

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director-General

Brussels, 01.08.2013
ACCESS DOCUMENTS-2010-2013
GestDem number 2013/3753

Sent by email only

Dear Mr Raptis,

**Subject: Your request for access to documents
Reference GestDem 2013/3753**

We refer to your email dated 29 June 2013 in which you make a request for access to documents, registered on 08 July 2013 under the above mentioned reference number.

1. SCOPE OF YOUR APPLICATION

Your application concerns the following documents:

- "1. The presentation of the hypothetical fraud case made at the [EU Commission and the US National Science Foundation co-hosted international] workshop [on accountability in science and research funding];*
- 2. Referring to the 'actual fraud case', the documents setting out the detailed analysis and reasoning that lead the Commission services to form the view that it was indeed a 'fraud' case, that it to say it had or risked having a detrimental effect to the Union's budget;*
- 3. The letter with which DG RTD announced to the 'contractor' the external financial audit, including every single annex and the Privacy Statement;*
- 4. The final audit report dispatched to the 'contractor', including in particular Annex II;*
- 5. Every single time-sheet in the possession of DG RTD originating from the audit;*
- 6. The DG RTD letters/notes/emails/telephone conversations pursuant to article 12(1) of Regulation No 45/2001 with which data subject were informed about the collection and processing of their personal data from the audited 'contractor';*
- 7. The prior notification of article 25 of Regulation No 45/2001 covering the audit at the time the field audit was conducted. It is noted that DG RTD DPO-3398.1 was filed in mid-April 2011, and therefore it is nearly certain that DPO-3398.1 did not cover the external financial audit in question;*
- 8. The documents drawn up by the DG RTD Data Protection Coordinator setting out a reasoning why the predecessor prior notification (i.e. the one applicable prior to DPO-3398)*

was not 'adequate' for the DG RTD external financial audits and a brand new one were to be registered in the register of article 26 of Regulation No 45/2001 (i.e. DPO-3398);

9. The documents drawn up by the DPO-3398 data controller setting out a reasoning why the predecessor prior notification (i.e. the one applicable prior to DPO-3398) was not 'adequate' for the DG RTD external financial audits and a brand new one were to be registered in the register of article 26 of Regulation No 45/2001;

10. Every single document drawn up by the data controller of the predecessor prior notification(s) (i.e. that covering external financial audits prior to 13/4/2011) about the said notification(s), regardless of whether or not external financial audits are expressly dealt with;

11. The Debit Note(s) dispatched to the 'contractor', including the cover letters accompanying the Debit Note(s). This request also includes any Debit Notes imposing liquidated damages;

12. The copy of the duly signed Recovery Order on the basis of which the authorising officer or the accounting officer, as the case may be, drew up the Debit Note;

13. The document(s) setting out the analysis and reasoning of the Research family DGs about the risks of double funding of a FP7 beneficiary, regardless of the sources of funding, and their impact to the Union budget;

14. The document(s) setting out some kind of a legal analysis of whether it is lawful to 'poke' into the private affairs of a FP7 beneficiary and seek to establish whether or not a FP7 beneficiary receives additional funding, especially in the light of the fact that the FP7 grant agreement is a private law contract and that, apparently, there is no a provision of Union law whatsoever dully empowering DG RTD to carry out interference with the private affairs of a FP7 beneficiary;

15. The document(s) setting out the analysis why plagiarism is to be considered as indicator for double funding;

16. The document(s) setting out the analysis why liberal 'copy-paste' of one's own work, or work of the consortium partners, or the material referred to in P5 above is an indication of double funding;

17. Every single document concerned mainly with the DAISY tool."

Your request is considered to fall within the scope of Regulation No (EC) 1049/2001.

We note, however, that your application contains a number of allegations and queries into the legality of certain Commission acts which are not related to the right of access provided under the framework of Regulation No (EC) 1049/2001 and the related Commission Decision of 5 December 2001¹. The merits of these matters which should be formulated in a proper complaints procedure will therefore not be addressed in the context of the present reply.

2. EXAMINATION AND CONCLUSIONS

2. 1. After a thorough examination of DG RTD's files, we regret to inform you that the documents requested under Point 1 of your request cannot be disclosed for public access as they fall within the scope of exceptions laid down in Article 4 of Regulation No (EC) 1049/2001, as detailed below.

