



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

The Director-General

06. 07. 2016

Brussels,
ENV.E.3/CB/MV/(2016) 3805037

Mr. Andreas Pavlou
Calle Cava de San Miguel 8, 4c
ES-28005 MADRID
[ask+request-3035-
423062b4@asktheeu.org](mailto:ask+request-3035-423062b4@asktheeu.org)

Subject: Your application for access to documents – Ref GestDem 2016/3299

Dear Mr Pavlou,

I refer to your e-mail of 13 June 2016 in which you make a request for access to documents, now registered on the same date under the above mentioned reference number.

In your application you request access to documents such as reports, evidence, and emails between the Cypriot authorities and the European Commission with regards Petitions 1540/2014, 1541/2014, 1542/2014, 1543/2014, 1544/2014, 1644/2014, 1662/2014, 1665/2014, 1666/2014, 1667/2014, 1668/2014, 1829/2014 and 1830/2014.

Having examined your request in compliance with the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and Regulation (EC) 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, I regret to inform you that as the documents requested are related to an on-going assessment of several complaints that have been submitted to the European Commission regarding a possible infringement of EU law, they are covered by one of the exceptions provided for by the policy relating to access to documents and that they cannot be made available to you. Please note that in carrying out this assessment, I have dealt with your request as one made by you in your private capacity as an interested individual.

The exception which applies to the documents you have requested is that under Article 4(2) third indent of Regulation 1049/2001 which lays down that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

In the matter of investigations of alleged infringements, sincere co-operation and a climate of mutual confidence between the Commission and the Member State concerned are required to allow both parties to engage in a process of negotiation and compromise with the search for a settlement of a dispute without bringing it before the Court of Justice. The safeguarding of this objective warrants the refusal of access to the document you requested.

This has been confirmed by the jurisprudence of the Court of First Instance. In its judgement of 11 December 2001 in the case T-191/99 the Court held that "*the Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to an infringement procedure. This requirement of confidentiality remains even*

after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that the discussions between the Commission and the Member State in question regarding the latter's voluntary compliance with the Treaty requirements may continue during the court proceedings and up to the delivery of the judgement of the Court of Justice. The preservation of that objective, namely an amicable resolution of the dispute between the Commission and the Member State concerned before the Court of Justice has delivered judgment, justifies refusal of access to the letters of formal notice and reasoned opinions drawn up in connection with the Article 226 EC proceedings on the ground of protection of the public interest relating to inspections, investigations and court proceedings".

In addition, in its judgement of 14 November 2013 in joint cases C-514/11 P and C-605/11 P (paragraph 63), the Court held that: *"the disclosure of the documents concerning an infringement procedure during its pre-litigation stage would, in addition, be likely to change the nature and progress of that procedure, given that, in those circumstances, it could prove even more difficult to begin a process of negotiation and to reach an agreement between the Commission and the Member State concerned putting an end to the infringement alleged, in order to enable European Union law to be respected and to avoid legal proceedings".*

Having carefully examined your request in the light of Article 4(2) of Regulation 1049/2001 and Article 6(1) of Regulation 1367/2006, I have been unable to identify in this particular case the existence of an overriding public interest which could justify the disclosure of the requested documents. I also note that you have not put forward any arguments demonstrating the existence of a public interest capable of overriding the public interest protected by Article 4(2) of Regulation No 1049/2001.

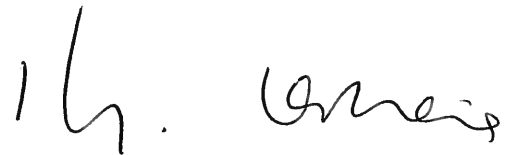
I have also examined the possibility of granting partial access to the requested documents, in accordance with Article 4(6) of Regulation 1049/2001. However, partial access is not possible considering that the documents concerned are at the stage covered in their entirety by the exception under Article 4 (2), third indent.

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 Brussels

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

Yours sincerely,



Daniel Calleja