



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels
SANTE.A.1/CF

**By registered letter
with acknowledgment of receipt¹:**

Mr Sergio PÉREZ SANGIAO
Calle Embajadores 308 5º b,
Madrid (28045),
España

Advance copy by email:
[ask+request-9913-
0841c125@asktheeu.org](mailto:ask+request-9913-0841c125@asktheeu.org)

Dear Mr PÉREZ SANGIAO,

1. SUBJECT: YOUR APPLICATIONS FOR ACCESS TO DOCUMENTS – GESTDEM 2021/5371

We refer to your email dated 02 September 2021 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

We also refer to our email of 10 September 2021 asking to clarify the scope of your request and to your reply received on the same date.

Lastly, we refer to our email of 01 October 2021 extending the time limit to respond to your request in accordance with Article 7(3) of Regulation (EC) No 1049/2001.

1. SCOPE OF YOUR REQUEST

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

« Toda la correspondencia (incluyendo informes, cartas oficiales, emails, bases de datos, documentos adjuntos, actas y memorandos de reuniones, además de cualquier otro tipo de documento público no mencionado en la enumeración anterior) enviada o recibida por la DG SANTE o cualquier organismo que de ella dependa con el Gobierno de España (especialmente con la Presidencia del Gobierno o con el Ministerio de Sanidad, pero también con cualquier otro departamento del Gobierno de España) desde el 1 de

¹ According to 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 epidemics, 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.

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

junio de 2021 hasta la actualidad sobre la pandemia de la covid-19 y sobre los temas relacionados con esta, como pueden ser la vacunación, los casos de coronavirus y fallecidos, el rastreo, el pasaporte o certificado covid, las restricciones implementadas o cualquier otro asunto ».

ENG :

«All correspondence (including reports, official letters, emails, databases, attached documents, minutes and meeting memoranda, as well as any other type of public document not mentioned in the previous list) sent or received by DG SANTE or any body that it depends on the Government of Spain (especially with the Presidency of the Government or with the Ministry of Health, but also with any other department of the Government of Spain) from June 1, 2021 to the present on the Covid-19 pandemic and on issues related to this, such as vaccination, coronavirus cases and deaths, tracking, passport or Covid certificate, implemented restrictions or any other matter».

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

« Sí, únicamente con las comunicaciones bilaterales de la DG SANTE y el Gobierno de España sería suficiente. Con respecto a los remitentes del Gobierno de España me refiero a cualquier organismo como puede ser el Ministerio de Sanidad o cualquier otro o el propio Gobierno o la presidencia. Del mismo modo, cualquier otro organismo o cargo del Gobierno español que haya podido tener comunicaciones con la DG SANTE ».

ENG:

«Yes, only bilateral communications from DG SANTE and the Government of Spain would be sufficient. With regard to the senders of the Government of Spain, I mean any body such as the Ministry of Health or any other or the Government itself or the presidency. Similarly, any other body or position of the Spanish Government that may have communicated with DG SANTE».

Please note that the European Commission recently created the European Health Emergency Preparedness and Response Authority (HERA) to prevent, detect and respond quickly to health emergencies.

As some of the files previously assigned to DG SANTE have been transferred to HERA, parts of your request have been attributed to it³. This reply relates only to the documents held by the Directorate-General for Health and Food safety. You will receive the reply from HERA in due course.

Please note that you may reuse public documents that have been produced by the European Commission or by public and private entities on its behalf in accordance with 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.

Part of the documents being disclosed to you were drawn up for internal use under the responsibility of the relevant services of the 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 documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

³ GESTDEM 2021/6279

Please also note that documents originating from third parties are being disclosed to you based on Regulation (EC) No 1049/2001. 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.

2. IDENTIFICATION AND ASSESSMENT OF DOCUMENTS

We have identified 26 documents that fall within 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.

Having examined the documents under the provisions of Regulation (EC) No 1049/2001, we have come to the conclusion, which is further explained in sections 3 and 4 of this letter, that:

- Full access can be granted to document 22.1;
- partial access can be granted to documents 1, 1.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13.1, 14, 14.1, 15, 16, 18, 20, 21, 22, 23 and 24, as their full disclosure is prevented by exceptions to the right of access laid down in Article 4 of the Regulation;
- no access can be granted to documents 16.1, 17 and 19 as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of the Regulation.

3. Reasons for partial disclosure

a. Protection of the privacy and integrity of individuals- Article 4(1)(b) of Regulation (EC) No 1049/2001

Full disclosure of documents No 1, 1.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13.1, 14, 14.1, 15, 16, 18, 20, 21, 22, 23 and 24 is prevented by the exception concerning the protection of privacy and the integrity of the individual, pursuant to 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;
- 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 Regulation 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, 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.

4. Reasons for refusal

a. Protection of the privacy and integrity of individuals - Article 4(1)(b) of Regulation (EC) No 1049/2001

Document 19 originates from a Member State; the originator of the document, consulted in accordance with Article 4(4) of the Regulation, has objected to the disclosure arguing that the information included in the document could directly and indirectly reveal the identity of an individual.

Having examined document No. 19 under the provisions of the Regulation and considered the opinion of the originator Member State, we regret to inform you that access cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4(1)(b) of the Regulation regarding the protection of privacy and integrity of individuals, because it contains 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;
- other information relating to an identified or identifiable natural person.

Article 9(1)(b) of the Data Protection Regulation 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 document No. 19, 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.

b. Protection of the institution's decision making process - Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001

Documents 16.1 and 17 were exchanged between the Commission and the Spanish authorities and contain opinions for internal use as part of deliberations and preliminary consultations within the Commission; their disclosure would seriously undermine the institution's decision-making process. Indeed, the possibility of expressing views independently within the institution is key to allow meaningful internal discussions and the smooth running of its decision-making process.

Therefore, following an examination of documents 16.1 and 17 under the provisions of the Regulation I regret to inform you that access to the above documents cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4(3), second subparagraph, of the Regulation regarding the protection of the institution's decision making process.

We have considered whether partial access can be granted to the documents in accordance with Article 4(6) of the Regulation. However, in accordance with the assessment made above, documents 19, 16.1 and 17 are entirely covered by the exceptions laid down Article 4 of the Regulation and therefore no access can be granted.

5. Overriding public interests

The exceptions to the right of access provided for in Article 4(2) and (3) 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.

6. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position, also in relation to this specific reply.

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-acc-doc@ec.europa.eu

Yours faithfully,

Sandra GALLINA
Director General

Enclosure: List of documents; documents.