Article 4(1)(a) fourth indent of the above mentioned Regulation provides that [t]he institutions shall refuse access to a document where disclosure would undermine the

¹ C(2001)3714 OJ L 345/94, of 29.12.2001.

protection of: (...) [t]he public interest as regards (...) the financial, monetary or economic policy of the Community.

The financial policy of the Union (formerly the Community) can be understood as relating to the proper management of funds of the EU. It is a policy aimed at protecting the financial resources managed by the Commission by way of audits of beneficiaries of grants and other subcontractors.

The presentation in question concerned two on-going real cases which are actually being handled by DG RDT and by the European anti-fraud office OLAF. One of these cases has in the meantime been transferred to the judicial authorities. Therefore any disclosure of documents related to this presentation would entail the danger of a misuse of this information and would have a direct financial impact for the EU budget, not only for the cases themselves but also through any other potential future investigation of unduly paid sums.

Moreover, Article 4(2), third indent, of Regulation No (EC) 1049/2001 provides that *[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (...) the purpose of inspections, investigations and audits.*

As previously stated, the documents related to the presentation in question are based on real cases of alleged fraud which are actually being handled by DG RTD, by OLAF and by the judicial authorities. Any public disclosure of this information would not only undermine the protection of the on-going cases but would also endanger the proper investigation of future cases. Such information could even inspire future fraudulent behaviour, as the examples given could be misused in attempts to circumvent regular controls in future.

Therefore, access to the documents related to the EU Commission and the US National Science Foundation co-hosted international workshop on accountability in science and research funding cannot be granted.

We have considered whether partial access could be granted to the documents requested. However, we came to the conclusion that partial access was not possible.

We would also like to kindly draw your attention to the fact that the NSF was not allowed to publish the presentation together with the papers of the other speakers or to even publish the summary report on their website.

The exception in Article 4(1)(a) fourth indent is absolute and should not be balanced against the public interest in disclosure. However, pursuant to Article 4(2), third indent the exception to the right of access must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly be a public interest and, secondly, outweigh the harm caused by disclosure. The arguments which you put forward in your initial application in order to support your request for access do not justify the existence of such an overriding interest in the sense of the Regulation which would outweigh the need to protect the purpose of the audits of the Commission.

2.2 We regret to inform you that no documents exist in relation to Points 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17.

In respect of Points 3 to 5 and 11 to 12, we would kindly like to stress that no documents exist because the cases referred to in the presentation were not triggered by an external audit.

In respect of Point 6, please note that telephone conversations are not registered and transcribed. (Information to data subjects regarding the processing operations of their personal data is provided with the letter initiating the audit, which in the present cases did not exist for the reason explained above).

In respect of Points 15 and 16, we enclose for your good information the *Commission's Charter for Researchers* and the *European Science Foundation's European Code of Conduct for Research Integrity*. Both documents highlight indeed plagiarism as a concern to the scientific community, setting out the basic guidelines for defining the scope of plagiarism and might interest you.

In respect of Point 17, we would like to draw your attention to the fact that more information on the IT tool used by our services is available at the following link:

<http://www-03.ibm.com/software/products/us/en/ibase>

2.3 As far as Point 7 of your application is concerned, please find enclosed the document requested.

3. MEANS OF REDRESS

We have refused to grant you access to the documents requested under Point 1 of your request.

Your application was considered as devoid of purpose in respect to Points 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

We disclosed to you the document requested under Point 7 of your request.

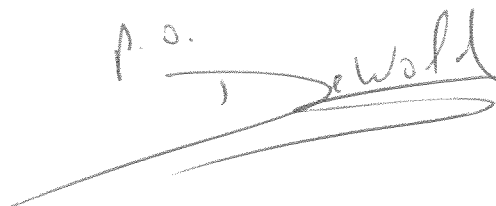
Should you wish the position of the Commission to be reviewed, you should send a confirmatory application to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen working days to do this as from the receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General would then inform you of the result of this review within 15 working days from the date of registration of your request. You would either be given access or your request would be rejected, in which case you would be informed of how you can take further action.

All correspondence should be sent to the following address:

The Secretary-General
European Commission
B-1049 BRUSSELS
Email: SG-ACC-DOC@ec.europa.eu

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'R. J. Smits', with a long, sweeping horizontal line underneath.

Robert-Jan Smits

Annexes

CC: Ms S. Bojinova (RTD. R5); Mr M. Bellens (RTD. M1);
Mr T. Bourgeois (RTD. R5); Ms S. Gruener (RTD. M1).