



Directorate D - Legal, Resources and
Partnerships

The Director

Mr Arun Dohle

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Via e-mail only

Brussels
OLAF.D.2(2025)9632
SENSITIVE:OLAF
*Investigations*¹

Subject: Your application for public access to documents

Case No: OF/2014/1007

Dear Mr Dohle,

We refer to your e-mail dated 17 February 2025, made under Regulation (EC) No 1049/2001² regarding public access to European Parliament, Council and Commission documents.

You request the following documents: *"All emails and other data related to the meeting of 2 EU officials and the Director of Against Child Trafficking with OLAF on 10 September 2014."*

1. Preliminary remarks

OLAF wishes to recall that it is legally bound to treat all information obtained during investigations as confidential and subject to professional secrecy, particularly under Article 339 of the Treaty on the Functioning of the European Union, Article 10 of Regulation (EU, Euratom) No 883/2013³ and Article 17 of the EU Staff Regulations⁴.

Additionally, the purpose of Regulation (EC) No 1049/2001 is to give access to documents to the public at large. Any document disclosed to an individual under this Regulation becomes automatically available to any other member of the public upon subsequent request. Therefore, please note that documents disclosed under this Regulation enter the public domain.

¹ Handling instructions for SENSITIVE are given at
https://ec.europa.eu/anti-fraud/sites/antifraud/files/handling_instructions_documents_sensitive_olaf_investigations_en.pdf

² OJ L 145, 31.05.2001, pages 43-48.

³ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 248 18.9.2013, p. 1.

⁴ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.6.1962, p. 1385-1386.

2. Assessment of the requested document under Regulation (EC) No 1049/2001

Having carefully examined your request in the light of Regulation (EC) No 1049/2001, OLAF has found three documents⁵ in the file of case OF/2014/1007, which was closed at selection stage. These documents fall under one of the exceptions of Article 4 of that Regulation, as granting public access to them would undermine the protection of the purpose of inspections, investigations and audits (Article 4(2), third indent of Regulation (EC) No 1049/2001).

The third indent of Article 4(2) of Regulation (EC) No 1049/2001 explicitly states that *"the institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits unless there is an overriding public interest in disclosure."*

The selection stage is an intrinsic and inherent part of the investigation process and must be regarded as such in the broader sense of the term. It serves as the foundation for the investigative work that follows, involving the assessment of initial information to determine whether OLAF has sufficient grounds to suspect fraud, corruption, or other illegal activities affecting the financial interests of the Union⁶. Based on this assessment, OLAF decides whether to open a full investigation.

The selection stage is afforded the same protections as the investigation and its follow-up phase. This is because disclosing documents related to the selection stage, such as the one requested, would expose OLAF to several foreseeable and concrete risks, which are not purely hypothetical. In particular, public disclosure could:

- Jeopardise the willingness of individuals, including whistle-blowers and other sources like you, to cooperate with OLAF. The prospect of having their initial information, explanations, or assumptions disclosed could lead them to self-censor or withhold critical details, undermining OLAF's ability to assess cases effectively and, ultimately, the EU's anti-fraud policy⁷;
- compromise the integrity of OLAF investigations in general. Individuals or economic operators under scrutiny or with vested interests could analyse disclosed selection-stage documents to understand OLAF's case assessment criteria, investigative priorities, and methodology, allowing them to adapt their behaviour to evade detection. This risk exists as fraud schemes often exhibit recurring patterns requiring similar investigative approaches;
- undermine the climate of mutual trust essential for OLAF's cooperation with its key stakeholders, including judicial and administrative authorities at both EU and national levels⁸. The premature disclosure of selection-stage documents could create uncertainty about the confidentiality of shared information, discouraging effective collaboration;
- risk the identification of individuals involved, exposing them to potential retaliation or reputational harm⁹;

For these reasons, documents related to OLAF's activities carried out at selection stage require the same level of protection as those from the investigation and follow-up phases, ensuring OLAF can effectively fulfil its mandate.

⁵ THOR(2014)28615 (note to the file) THOR(2015)26806 (outgoing email 8 September 2014)

⁶ Article 5(1) of Regulation (EU, Euratom) No 883/2013.

