



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

The Acting Director-General

Brussels,

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Sent by email with acknowledgment of receipt

Subject: Your application for access to documents – Ref GestDem No 2020/4186

Dear Sir,

We refer to your e-mail dated 08/07/2020 in which you make a request for access to documents, registered on 09/07/2020 under the above mentioned reference number. You request access to documents which contain the following information:

- Firstly, the letter of formal notice that the European Commission announced on 2 July 2020 it has sent to France, warning it to comply with EU directive 2010/63/EU on the protection of animals used for scientific purposes.
- Secondly, any responses to the letter of formal notice sent by France to the European Commission.

We consider your request to cover documents held up to the date of your initial application, i.e. 08/07/2020. Your application concerns the following document :

- Letter of formal notice C(2020)3854 related to infringement procedure 2020/2240 under Article 258 of the Treaty on the Functioning of the European Union.

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

Article 4(2), third indent of Regulation 1049/2001 provides that the “*institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audit*”.

The requested documents relate to an infringement procedure (reference 2020/2240), which is ongoing. Public disclosure of the requested documents would not only negatively influence the dialogue between the European Commission and the Member State, for which a climate of trust is essential, but would also alter the strictly bilateral nature of the infringement procedure as provided for in Article 258 of the Treaty on the Functioning of the European Union. Therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to this document.

The Court of Justice has interpreted Article 4(2), third indent of Regulation 1049/2001 and underlined that, in ongoing infringement cases, the institution may base itself on a general presumption of non-disclosure¹. This confirmed the earlier judgment in case T-191/99², which ruled that *“the Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to an infringement procedure. This requirement of confidentiality remains even after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that the discussions between the Commission and the Member State in question regarding the latter's voluntary compliance with the Treaty requirements may continue during the court proceedings and up to the delivery of the judgment of the Court of Justice”*.

Partial access

We have considered whether partial access could be granted to the document requested in accordance with Article 4(6) of the Regulation 1049/2001. However, partial access is not possible considering that the document concerned is covered in its entirety by the exception under Article 4(2) third indent of Regulation 1049/2001.

Overriding public interest

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 document. We have examined to which extent the exception laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in 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 exception stipulated in Article 4(2) mentioned above. Therefore, we have concluded that access to the aforementioned documents cannot be granted.

Confirmatory application

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

We would be grateful if you could acknowledge receipt of the present letter.

Yours faithfully,



Joanna Drake

¹ See Judgment of 14 November 2013, *Liga para a Protecção da Natureza and Finland v Commission*, Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraphs 55, 65-68.

² Judgment of 11 December 2001, *Petrie and Others v Commission*, T-191/99, EU:T:2001:284, para. 68.