



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels, **21 NOV. 2013**
SG.B5/JMLC/psc – sg.dsg1.b.5(2013) 3743119

Mr Aris Kolimatsis

per email only:
ask+request-593-daadaaa2@asktheeu.org

Subject: Confirmatory application for access to documents – Gestdem 2013/3370

Dear Mr Kolimatsis,

I am writing in reference to your email of 30 August 2013, registered on 13 September 2013. In your e-mail you made a confirmatory application in which you require, in accordance with Article 7(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter Regulation 1049/2001), a review of the position taken by the Directorate-General for Research and Innovation (hereafter DG RTD) on 8 August 2013, in reply to your initial application of 25 June 2013 regarding the request of 19 documents. I also refer to the holding replies dated 4 and 25 October 2013.

In your application you made a confirmatory request for points 1, 3, 5 7, 9, 13, 14 a) and c), 15 17, 18, and 19 of your initial request.

In your initial application you requested the following documents:

- "1. The notes/requests of DG RTD to the Legal Services, which were drafted from 1/7/2000 to 31/12/2004, seeking the advice and opinion of the Legal Services about the effects of entry into force of Regulation No 45/2001 to the FP5 and FP6 programmes, including, among others, proposals for legislative acts, Commission Decisions, and the necessary for the FP6 model contract removal of all incompatible provisions of the FP5 model contract with the Regulation (e.g contractual requirement for keeping certified time-sheets, e.g. article 23(1) of Annex II FP5 model contract). Annexes and appendices to the notes/requests are included in the scope of the request.*
- 2. The notes/opinions of the Legal Services in response to the DG RTD notes/request under (1) above.*
- 3. The notes/requests of DG RTD to the Legal Services, which were drafted from 1/1/2005 to 31/12/2008, seeking the advice and opinion of the Legal Services about every different draft version of the FP7 model grant agreement, as well as those notes/requests regarding the final version of that agreement which lead to the Commission Decision C(2007) 1509/1.*

¹ OJ L145, 31.05.2001 p.43

4. The notes/opinions of the Legal Services in response to the DG RTD notes/request under (3) above.
5. The documents of DG RTD with an analysis and reasoning about article 13 of Annex II of the FP7 model grant agreement 'Processing of personal data' (version published in Cordis in 2007).
6. The documents of the Legal Services with an analysis and reasoning about article 13 of Annex II of the FP7 model grant agreement 'Processing of personal data' (version published in Cordis in 2007).
7. The documents of DG RTD with an analysis and reasoning about article 30 'Liquidated Damages' of Annex II of the FP6 model contract. The request concerns especially the formula of the first subparagraph of the article and the absence of an upper ceiling in that formula, for instance an upper ceiling of 20% of the unduly paid amount, but instead allowing the penalty to reach a possible 100% of the unduly paid amount.
8. The documents of the Legal Services with an analysis and reasoning about article 30 'Liquidated Damages' of Annex II of the FP6 model contract. The request concerns especially the formula of the first subparagraph and the absence of an upper ceiling in that formula.
9. The duly signed day note concerning the Decision C(2003) 799/2, as stipulated by the Commission's rules of procedure and the rules giving effect to the former rules.
10. The duly signed day note concerning the Decision C(2007) 1509/1, as stipulated by the Commission's rules of procedure and the rules giving effect to the former rules.
11. The notes/requests of DG RTD to the Legal Services requesting their advice and legal opinion for (a) 'Guide to Financial Issues relating to Indirect Actions of the Sixth Framework Programmes', and (b) 'Guide to Financial Issues relating to FP7 Indirect Actions', all versions since 2007.
12. The notes/opinions of the Legal Services in response to the DG RTD notes/request under (11) above.
13. Referring to the second sub-paragraph of article 12(1) of Regulation No 2321/2002 'The Commission, after conferring with interested parties from the Member States and the associated States, will prepare a model contract to facilitate the drawing up of contracts':
 - a. The document(s) setting out the 'identification' of the 'interested parties'.
 - b. The initial invitations to the 'interested parties' inviting them to participate in the 'consultations.'
 - c. The invitations to meetings, agendas and meeting minutes for every single meeting organised for consultation purposes with the 'interested parties'.
 - d. Every single document the Commission services made available, including those dispatched via email, to the 'interested parties'. This particular request specifically includes the successive draft versions of the FP6 model contract.
14. Referring to article 19(8) of Regulation No 1906/2006 'The Commission shall, in close cooperation with Member States, establish a model grant agreement in accordance with this Regulation. If a significant modification of the model grant agreement proves necessary, the Commission shall, in close cooperation with Member States, revise it as appropriate':
 - a. The initial invitations to the Member States inviting them to participate in the 'consultations.'
 - b. The invitations to meetings, agendas and meeting minutes for every single meeting organised for consultation purposes with the Member States.
 - c. Every single document the Commission services made available, including those dispatched via email, to the Member States. This particular request specifically includes the successive draft versions of the FP7 model grant agreement.

15. Referring to the provision of article 16(3) of Regulation No 1906/2006 'The Commission shall adopt and publish rules governing the procedure for the submission of proposals, as well as the related evaluation, selection and award procedures', the notes/requests of DG RTD to the Legal Services seeking the advice and opinion of the Legal Services about the stipulations of FP7 Guides to Applicants requiring applicants to include in their proposals short CVs (referred to as 'profiles') of the key researchers (henceforth 'CV stipulation').

16. The notes/opinions of the Legal Services in response to the DG RTD notes/request under (15) above.

17. Referring to the 'CV stipulation', every single document drawn up by the DG RTD Data Protection Coordinator about that stipulation.

18. Referring to the 'CV stipulation', every single document drawn up by the data controller of the prior notification DPO-978 about that stipulation.

19. The internal notes of the DG RTD Unit(s) dealing with the 'legal matters' of FP5, FP6 and FP7 programmes, as the case may be regarding such Unit(s), setting out some kind of a 'legal analysis' of the subject-matter of requests under (1), (3), (5), (7), (9), (11), (13) - (15), and (17) - (19)."

First of all, your request number 9 cannot be treated as a confirmatory but as an initial one. Indeed, as suggested by DG RTD in its initial reply, this is up to the Secretariat general of the Commission to provide for an initial reply to this point. Therefore, your request number 9 has been registered as an initial and will be treated as such by DG RTD.

Regarding the remaining documents, after verification, I confirm that the requested documents are not held by DG RTD and they do not exist.

Under these circumstances, I consider that your confirmatory application is devoid of purpose. Indeed, a confirmatory application is a request to review a position by which access to one or more documents has been fully or partially denied. This is obviously not the case with regard to your request.

Finally, I draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,



Catherine Day