



EUROPEAN COMMISSION
BUDGET

The Director-General

Brussels, 31/10/2019
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Peter Teffer
Ekko Voorkamer
Bemuurde Weerd WZ 3
3513 BH Utrecht
The Netherlands

Dear Mr Teffer,

Subject: Your application for access to documents – Ref GestDem No 2019/5362

We refer to your e-mail dated 04/09/2019 in which you make a request for access to documents, registered on 05/09/2019 under the above-mentioned reference number.

You request access to the following information:

- DG DEVCO's response to OLAF's recommendation in 2018 that it blacklist a Dutch company and;
- A list of all companies which are blacklisted.

Please note that since the first part of your request falls under the responsibility of another Directorate-General, part of your request is dealt with separately by this Directorate-General, under the following reference:

DG DEVCO: 5153

This reply relates only to the documents held by the Directorate-General for Budget (DG BUDG).

Having examined your request under the provisions of Regulation (EC) No 1049/2001¹ regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation and in Article 140 of Regulation (EU, Euratom) 2018/1046 (hereinafter “the Financial Regulation”)².

¹ OJ L 145, 31.05.2001, p.43.

² OJ L 193, 30.7.2018, p.1.

In line with Article 140 of the Financial Regulation³, the publication of information concerning sanctioned economic operators is strictly limited to the cases where it is necessary to reinforce the deterrent effect achieved by the adopted administrative sanction, with full respect for the data protection requirements set out in Regulation (EU) 1725/2018⁴ and Regulation (EU) 2016/679⁵.

Such decisions on the publication are taken on a case-by-case basis by the responsible authorising officer of the institution concerned, either following the relevant final judgment or, where applicable, final administrative decision, or following the recommendation referred to in Article 136(2) of the Financial Regulation. Publication is made on the following Internet page:

http://ec.europa.eu/budget/edes/index_en.cfm.

However, information related to not published decisions of exclusion and/or of financial penalty, which are included in the database referred to in Article 142 of the Financial Regulation, cannot be provided, on the basis of the following exceptions of Article 4 of Regulation No 1049/2001 since their disclosure would undermine:

- Article 4(1)(b) - the privacy of the integrity of the individual: the names of individuals, including names of company representatives, constitute personal data that may only be transferred to recipients if the latter establish the necessity of having the data transferred, which is not the case here;
- Article 4(2), first indent - protection of commercial interests: the release of those data would negatively affect the reputation of the entities listed therein and undermine their commercial interests and;
- Article 4(3), second subparagraph - protection of the decision-making process: the purpose of the database is to contribute to preliminary deliberations and consultations in the framework of the allocation of EU funds which have to be shielded against undue external interference aiming at modifying or removing the entries into the database.

There is a general presumption that their disclosure would run contrary to the above-mentioned restrictions imposed by the Financial Regulation, as this would result in those restrictions being deprived of their meaningful effect.

I have also considered whether partial access could be granted to the documents requested. However, partial access in accordance with Article 4(6) of Regulation 1049/2001 is not

³ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193/30.07.2018, p.1).

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing (EC) No 45/2001 and decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

possible considering that the data to which you seek access must be protected in their entirety, as explained above.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. There is no overriding public interest in disclosure as the public interest is better served by enabling the Commission and other authorised users to protect the Union's financial interests in full respect of the rights of the natural and legal persons included in the database without any undue external interference. Consequently, the prevailing interest in this case is to protect the personal data and commercial interests of the natural and legal persons, and the decision-making process.

In accordance with Article 7(2) of Regulation (EC) No 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:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

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

Yours sincerely,



Gert Jan KOOPMAN
Director-General