



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
HUMAN RESOURCES AND SECURITY

The Director-General (acting)

Brussels  
HR/CR  
Samuel Stolton  
Bloomberg  
International Press Centre  
Brussels  
1041

**Subject: Your application for access to documents – EASE 2024/1160**

Dear Sir,

This correspondence is in reference to your e-mail dated 28 February 2024, in which you made a request for access to documents. This request was registered on 8 March 2024 under the above-mentioned reference number, following your provision of clarifications regarding the request's scope.

You requested access to “Information on any spyware detected on devices of any Commission staffers or members of the college and their cabinets, since the start of the Von der Leyen Commission”.

I consider your request to cover documents held up to the date of your initial application, i.e. 28 February 2024.

After having examined your request under Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as the disclosure of the documents falling under the scope of your request is prevented by exceptions to the right of access, as laid down in Article 4 of this Regulation.

It should be noted that this also applies to the mere identification of the requested documents.

Pursuant to settled case-law, whereas the institution has a duty to identify and briefly list the documents falling under the scope of the request (by titles, dates, authors and, if applicable, registration references), such duty applies only to the extent that the disclosure in question does not involve releasing harmful information as to the confidentiality of the relevant administrative procedure.

In this instance, as your application concerns highly sensitive information, any identification of documents covered by your request would involve releasing confidential information that falls within the scope of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, for the reasons explained below.

According to Article 4(1)(a), first indent of Regulation (EC) No 1049/2001, the ‘institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards public security’. This exception applies to all documents covered by your request.

The documents you seek to obtain indisputably relate to the public security of the EU institutions and/or of some of the Member States. Most of the documents have been earmarked with a marking and/or classification level. This indicates the sensitivity of the information they contain as well as the need protect it.

The concerned documents also contain a significant number of direct and indirect personal data belonging to witnesses and/or staff members of the European Commission. A very large number of the documents are witness statements which contain identification data, alongside information, opinions and documents these witnesses have shared with the Security Directorate of the European Commission.

It should be noted that the General Court has confirmed that ‘the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest and, consequently, [...] the Courts review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exceptions relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers.’<sup>(1)</sup>

Furthermore, I would like to point out that Article 4(1)(a) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

I consider therefore that the exception laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 applies to these documents.

Additionally, a public disclosure of the requested documents would undermine the exception laid down in Article 4(1)(b) of the Regulation, which provides that ‘the institutions shall refuse access to a document where 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’.

As I have already indicated above, the documents you have requested contain personal data belonging to witnesses and/or staff members.

The disclosure of the documents falling under the scope of your request would constitute processing of personal data and reveal information relating to an identified or identifiable natural person (personal data) – i.e. the individuals whose personal data are contained in those documents.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of such personal data when there is a reason to assume that the legitimate interests of the data subject will be prejudiced, which is the case for the documents in question.

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<sup>(1)</sup> Judgment of the General Court of 25 April 2007, T-264/04, WWF European Policy Programme v Council, EU:T:2007:114, paragraph 40.

The disclosure of the requested documents would therefore undermine the protection of the privacy and the integrity of the individuals whose personal data are contained in the documents (as referred to in Article 4(1)(b) of Regulation (EC) No 1049/2001 and as protected by the Data Protection Regulation).

Moreover, for the reasons explained above, a disclosure would reveal investigation results and reports the EU Commission's Security Directorate has drafted over the years, thereby undermining the protection of its know-how and its investigative tools, methods and procedures. It would therefore undermine the protection of inspections, investigations and audits, as referred to in Article 4(2), third indent of Regulation 1049/2001.

While the exception laid down in Article 4(2) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the documents, in this instance the public interest in making the content of the documents public does not outweigh the harm that disclosure would cause to the interests protected by the invoked exception, in particular by Article 4(1)(a), first indent, and 4(1)(b) of the Regulation.

I have also considered whether partial access could be granted to the documents requested. However, they are entirely covered by the exception laid down in Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

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](mailto:sg-acc-doc@ec.europa.eu).

Could you please confirm receipt of the present letter by replying to [HR-ACCESS-TO-DOCUMENTS@ec.europa.eu](mailto:HR-ACCESS-TO-DOCUMENTS@ec.europa.eu)?

Yours faithfully,

Electronically signed

Christian ROQUES