



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE

Director-General

Brussels,  
JUST/A4/Ares(2014)

Mr Mariano Delgado

by e-mail to ask+request-946-873d2760@asktheeu.org

**Subject: Your application for access to information and documents – Ref GestDem  
No 2013/5638**

Dear Mr. Delgado,

We refer to your e-mail dated 2 November 2013 in which you make the following request for access to documents, registered under the above-mentioned reference number:

*"1. All documents showing the role of your Head of Cabinet Mr Martin Selmayr about Financial Irregularities by Mr Morten Kjaerum.*

*2. Email/s or any other format of the Communication of Morten Kjaerum to Martin Selmayr in relation to financial irregularities at DIHR.*

*3. a) Documents showing the steps or measures taken by Martin Selmayr – if he informed you as Vice –president of the EU, responsible for human rights, fundamental rights and also FRA agency.*

*b) Documents showing the steps or measures taken by Paul Nemitz – if he informed the relevant hierarchy at FRA (chairwoman Maija Sakslin, executive board or governing board, if perhaps he informed you or your Head of cabinet Martin Selmayr.*

*4. All communications sent by you and/or your Head of Cabinet to Anti-fraud Office in relation to DIHR situation (in the context that DIHR is contractor of FRA and EC).*

*5. All communication transmitted by Anti-fraud Office to European Commission (in any format: reports, Notes, phone notes, verbal notes, etc). Any Report by Anti-fraud Office drafted following any relevant investigation into financial irregularities at DIHR transported to FRA and European Commission.*

*6. All contracts awarded by European Commission to DIHR in last 12 years."*

Following your requests under points 1, 3 and 4, we have carried out a check in our archives and we could find no documents in relation to the request for access to documents that is being made.

Concerning your request under point 2, you will find in attachment copy of the correspondence of Mr Kjaerum to Mr Selmayr.

As for your request under point 5, this has been transmitted to the European Anti-Fraud Office and is therefore part of a separate answer.

Finally, in relation to your request to access “*All contracts awarded by European Commission to DIHR in last 12 years*”, the Commission has identified a number of contracts falling within the scope of your request. These are as follows:

VS/2004/0439, VS/2005/0412, VS/2006/0488, VC/2006/0074, VS/2002/0615, VS/2003/0496, VS/2007/0459, VS/2008/0389, VS/2009/0390, 2007/FRAC/AG/0019, 2008/FRAC/AG/1226, 2008/FRAC/AG/1241, 2009/FRAC/AG/1279, 2010/PROG/AG/0534, 2011/PROG/AG/1909, 2012/PROG/AG/3720, VS/2003/0131, 704/2000/C-99/0380D, B7-707/2000/C-1999/0380E, B7-701/2002/3080, B7-701/2002/3080 (extension) and VN/SPF/29 (123161).

Please note that having examined the documents in our possession and having consulted the third party who is their author (where applicable), I have come to the conclusion that all the aforesaid documents may be partially disclosed and you will find them attached to the cover-email of this letter. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 (1b) and (2) of this Regulation. The expunged parts of the documents contained the following information:

- The names and signatures of the members of the staff of the European Commission and DIHR and other individuals mentioned in the documents covered by your request, as well as their personal telephone numbers and electronic contact details;
- CVs of DIHR’s staff members or other persons involved;
- The bank details of DIHR.

Disclosure of these parts of the documents would undermine the protection of the following interests:

#### **I. 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 data<sup>1</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>2</sup>. According to Article 8(b) of this Regulation, personal

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<sup>1</sup> OJ L 8 of 12.1.2001, p. 1.

<sup>2</sup> 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.

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.

## **II. Commercial interests of a legal person, including intellectual property:**

Publishing financial data (including bank details) of a legal person may harm the commercial interests of the said legal person. Moreover, there is no overriding public interest justifying the disclosure of this information.

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.

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](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,



Françoise LE BAIL