Judgment of 12 September 2007, *API v Commission*, T-36/04, EU:T:2007:258, paragraph 133.

Yours faithfully,

Sandra GALLINA

Enclosure: List of documents and documents.