



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Director-General

Brussels, 28 NOV. 2013
JUST/A4/TS/Ares(2013)

Ms Cornelia Trentea

by e-mail to ask+request-477-e12974e5@asktheeu.org

Subject: Your application for access to information and documents – Ref GestDem No 2013/4337

Dear Ms. Trentea

I refer to your e-mail dated 14/08/2013 in which you make a request for access to information and documents, and to your email of 09/09/2013, in which you supplement your request of 14/08/2013. Both requests are registered under the above-mentioned reference number and shall be treated jointly.

This reply concerns only the requests for access to documents under Regulation 1049/2001.

A. Your application of 14/08/2013 concerns the following documents:

1) relevant annex of the Evaluation Report JUST/2012/PROG/AG/AD – a document concluded by the Assessors and approved by Evaluation Committee in respect of point 2.2. “Exclusion Criteria”

The requested document is the assessment form for eligibility and exclusion criteria for Danish Institute for Human Rights under the above-mentioned call.

Having examined this document under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that it may be partially disclosed. Some parts of the document have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The expunged parts of the document are:

- The name of the Commission’s assessor.

Disclosure of these parts would undermine the protection of

- **privacy and the integrity of the individual:**

Please note that 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 EU 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 this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, 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
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Bruxelles

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

2) documents concluded by Assessors in Unit 4 and approved by Evaluation Committee in respect of Article 93(1)(a) . I also request access to information documents showing if the Assessors Team addressed the situation existent at the moment of evaluation at DIHR.

No such document exists.

3) documents showing how the Assessors Team considered for the purposes of Grant

¹ OJ 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, OJ C 234 of 28.8.2010, p. 3.

Application submitted by DIHR, the Public Statement of Danish Foreign Ministry REF: "the deliberate transfer of old losses to non-existing projects that were created for this purpose".

No such document exists.

4) documents (i.e. Declaration) showing that DIHR informed European Commission about the frozen financing by Danish Foreign Ministry, and about " the deliberate transfer of old losses to non-existing projects that were created for this purpose".

No such document exists.

5) documents about any intention by European Commission to apply contractual provision stipulated in the Grant Agreement (<http://www.asktheeu.org/en/request/548/response/2278/attach/6/SIGNED%20GA%203720.TIF%201.pdf>) par. II.11.3 "Termination of the grant by the Commission" in line with the following : e) professional misconduct, h) irregularities, substantial errors.

No such document exists.

6) If there is no such intention, the document motivating the exemption granted.

No such document exists.

7) applicable rules of the EC containing the definition of concepts "irregularity", "financial irregularity"

Cf. Art. 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1995:312:0001:0004:EN:PDF>; on the term "substantial error and irregularity", cf. Art. 166(2) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:362:FULL:EN:PDF#page=3>

B. Your application of 09/09/2013 concerns the following documents:

1) the relevant documents related to the exclusion from the Restricted Call for Proposals for Grants ref. JUST/2012/PROG/AG7AD of the competitor of DIHR, i.e Documentation and Advisory Center on Racial Discrimination Denmark.

The requested document is the assessment form for eligibility and exclusion criteria for Documentation and Advisory Center on Racial Discrimination Denmark under the above-mentioned call.

Having examined this document under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that it may be partially disclosed. Some parts of the document have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The expunged parts of the document are:

- The name of the Commission's assessor.

Disclosure of these parts would undermine the protection of

- **privacy and the integrity of the individual:**

Please note that 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 EU 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 data³.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁴. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, 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 address mentioned under A.1).

2) the EC letters for request for clarifications, submitted to the excluded companies, including the competitor of DIHR

No such document exists.

3) the updated version of the List of public bodies appended to Annex III of Directive 2004/18/EC of 31 March 2004

The consolidated version of Directive 2004/18/EC, including its Annex III, can be found at the following link: <http://eur->

³ OJ L 8 of 12.1.2001, p. 1.

⁴ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, OJ C 234 of 28.8.2010, p. 3.

Yours faithfully,



Françoise LE BAIL

Annex:

1. Assessment form for eligibility and exclusion criteria for Danish Institute for Human Rights under call for proposals JUST/2012/PROG/AG/AD.
2. Assessment form for eligibility and exclusion criteria for Documentation and Advisory Center on Racial Discrimination Denmark under call for proposals JUST/2012/PROG/AG/AD.