



Directorate B: Investigations II
Director

Ms. Kata KARÁTH
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Brussels,
olaf.c.4(2018)17491

Subject: Your application for public access to documents

Case No OF/2015/1028/B4

Dear Ms Karáth,

We refer to your request of 6 June 2018, registered in OLAF under OCM(2018)13221, on 13 June 2018, for disclosure of documents which contain the following information:

- Report on cross-border investigation OLAF concluded in 2017
- Allegations related to the potential misuse of EU funds in 31 research and development projects in Hungary; including the names of the two research centres that had artificially set up regional offices in order to be eligible for regional EU-funded projects.
- Letter on the case and/or OLAF recommendation to the Hungarian judicial authorities

OLAF interprets it as request for public access to OLAF's final report and the judicial recommendation to the competent Hungarian authorities of case OF/2015/1028/B4 under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Having carefully considered all circumstances, OLAF regrets to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of public access laid down in Article 4 of Regulation (EC) No 1049/2001 based on the following considerations.

The requested documents are part of OLAF's case file OF/2015/1028/B4.

The documents are covered by the exception under Article 4(2), third indent of Regulation No 1049/2001, which stipulates that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, as well as the protection of privacy and the integrity of the individual as referred to Article 4(1)(b) of the Regulation and the protection of the decision-making process as referred to in Article 4(3) of the Regulation.

The General Court recognised in recent case-law¹ a general presumption of non-accessibility for documents in OLAF case files. It considers that the disclosure to the public under Regulation (EC) No 1049/2001 of documents related to OLAF investigations could fundamentally undermine the objectives of the investigative activities, as well as the decision making process, both now and in the future. This implies that the disclosure of the requested documents can be refused without carrying out a concrete, individual examination of that document in order to assess whether its disclosure may seriously undermine the protected interest, and that no partial access needs to be considered.

The presumption is based on the consideration that, in order to determine the scope of Regulation (EC) No 1049/2001, account must be taken of relevant sectoral rules governing the administrative procedure under which the documents requested under Regulation 1049/2001 were gathered², in the case at hand, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). Article 10 of that Regulation provides for the obligation of confidentiality with regard to all information gathered during investigations.

The protection of confidentiality of information in the legal framework applicable to OLAF investigations aims, on the one hand, at safeguarding the successful conduct of an investigation in the public interest and, on the other hand, at safeguarding the legitimate interests of the individuals, so that the information they provide is used only for the purposes of the investigation. The protection of confidentiality extends to closed cases³.

In addition, having regard to the nature of the information processed in the context of OLAF investigations, the publication of the sensitive information contained in the OLAF case file is likely to harm the protection of personal data regardless of whether an investigation is pending or closed. Furthermore, public disclosure of selection or investigation documents could negatively affect OLAF's future cooperation with national administrative or judicial authorities and vice versa in the context of its investigations.⁴

In view of the foregoing, the documents in OLAF's investigation files fall under the presumption of non-accessibility as documents containing information collected during an OLAF investigation and subject to confidentiality and professional secrecy rules. Consequently, the documents requested are exempt, in principle and in full, from disclosure to the public unless the applicant demonstrates that the presumption is not applicable because an overriding public interest justifies the disclosure of the requested documents.⁵

Overriding public interest in disclosure

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. For such an interest to exist, it first has to be a public interest, and second it has to outweigh the interest protected by the exception to the right of access.

OLAF understands the importance of transparency of the functioning of the EU institutions and particularly of the European Commission. However, given the nature of the anti-fraud investigations conducted by OLAF, and the confidential nature of information collected, in particular in relation to sources of information, content of case files and reputation of natural persons, OLAF considers there are no elements that would show the existence of an overriding public interest in disclosing the requested documents.

1 Judgment of the General Court of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, p. 162.

2 Judgment Court of Justice of 28 June 2012, *Agrofert Holding v Commission*, C-477/10 P, EU:C:2012:394, p. 50 to 59; judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, p. 55 ff.

3 Judgment of the General Court of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, p. 150 to 164.

4 Judgment of the General Court of 12 May 2015, *UAHE v Commission*, T-623/13, EU:T:2015:268, p. 72 to 79.

5 Judgment of the General Court of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, p. 91.

Given the preliminary nature of the anti-fraud investigations conducted by OLAF, OLAF considers that the interest in maintaining the confidential nature of its case documents prevails. In this context it should be borne in mind that whatever the outcome of OLAF's investigation, according to well established case-law the conclusions of an OLAF final report have no effects likely to adversely affect the legal position of the person concerned.⁶ OLAF has no competence to conduct or even initiate disciplinary, administrative or judicial proceedings.

Hence, the interests of competent authorities who follow up on OLAF's conclusions in a serene manner as well as the interests of persons involved in the investigation, such as sources of information, in preserving confidentiality prevail. In particular, with regard to the reputation of persons concerned, the Office is bound to uphold the presumption of innocence, in accordance with the cited relevant case law and legislation.

Confirmatory application

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting OLAF to review this position. Pursuant to Article 4 of Commission Decision 2001/937/EC, ECSC, Euratom, such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director General of OLAF.

Any confirmatory application to OLAF should be sent to the following address:

Mr N. J. ILETT
Director General (acting)
European Anti-Fraud Office (OLAF)
European Commission
B-1049 BRUXELLES
BELGIUM

Your attention is drawn to the privacy statement below.

Yours sincerely,

Signed Electronically

⁶ Order of the Court of First Instance of 18 December 2003, *Gómez-Reino v Commission*, T-215/02, ECLI:EU:T:2003:352, p. 65.

Privacy statement

Pursuant to Article 11 of Regulation (EC) 45/2001 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, please be informed that your personal data are stored in OLAF's electronic and paper files concerning this matter for the purposes of ensuring conformity with the requirements of Regulation 1049/2001.

The categories of your personal data being processed are identification and contact data (name, address, e-mail, telephone, fax) and any other personal data provided by or to you in relation to your request. Officials within OLAF and other Commission services responsible for dealing with requests for access to documents have access to your personal data.

All documentation and communications concerning OLAF investigations are stored in the relevant OLAF investigation files and are retained for a maximum of 15 years. Thus personal data contained in requests for public access to documents concerning OLAF investigations are retained for a maximum of 15 years.

You have the right to access those data and to correct and complete them. On request and within three months from its receipt, you may obtain information concerning your personal data which we have processed. Any such request should be addressed to the Controller (OLAF-FMB-Data-Protection@ec.europa.eu).

You may lodge a complaint concerning the processing of your personal data with the European Data Protection Supervisor (edps@edps.europa.eu) at any time.

The complete privacy statements for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud.