

The Director-General

Mr Arun Dohle

[ask+request-15572-  
e5b77532@asktheeu.org](mailto:ask+request-15572-e5b77532@asktheeu.org)

Via e-mail only:

Brussels

**SENSITIVE:OLAF**  
*Investigations*<sup>1</sup>

Subject: Your confirmatory application for public access to documents

---

Case No OF/2014/1007/01 (Please include this number in all correspondence)

---

Dear Mr Dohle,

I refer to your confirmatory request of 4 April 2025, by which you asked OLAF to review its position concerning your request for access to documents related to case OF/2014/1007, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents<sup>2</sup>.

Your confirmatory application has been carefully considered and a detailed response follows below.

#### 1. Your initial application

In your initial application of 17 February 2025, you requested access to "*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*".

Following the assessment of your application, OLAF identified, within the scope of your request, three documents in the file of case OF/2014/1007, which was closed at selection stage. These documents are:

- Note to the file summarising the meeting of OLAF officials and the Director of "Against Child Trafficking" with OLAF on 10 September 2014, as well as its annex (reference THOR(2014)28615).
- Email exchange of 8 September 2014 to arrange the meeting (reference THOR(2015)26806).

---

<sup>1</sup> Handling instructions for SENSITIVE are given at [https://ec.europa.eu/anti-fraud/sites/antifraud/files/handling\\_instructions\\_documents\\_sensitive\\_olaf\\_investigations\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/handling_instructions_documents_sensitive_olaf_investigations_en.pdf)

<sup>2</sup> OJ L 145, 31.05.2001, p. 43.

On 31 March 2025, OLAF replied that the documents you had requested fell under the general presumption of non-disclosure applicable to OLAF investigative documents arising from the exception in Article 4(2) third indent of Regulation (EC) No 1049/2001. This is because disclosing documents related to the selection stage of an investigation, such as the one requested, would expose OLAF to several foreseeable risks and undermine the protection of the purpose of its investigations in general. Therefore, access to the documents you requested was refused.

## 2. Your confirmatory application

In your confirmatory application, you ask OLAF to review its decision, arguing that the documents that you request refer to a meeting that occurred over a decade ago and the case was closed at the selection stage. The risks cited by OLAF—e.g., deterring whistleblowers or exposing methods—are minimised by the passage of time and the case's closure.

You consider that there is an overriding public interest in disclosure that outweighs hypothetical risks to OLAF's processes, rooted in the need for transparency to assess whether EU institutions adequately safeguard those who report wrongdoing and understanding the European Commission's role in the reform of child protection in Romania.

## 3. Assessment of the requested documents under Regulation (EC) No 1049/2001

When assessing a confirmatory application for access to documents pursuant to Regulation (EC) No 1049/2001, OLAF conducts a new assessment of the request.

OLAF wishes to recall, firstly, that it is legally bound to treat all information it obtains during its investigations as confidential and subject to professional secrecy, in particular pursuant to Article 339 of the Treaty on the Functioning of the European Union, Article 10 of Regulation (EU, Euratom) No 883/2013<sup>3</sup> and Article 17 of the Staff Regulations<sup>4</sup>.

Secondly, the purpose of the Regulation is to give access to documents to the public at large (*erga omnes*). Any document disclosed to an individual under this Regulation becomes automatically available whenever there is a subsequent request. Therefore, documents disclosed under this Regulation enter the public domain and can be considered as lawfully disseminated and officially made public.

After carefully considering your confirmatory application and the arguments therein, OLAF confirms its reasons for not disclosing the requested documents set out in the initial reply in relation to the application of the general presumption of non-disclosure for the protection of the purpose of investigations and their follow-up, based on the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001. Therefore, this reply will address in detail your arguments on the application of the general presumption.

The third indent of Article 4(2) of Regulation (EC) No 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 audits unless there is an overriding public interest in disclosure'*.

As recognised by the Court in *Ntouvas v ECDC*<sup>5</sup>, 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 audit as such, but their 'purpose'.

The requested documents form part of the OLAF case file OF/2014/1007, closed at selection stage. These documents contain information gathered under OLAF's investigative mandate.

---

<sup>3</sup> OJ L 248, 18.9.2013, p. 1.

<sup>4</sup> OJ P 045 14.6.1962, p. 1385.

<sup>5</sup> Judgment of the General Court of 19 November 2014, *Ntouvas v ECDC*, T-223/12, EU:T:2014:975, paragraph 28.

As explained in the initial reply, the Court of Justice has acknowledged that institutions may rely on general presumptions that apply to certain categories of documents. This is because similar considerations are likely to apply to requests for disclosure concerning documents of the same nature<sup>6</sup>. It is in this light that Article 4(2)(g) of the Detailed Rules for the Application of Regulation (EC) No 1049/2001, annexed to the Commission's Rules of Procedure<sup>7</sup>, states that there is a presumption that granting access to documents related to OLAF investigations would undermine the interests protected under Article 4(1) to (3) of Regulation (EC) No 1049/2001.

