



EUROPEAN COMMISSION
DG Employment, Social Affairs and Inclusion

The Director General

Brussels,
EMPL/01/VG

Mr Dohle
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Dear Sir,

Subject: Your application for access to documents – Ref GestDem No 2014/419

I refer to your e-mail dated 23 January 2014 in which you make a request for access to documents registered under the above number, in accordance with Regulation 1049/2001 on access to documents.

I also refer to the holding replies of 13 February and 7 March 2014 extending the time-limit to 24 March 2014.

You wish to receive :

"all documents related to EU funding for LUMOS, including project proposals which were and those who were not awarded with a contract."

1. DOCUMENTS TO BE DISCLOSED

1- Regarding the documents relating to project proposals which were awarded with a contract, further extensive research has taken place within DG EMPL and I am pleased to provide you with the following documents:

- the application for the VP/2010/007 call registered on 08/09/2010,
- the summary quantitative information linked to the above application registered on 08/09/2010,
- a notification letter from the Commission services dated 13/07/2011,
- an exchange of e-mails between DG EMPL and LUMOS with the final registration date of 25/07/2011,
- a notification letter from the Commission services dated 17/08/2011,
- a check-list for the first pre-financing registered on 31/08/2011,

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- a document about the first steering Committee meeting of 24 November 2011,
- an exchange of e-mails between Lumos and the Commission services registered on 22/03/2012,
- a letter from LUMOS to the Commission services registered on 30/03/2012,
- an exchange of e-mails between Lumos and the Commission services registered on 02/05/2012,
- a notification letter from the Commission services dated 03/05/2012,
- a notification letter from the Commission services dated 31/05/2012,
- a request for payment from LUMOS registered on 22/10/2012,
- an interim report sent by LUMOS registered on 22/10/2012,
- a payment order S12.2797653,
- an exchange of e-mails registered on 21/02/2013,
- a request for extension from Lumos registered on 28/02/2013,
- a notification letter from the Commission services dated 16/05/2013,
- a slides presentation entitled "unique flowers...just like us",
- a slides presentation for a steering Committee in the Czech Republic,
- a slides presentation for a meeting in Sofia on 18-20 September 2012,
- a slides presentation from LUMOS for a meeting in Sofia on 18-20 September 2012,
- a request for payment from LUMOS registered on 23/09/2013, enclosing a final technical implementation report, a final financial statement, a summary statement,
- an assessment of the final technical implementation report of 24/09/2013
- an e-mail from a Commission official registered on 11/10/2013 and the reply of 15/10/2013,
- the payment order S12.2922912,
- the draft publication "Turning words into action" dated 18 September 2013.

2- Regarding project proposals which were not awarded with a contract, I am pleased to provide you with the following documents:

- an application form VP/2010/007/0989 registered on 08/09/2010
- a letter from the Commission services dated 06/06/2011,

- a cover letter enclosing an application form registered on 15/02/2013,
- a letter from the Commission services dated 08/08/2013.

2. PROTECTION OF THE PRIVACY AND INTEGRITY OF INDIVIDUALS

Article 4(1)(b) of the Regulation provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

According to this legislation¹, "*'personal data' shall mean any information relating to an identified or identifiable natural person (...)*". This term undoubtedly covers the name, e-mail address as well as any information relating to the citizen capable of identifying him or her.

According to Article 2(b) of Regulation 45/2001, '*processing of personal data*' includes, amongst others, "*disclosure by transmission, dissemination or otherwise making available*".

You will have seen that some documents originate from LUMOS. My services asked their opinion about the release of their documents, in view of the exceptions of Article 4 §1 and §2 of Regulation No 1049/2001 on public access to documents.

LUMOS has agreed to the release of all documents but expressed its concerns about the release of names of officials and expressed the wish to see their privacy respected. Such a request is compatible with the provision of Article 4§1 (b) of Regulation 1049/2001 which makes an exception to the release of documents which would undermine the protection of the privacy of individuals in accordance with Regulation No 1045/2001 on the protection of personal data.

Therefore, names and personal data have there been expunged of the documents provided.

Moreover, and for the same reason, I am not able to provide you with:

- the list of company officers and 5 CVs which were enclosed with the application form VP/2010/007/ registered on 08/09/2010,
- the list of participants to the three steering Committees or the list of participants in the Transnational action planning workshop of 18-20 September 2012. These are lists of surnames, names, with the job, the name of the organisation and the signature of the person concerned, all these data indeed being personal,
- the list of company officers and 5 CVs which were enclosed with the application form VP/2010/007/0989 registered on 08/09/2010,

¹ Article 2(a) of Regulation (EC) No 45/2001 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, OJ L 8 of 12.1.2001, p. 1

In the same vein, banking details regarding LUMOS have been removed.

3. PROTECTION OF THE COMMISSION'S DECISION-MAKING PROCESS

Article 4(3) second paragraph of Regulation (EC) 1049/2001 provides that "[a]ccess to a document containing opinions for internal use as part of deliberations and preliminary consultation within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process (...)".

On that basis, I cannot grant access to the evaluation committee reports drawn up by the Commission services for the above applications. These documents contain information and opinions for internal use as part of a deliberation in view of a decision within the Commission. Despite the fact that the Commission has taken decisions on those three applications, disclosure of these internal documents would put in the public domain options and strategies that the Commission may follow on ongoing and future evaluation of applications with the consequences that it would be more difficult for it to conduct evaluations : members of the evaluation committees are meant to evaluate other applications and the release of the evaluations reports might imply that other candidates (in particular those that were not chosen) contact the members and put pressure on them.

Moreover, the documents concerned contain opinions of officials acting in their professional capacity. As any other public administration, the Commission needs a certain 'space to think' with a view to protecting its decision-making process. Commission official's freedom to express their views could be curtailed if, when expressing opinions, they would have to take into account that all individual opinions and assessments would be disclosed to the public upon request once a decision has been taken.

4. OVERRIDING PUBLIC INTEREST

The exceptions laid down in Article 4(3) first and second subparagraphs of the Regulation apply "(...) *unless there is an overriding public interest in disclosure*". To apply, such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure.

While you may have personal interests to seek access to the documents, I would like to point out that the purpose of Regulation (EC) 1049/2001 is to make documents accessible to the public. It is not intended to determine the conditions under which certain persons can obtain special access to documents that cannot be disclosed to the general public. Indeed, documents disclosed under this regulation come into the public domain and will, subsequently, be made public by the Commission, either through its public register or following subsequent requests.

Therefore, the particular interest which may be asserted by a requesting party in obtaining access to a document concerning him or her personally cannot be taken into account.

I see no elements capable of showing the existence of an overriding public interest that would outweigh the need to protect the privacy and integrity of individuals and the Commission's decision-making process, as explained above.

Therefore, I do not consider that the Commission's internal documents concerned by your request are of such a nature that it would justify disregarding the harm that would be caused to the interests protected by the invoked exceptions.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this position.

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-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Michel Servoz