⁷ Judgement of 21 May 2014, *Catinis v European Commission*, Case T-447/11, ECLI:EU:T:2014:267, paragraph 54; *IMG v Commission*, T-110/15, cited above, paragraph 35.

⁸ *Catinis v Commission*, Case T-447/11, cited above, paragraph 54.

⁹ See, by analogy, judgement of 7 March 2024, *OC v European Commission*, C-479/22 P, ECLI:EU:C:2024:215 paragraph 60.

As recognised by the General Court in *Ntouvas v ECDC*¹⁰, the exception laid down in the third indent of Article 4(2) of Regulation (EC) No 1049/2001 is not designed to protect the inspections, investigations and audits as such, but their 'purpose'. This protection extends to all phases that contribute to the effectiveness of an investigation, including the selection stage, which is an essential first step in OLAF's investigative work.

According to the case-law, institutions may rely on general presumptions to certain categories of documents of the same nature when similar concerns arise regarding their disclosure¹¹. Such general presumptions allow institutions to conclude that public access to documents related to investigations are governed by specific legal frameworks¹², would undermine the protection of the investigations. This approach enables institutions to withhold entire categories of documents, such as those related to the selection of investigations, without the need for a detailed, individual review of each document.

In *Commission v TGI*¹³, the Court of Justice established a general presumption that disclosing documents, such as those in State aid procedures, would undermine the very purpose of those investigations. Similarly, this general presumption of non-disclosure was recognised to protect OLAF's investigations and working methods¹⁴, considering that Regulation (EC) No 1049/2001 must take into account the specific rules of Regulation (EU, Euratom) No 883/2013. This latter regulation governs OLAF's activities and mandates confidentiality for all information gathered during its processes, including the selection stage, to protect the EU's financial interests, which is a public interest¹⁵.

Under Article 10 of Regulation (EU, Euratom) No 883/2013, OLAF is required to treat such information as confidential and subject to professional secrecy. Even the sources providing information to OLAF are not entitled to access selection-stage documents. Granting public access to these documents would paradoxically afford the general public broader rights than those available to the individuals directly involved, undermining OLAF's legal framework. Moreover, as held by the Court of Justice, if a document is not accessible under the "access to file procedure", it cannot be made available to the public under Regulation (EC) No 1049/2001¹⁶.

In view of the foregoing, the selection-related documents requested fall under the presumption of non-accessibility as a document containing information collected during an OLAF investigation and subject to professional secrecy. Consequently, it is exempt, in principle and in full, from disclosure to the public. Under Regulation (EC) No 1049/2001, applicants may demonstrate that a specific document is not covered by this general presumption¹⁷. However, in this case, you did not present any evidence that calls into question the finding that the requested documents fall within the category of documents covered by the general presumption.

3. Partial access

¹⁰ Judgment of the General Court of 19 November 2014, *Ntouvas v ECDC*, T-223/12, EU:T:2014:975, paragraph 28.

¹¹ See judgments of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraph 54 and the case-law cited; of 27 February 2014, *Commission v EnBW*, C-365/12 P, EU:C:2014:112, paragraph 65; and of 12 February 2019, *Hércules Club de Fútbol v Commission*, T-134/17, EU:T:2019:80, paragraph 34.

¹² Judgment of 28 June 2012, *European Commission v Agrofert Holding a.s.*, C-477/10P, EU:C:2012:394, paragraph 33.

¹³ See, by analogy, *Commission v Technische Glaswerke Ilmenau GmbH*, C-139/07 P, cited above, paragraph 58.

¹⁴ Judgments of 26 April 2016, *Strack v Commission*, T-221/08, ECLI:EU:T:2016:242, paragraphs 153-162; of 26 May 2016, *IMG v Commission*, T-110/15, EU:T:2016:322, paragraphs 28 to 39; of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraphs 108 to 113.

¹⁵ The fact that the effectiveness of OLAF's investigations is of public interest was recognized by the Advocate-General Hogan. See, by analogy, paragraph 115 of his opinion in case C-130/19, *European Court of Auditors v Pinxten*, ECLI:EU:C:2020:1052.

¹⁶ *European Commission v Agrofert Holding a.s.*, C-477/10P, cited above, paragraph 63.

