



## EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

The Director-General

Brussels,  
DG CONNECT/RM/AS/pef

Mr. Raptis

Email: [ask+request-607-  
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**Subject: Your application for access to documents – Ref GestDem No 2013/3521 under Regulation 1049/2011 regarding public access to European Parliament, Council and Commission documents**

Dear Sir,

We refer to your email dated 28 June 2013 wherein you make a request for access to documents, registered on 03 July 2013 under the above mentioned reference number.

We refer to the letter of 22 July 2013 wherein we proposed that your application would be handled in several successive stages, and to your reply of 22 July 2013, accepting the Commission's proposal, wherein you indicated the priority order for disclosure of the documents subject to your request for access to documents.

**I. AUDITS ANNOUNCED IN APRIL 2009 TO FP6 CONTRACTORS IN GREECE AND CONDUCTED BY EXTERNAL CONTRACTORS/AUDITORS.**

*The requested documents concern external financial audits, for which the following two conditions simultaneously hold:*

*A) DG INFSO announced to the FP6 contractors-auditees the audit by a letter dated in the period 1/1/2009 to 30/4/2009.*

*B) They were conducted in Greece by a member of the Polaris Group of Auditors, presumably as subcontractors of Bloemer Accountants and Reviseurs that had signed a framework contract with DG RTD.*

*As further clarified in your email of 22 July 2013 the request under this point relates to audits performed on FP6 ICT for Health projects.*

**1. Every single time-sheet in the possession of DG INFSO.**

We have identified document(s) corresponding to the criteria set out in your request.

The document(s) requested relate to cases for which an investigation and a court case are respectively ongoing.

We further draw your attention to the fact that for one of the beneficiaries falling under the scope of your request and for which, however, there is a pending litigation before the General court the Commission is not in the possession of timesheets. This is due to the fact that for audits performed by an external audit firm on behalf of the Commission, the latter usually does not hold all the documents collected by the auditors, including timesheets.

Please note that in accordance with Article 4(2) second indent of Regulation 1049/2001 regarding public access to documents "*the institution shall refuse access to a document where disclosure would undermine the protection of court proceedings and legal advice.*"

In addition, pursuant to Article 4(2) third indent "*the institution shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits.*"

This exception is applicable to the remaining part of the documents that have been identified by us, falling under the scope of your request.

We have examined to which extent exceptions laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be of a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2).

We consider that the prevailing interest in this case is to protect the purpose of the ongoing investigation and court proceeding.

Therefore, we have concluded that access to the document(s) requested cannot be granted.

## **2. Annex II of every single final audit.**

Please refer to our response under point 1.

### **II. AUDITS ANNOUNCED IN FEBRUARY 2011 TO FP7 BENEFICIARIES AND CONDUCTED BY EXTERNAL CONTRACTORS/AUDITORS.**

*The requested documents concern external financial audits, for which the following two conditions simultaneously hold:*

*A) DG CONNECT (former INFOS) announced to the FP7 beneficiaries-auditees the audit by a letter dated in the period 1/2/2011 to 28/2/2011.*

*B) The field audit took place in Germany, Austria or Poland by one of the main signatories of the DG RTD framework contracts, or their local subsidiaries.*

*As further clarified in your email of 22 July 2013 the request under this point relates to audits performed on FP7 ICT for Health projects.*

**3. Every single time-sheet in the possession of DG CONNECT (former INFSO) for the persons whose surname starts with one of the following five Latin characters: A, C, G, M and P.**

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

We would like to draw your attention to the fact that for audits performed by an external audit firm on behalf of the Commission, the latter usually does not hold all the documents collected by the auditors, including timesheets.

**4. Annex II of every single final audit report.**

We have identified document(s) corresponding to the criteria set out in your request.

Pursuant to Article 4(2) third indent *"the institution shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits."*

The document(s) requested relate to a case for which an investigation is ongoing.

We have examined to which extent exceptions laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be of a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2).

We consider that the prevailing interest in this case is to protect the purposes of the ongoing investigation.

Therefore, we have concluded that access to the document(s) requested cannot be granted.

**III. AUDITS ANNOUNCED IN MARCH 2011 TO FP6 CONTRACTORS AND FP7 BENEFICIARIES AND CONDUCTED BY DG CONNECT (FORMER INFSO) STAFF ONLY.**

*The requested documents concern external financial audits, conducted by DG CONNECT (former INFSO) staff only, which DG CONNECT (former INFSO) announced to the FP6 contractor – FP beneficiary and auditee the audit by a letter dated in the period 1/3/2011 to 31/3/2011.*

*As further clarified in your email of 22 July 2013 the request under this point relates to audits performed on FP6 and FP7 ICT for Health and ICT for Transport projects.*

**5. Every single timesheet in the possession of DG CONNECT (former INFSO) for the persons whose surname starts with one of the following five Latin characters: A, C, G, M and P.**

We have identified document(s) corresponding to the criteria set out in your request.

Please note that in accordance with Article 4(2) third indent "*the institution shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits.*"

The document(s) requested relate to a case for which an investigation is ongoing.

We have examined to which extent exceptions laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be of a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2).

We consider that the prevailing interest in this case is to protect the purpose of the ongoing investigation.

Therefore, we have concluded that access to the document(s) requested cannot be granted.

#### **6. Annex II of every single final audit report.**

Please refer to our response under point 5.

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

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-5  
BERL 5/327  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

(e-Signed)  
Robert Madelin