



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION AND HOME AFFAIRS

The Director-General

Brussels,
HOME/MP

Subject: Your application for access to documents – Ref GestDem No 2018/6132

Dear Sir,

We refer to your e-mail dated 6/11/2018 in which you make a request for access to documents, registered under the above-mentioned reference number.

You request access to all internal documents for ordering the “Study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection”. We have identified the contract for this study is JLX/2009/ERFX/PR/1005.

In our communication Ares(2018)5957241, we informed you that your initial request (Ref GestDem 2018/5811) will be addressed in two separate replies, with the present reply addressing the scope related to the financial aspects. This reply has now the GestDem No 2018/6132 and answers the following element of your request: “This includes all internal documents for ordering the study. It also includes the contract for this study”.

As a consequence, the following documents have been identified in relation to your request:

- Document 1: Annual Work Programme ERFX/2009 – Public document
- Document 2: Technical specifications and annexes – Public document
- Document 3: Evaluation Committee Report – Ref: JLS/B4/(2009)A/14700
- Document 4: Contract – Ref: JLS/B4/(2009)A/18074

Following an examination of all documents here above listed and requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that documents 1 and 2 are public and can be disclosed (the respective links are listed in the enclosure) and documents 3 and 4 may be partially disclosed. Some parts of documents 3 and 4 have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

Registered letter with acknowledgement of receipt

Mr. Klaus Zinser
Hauptstrasse 8
88427 Bad Schussenried
Deutschland

By email: ask+request-6094-69abdee6@asktheeu.org

Some redacted parts of documents 3 and 4 contain commercially sensitive business information of the company that submitted it, which should not be disclosed, as provided in Article 4(2), first indent of Regulation (EC) No 1049/2001.

The documents identified in the scope of the present request for access to documents contain information relating to the execution of a service. Its disclosure would not only undermine the protection of commercial interests of a natural or legal person, including intellectual property but also give the competitors a competitive advantage during the reopening of competition. Its disclosure would undermine the protection of the relevant natural or legal person's expertise, strategy and creativity and thus their commercial strength.

Article 4(2), first indent, of Regulation (EC) 1049/2001 (protection of commercial interests) applies unless there is an overriding public interest in disclosure of the documents requested. In this instance, we have found no elements, which could indicate the existence of an overriding public interest in the sense of Regulation (EC) 1049/2001 that would outweigh the need to protect the commercial interests identified in the present letter.

Some redacted parts of documents 3 and 4 also contain personal data which should not be disclosed, as provided in Article 4(1)(b) of Regulation (EC) No 1049/2001.

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 data¹. When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

According to Article 8(b) of Regulation (EC) 45/2001, personal data shall only be transferred to a recipient in the EU/EEA if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative. In the present case, you have not put forward any arguments to substantiate a need to obtain these personal data. Furthermore, it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

Therefore, personal data have been withheld, except the name of individuals forming part of senior management staff of the Commission, in conformity with the EU usual practice.

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:

¹ Official Journal L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles

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

Yours faithfully,

(e-signed)

Paraskevi MICHOU

Enclosure: Document 1: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/financing/fundings/pdf/refugee/work_programme_2009_en.pdf

Document 2: https://ec.europa.eu/home-affairs/financing/tenders/2009/160631_en

Document 3: Evaluation Committee Report – Ref: JLS/B4/(2009)A/14700

Document 4: Contract – Ref: JLS/B4/(2009)A/18074