¹⁷ *IMG v Commission*, T-110/15, cited above, paragraph 38.

The general presumption of non-accessibility means that the documents covered by it are not subject to an obligation of disclosure, in full or in part, of their content. It is therefore not necessary for OLAF to examine the possibility of granting partial access to the requested documents, in accordance with Article 4(6) of Regulation (EC) No 1049/2001¹⁸.

In any event, partial access is not possible, given that the information they contain falls entirely under the above-mentioned general presumption.

4. Overriding public interest in disclosure

The exception under Article 4(2), third indent of Regulation (EC) No 1049/2001 applies unless an overriding public interest justifies disclosure. Such an interest must, first, be public and, second, outweigh the interest protected by the exception¹⁹. According to case law, it is the applicant's responsibility to demonstrate this overriding public interest.²⁰

In your application, you do not claim an overriding public interest in disclosure. Consequently, OLAF considers that you have not demonstrated such an interest that would outweigh the protection afforded under Article 4(2), third indent of Regulation (EC) No 1049/2001. Furthermore, OLAF has not identified any overriding public interest based on your application.

OLAF therefore concludes that no overriding public interest has been established.

5. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting OLAF to review this position. Pursuant to Article 4 of Commission Decision 2001/937/EC, ECSC, Euratom, such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director General of OLAF.

Any confirmatory application to OLAF should be sent to the following address:

Mr Ville ITÄLÄ
Director-General OLAF
European Commission
B-1049 BRUXELLES
BELGIUM

You may also send a confirmatory application to the email address:
OLAF-FM-D2@ec.europa.eu.

Your attention is drawn to the privacy statement below.

Yours sincerely,

¹⁸ Judgment of the Court of Justice of 28 June 2012, *European Commission v Odile Jacob*, C-404/10 P, EU:C:2012:393, paragraph 133

¹⁹ Judgment of 9 October 2018, *Anikó Pint v European Commission*, T-634/17, EU:T:2018:662, paragraph 48; Judgment of 23 January 2017, *Association Justice & Environment, z.s v European Commission*, T-727/15, EU:T:2017:18, paragraph 49; Judgment of 5 December 2018, *Falcon Technologies International LLC v European Commission*, T-875/16, EU:T:2018:877, paragraph 84.

²⁰ *Strack v Commission*, cited above, paragraph 128; judgment of 14 November 2013, C-514/11 P and C-605/11 P, *LPN and Finland v Commission*, EU:C:2013:738, paragraph 94.

Signed Electronically

Digitally signed by:
EUROPEAN COMMISSION (EUROPEAN COMMISSION)
Reason: On behalf of KNEUER Petra as Director
Date: 2025-03-31 14:20:35 UTC

Privacy notice

Pursuant to Articles 15 and 16 of Regulation No 2018/1725 on the protection of natural persons with regard to the processing of personal data by Union Institutions, bodies, offices and agencies and of the free movement of such data, please be informed that your personal data are stored in OLAF's electronic and paper files concerning this matter for the purposes of or in relation to the activities carried out in order to fulfil OLAF's tasks referred to in Article 2 of Decision 1999/352/EC, ECSC, Euratom and Regulation (EU, Euratom) 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). The categories of your personal data being processed are contact data, identification data, professional data, and case involvement data. Your data may originate from various sources, including publicly accessible information. Your data may be transferred to other EU institutions, bodies, offices and agencies, competent Member State and third country authorities and international organisations. There is no automated decision process by OLAF concerning any data subject. Your data will be stored for a maximum of 15 years.

You have the right to request access to, rectification or erasure, or restriction of processing of your personal data and to object to their processing on grounds relating to your particular situation. If you wish to request access to your personal data processed in a specific file, please provide the relevant reference or description in your request. Any such request should be addressed to the Controller (OLAF-FMB-Data-Protection@ec.europa.eu).

The complete privacy statement for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud. If you have questions as regards the processing of your personal data or your rights you may contact the OLAF Data Protection Officer (OLAF-FMB-DPO@ec.europa.eu)

You may lodge a complaint concerning the processing of your personal data with the European Data Protection Supervisor (edps@edps.europa.eu) at any time.