



EUROPEAN COMMISSION

Directorate-General for Trade

The Director General

Brussels, **31 MAI 2016**
trade.a.3.dir(2016)2316150

By registered letter with acknowledgment of receipt

Mr Klaus Zinser
Hauptstraße 8 D
88427 Bad Schussenried
Germany

Advance copy by email:
ask+request-2233-612da30e@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2015/4935

Dear Mr Zinser,

I refer to your e-mail of 15 September 2015 in which you make a request for access to documents under Regulation (EC) No 1049/2001 ("Regulation 1049/2001"),¹ registered on the same date under the above mentioned reference number. I refer also to your earlier e-mail of 25 August 2015 addressed to the Secretariat General of the Commission, which was initially handled as a request for information.

I would like to apologize for the delay in replying to your request which is due to a high volume of requests received in the last months.

1. SCOPE OF YOUR REQUEST

I understand from your request that you would like to have access to documents concerning the contractual relationship between the EU and the company Coffey International Development Limited ("Coffey") during the period 2005-2015, in particular with regard to the tenders lost or won by the company, the historic and ongoing contracts between Coffey and the EU, the payments made to Coffey, the names of the employees of the organisation

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

that worked for the EU contracts and the names of the persons, project managers from the EU that guided them.

The Secretariat General has attributed your request to several Directorates General of the Commission, including DG Trade. This reply contains the response of DG Trade to the part of your request that concerns DG Trade's contractual relationship with Coffey.

Further to your request, we have identified the following documents:

- An e-mail exchange dated 25 October to 13 November 2013 containing the request for services to Coffey (Ares(2016)1594168) ("**document 1**");
- A document registered under the reference Ares(2014)7707 ("**document 2**") containing:
 - the specific contract and its cover letter;
 - the proposal of the company on the evaluation study;
 - the curriculum vitae of the experts in charge of the study;
 - the contact details form of the specific contract;
 - the evaluation report.
- A letter from DG Trade to Coffey dated 15 July 2014, containing a request for amendments (Ares(2016)1877477) ("**document 3**");
- Coffey's final report entitled "Evaluation of DG TRADE's Civil Society Dialogue in order to assess its effectiveness, efficiency and relevance", dated 28 July 2014 ("**document 4**").

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law,² when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach: first, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception; second, it must examine whether disclosure of the parts of the document in question pose a "*reasonably foreseeable and not purely hypothetical*" risk of undermining the protection of the interest covered by the exception; third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Articles 4.2 and 4.3 of

² Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

Regulation 1049/2001, the institution is required *"to ascertain whether there is any overriding public interest justifying disclosure"*.³

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents,⁴ *"the exceptions to that right [...] must be interpreted and applied strictly"*.⁵

Having carefully examined the documents identified above in light of the applicable legal framework, I am pleased to inform you that **documents 1 to 3 can be partially disclosed**. Names and other personal data have been redacted pursuant to Article 4.1(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 ("Regulation 45/2001").⁶ However, names of the senior management of the Commission starting from the Director level have been disclosed. Some parts have been deleted in document 3 under the exception laid down in Article 4.2 first indent of Regulation 1049/2001.

Document 4 is a public document available on the website of DG Trade at the following link: http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf.

2.1 Context of the documents

In the context of its 2014 evaluation plan, DG Trade carried out an evaluation of its civil Society Dialogue (CSD) in order to assess the relevance, effectiveness and efficiency of the process, and identify ways to improve transparency and communication.

The evaluation was commissioned to an external contractor, The Evaluation Partnership (part of Coffey) that was selected by DG RTD through a public tendering procedure within DG RTD's Framework Contract for impact assessments. The documents covered by this request were all drawn up or received in the course of this process. The evaluation lasted 8 months, from December 2013 to July 2014.

2.2 Protection of the privacy and the integrity of the individual

Article 4.1 (b) of Regulation 1049/2001 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."*

³ *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52 and 64.

⁴ See Regulation (EC) No 1049/2001, recital (4).

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

⁶ Regulation (EC) No 45/2001 of the European Parliament and the 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, OJ L 8, 12.1.2001, p. 1.

The Court of Justice has ruled that *"where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data" "the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety"*.⁷

Article 2(a) of Regulation 45/2001 provides that *"personal data" shall mean any information relating to an identified or identifiable natural person [...]*". The Court of Justice has confirmed that *"there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'"*⁸ and that *"surnames and forenames may be regarded as personal data"*,⁹ including names of the staff of the institutions.¹⁰

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish *"the necessity of having the data transferred"* and additionally *"if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced"*. The Court of Justice has clarified that *"it is for the person applying for access to establish the necessity of transferring that data"*.¹¹

Documents 1 to 3 contain names, phone and office numbers, job titles, curricula, signatures and other personal information that allows the identification of natural persons.

I note that that you have not established the necessity of having these personal data transferred to you. Moreover, it cannot be assumed, on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. In addition, public disclosure of the signatures of staff would harm their privacy and expose them to the risk of forgery of their signature. Therefore, these personal data shall remain undisclosed in order to ensure the protection of the privacy and integrity of the individuals concerned.

If you wish to receive the removed 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.

⁷ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64.

⁸ Judgment in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁹ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

¹⁰ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

¹¹ Judgment in C-127/13 P *Guido Strack v Commission*, EU:C:2014:2250, paragraph 107 and judgment in C-28/08 P *Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77.

Although for the reasons provided above we cannot disclose the names of individuals employed by Coffey and contracted out by the Commission, we can confirm that none of the consultants working on this project had been formerly employed by DG Trade.¹²

2.3 Protection of commercial interests

Article 4.2 first indent, of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] commercial interests of a natural or legal person, including intellectual property [...] unless there is an overriding public interest in disclosure”.

Certain withheld parts of document 2 contain sensitive commercial information of the contractor concerning, *inter alia*, its working methodologies, know-how, specific pricing and management of resources working on the project, as well as information describing the work and involvement of the contractor in previous projects.

Disclosure of such information would undermine in a reasonably foreseeable manner the protection of the expertise, strategy and creativity of the contractor, thus undermining its commercial strength. Moreover, such a disclosure may give the contractor's competitors an unfair advantage as they could use this information in future similar procedures when competing with the contractor in calls for tenders and proposals. There is also a risk that the disclosure of specific prices could foster the upward alignment of prices thereby undermining the commercial interest of the Commission and the sound expenditure of public funds.

3. OVERRIDING PUBLIC INTEREST

The exception laid down in Articles 4.2 of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Accordingly, we have also considered whether the risks attached to the release of the withheld documents or withheld parts of these documents are outweighed by the public interest in accessing the requested documents. We do not believe this to be the case.

Please note that you may reuse the documents disclosed free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message. The Commission does not assume liability stemming from the reuse.

¹² This information is provided under the Code of Good Administrative Behaviour, and not under Regulation 1049/2001.

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

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 sincerely,


Jean-Luc DEMARTY

Encl.: documents (partially) disclosed