



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels,
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Mr Aris Kolimatsis

per email only:
ask+request-596-be25232d@asktheeu.org

Subject: Confirmatory application for access to documents – Gestdem 2013/3488

Dear Mr Kolimatsis,

I am writing in reference to your email of 26 August 2013, registered on 13 September 2013 and your last e-mail of 27 September 2013. In the first mentioned 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 positions taken by the Directorate-General for Mobility and Transports (hereafter DG MOVE) on 23 July 2013 and 28 October 2013, in reply to your initial applications of 25 June 2013 and 5 November 2013 regarding the request for 6 documents.

I also refer to the holding replies dated 4 October 2013, 25 October 2013 and 27 November 2013.

In your application you request the following documents:

- "1. The documents drawn up by the DPO-3420.1 data controller.*
- 2. The documents drawn up by the DG MOVE and DG ENER Data Protection Coordinator about the processing operations of DPO-3420.1*
- 3. The documents drawn up by the European Commission Data Protection Officer about the processing operations of DPO-3420.1, including those he dispatched to the EDPS.*
- 4. The EDPS document with his conclusion that 'Article 27 is not applicable'*
- 5. The DG MOVE and DG ENER prior notification of article 25 of Regulation No 45/2001 concerning the DG ENTR external financial audits prior to 8/9/2011.*
- 6. DG ENER and DG MOVE drawn up documents bringing to the attention of the Members of the Commission responsible for them:*

¹ OJ L145, 31.05.2001 p.43

a. That DPO-3420.1 essentially states that no subcontractors had been engaged in DG ENER and DG MOVE external financial audits of FP6 contractors and FP7 beneficiaries, which appears to be in total contradiction with reality. For instance, page 35 of the 2011 DG ENER and DG MOVE Annual Report, table 5 states that DG ENER and DG MOVE paid in 2010 – 2011 for 'Cost of outsourced auditing (in €)' nearly 3 million Euro.

b. That it is not immediately obvious that the particular passage of the statement of assurance in page 57 of the said annual report 'Confirm that I am not aware of anything not reported here which could harm the interests of the institution' is fully in line with what a diligent public administration ought to have ensured in terms of legality. This is even more the case when the matter solely concerns compliance with article TFEU 16(1) and Regulation No 45/2001."

I note that documents corresponding to your points 1 and 4 have already been provided by DG Move in its first reply.

Regarding the remaining documents – meaning number 3, 5 and 6 (a and b), after verification, I confirm that the requested documents are not held by DG MOVE. Furthermore, the document you mention in your request number 2 does 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,

A handwritten signature in black ink, appearing to read 'Catherine Day', with a stylized flourish at the end.

Catherine Day