For the purpose of interpreting the exception laid down in the third indent of Article 4(2) of Regulation (EC) No 1049/2001, the Court of Justice has recognised the existence of general presumptions that justify refusing access to certain documents. These include documents in the Commission's administrative file relating to a procedure for reviewing State aid<sup>8</sup>, documents exchanged between the Commission and the undertakings concerned in the context of merger control proceedings<sup>9</sup>, pleadings lodged by an institution in court proceedings<sup>10</sup>, documents relating to infringement proceedings at the pre-litigation stage<sup>11</sup>, documents in a file relating to a proceeding under Article 101 TFEU<sup>12</sup> and documents relating to an 'EU-Pilot' procedure<sup>13</sup>.

Documents in an OLAF case file present similar features due to the special legal regime governing the requested documents, the specific characteristics of OLAF investigations, and the nature of the documents themselves.

*First*, to determine the scope of the Regulation (EC) No 1049/2001, consideration must be given to the specific rules governing the administrative procedure under which the documents requested were gathered<sup>14</sup>. In this case, this is Regulation (EU, Euratom) No 883/2013 which governs OLAF's administrative activities.

The rationale behind the application of general presumptions lies in the need to ensure the proper functioning of the procedures in question and to prevent their objectives from being undermined. Accordingly, a general presumption may be recognised when access to documents involved in certain procedures is deemed incompatible with the proper conduct of those procedures. Such a presumption, intended to mitigate the risk of external interference compromising the process, serves to preserve the integrity of such procedures by limiting third-party intervention<sup>15</sup>. Indeed, as established by the Court of Justice, one of the criteria for recognising the general presumption is that the procedure before the EU institution is governed by specific rules laid down in a legal measure, under which the requested documents were produced.<sup>16</sup>

OLAF's investigations are subject to specific rules regarding access to and the handling of information obtained or produced during the investigation. Regulation (EU, Euratom) No

---

<sup>6</sup> See judgment of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraph 54 and the case-law cited; judgments 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.

<sup>7</sup> Commission Decision (EU) 2024/3080 of 4 December 2024 establishing the Rules of Procedure of the Commission and amending Decision C(2000) 3614 (OJ L, 2024/3080, 5.12.2024).

<sup>8</sup> *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, cited above, paragraph 61.

<sup>9</sup> Judgments of 28 June 2012, *Commission v Éditions Odile Jacob*, C-404/10 P, EU:C:2012:393, paragraph 123, and of 28 June 2012, *Commission v Agrofert Holding*, C-477/10 P, EU:C:2012:394, paragraph 64.

<sup>10</sup> Judgment of 21 September 2010, *Sweden and Others v API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 94.

<sup>11</sup> Judgment of 14 November 2013, *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 65.

<sup>12</sup> Judgment of 27 February 2014, *Commission v EnBW*, C-365/12 P, EU:C:2014:112, paragraph 93.

<sup>13</sup> Judgment of 11 May 2017, *Sweden v Commission*, C-562/14 P, EU:C:2017:356, paragraph 51.

<sup>14</sup> Judgment of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, paragraphs 153-154.

<sup>15</sup> See judgment of 26 May 2016, *IMG v Commission*, T-110/15, EU:T:2016:322 paragraph 31, and to that effect, Opinion of Advocate General Wathelet in Joined Cases *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:528, points 66, 68, 74 and 76.

<sup>16</sup> *IMG v Commission*, T-110/15, cited above, paragraph 32, and judgment of 11 June 2015, *McCullough v Cedefop*, T-496/13, EU:T:2015:374, paragraph 91 and the case-law cited; Opinion of Advocate General Cruz Villalón in *Council v Access Info Europe*, C-280/11 P, EU:C:2013:325, point 75

883/2013 requires OLAF to treat all such information as confidential and subject to professional secrecy, in accordance with Article 10.

As noted in the initial reply, the regulation does not grant individuals the right to obtain documents from OLAF's case files. This restriction applies even to the persons concerned<sup>17</sup>, unless OLAF recommends judicial follow-up<sup>18</sup>. Extending public access beyond the limits set by Regulation No 883/2013 would undermine the effectiveness of Article 10(3b) and create a conflict with Regulation No 1049/2001, which holds equal standing.

Allowing public access to an OLAF case file, even after closure, would disrupt the legislator's intended balance between Regulation (EU, Euratom) No 883/2013 and Regulation (EC) No 1049/2001, giving the general public broader rights than those granted to the individuals directly involved in the case. As the Court of Justice has confirmed, a document that is not accessible under the 'access to file' procedure cannot be made available to the public under Regulation (EC) No 1049/2001<sup>19</sup>.

Recognising this balance, the General Court has established a general presumption of non-accessibility, holding that disclosing documents related to OLAF investigations under Regulation No 1049/2001 could fundamentally undermine both current and future investigative activities. This presumption necessarily extends to cases that have been closed, ensuring the continued protection of investigative methods and objectives.

*Second*, the conclusion that the general presumption of non-accessibility must also apply to closed procedures, including those closed at the selection phase, is supported by several considerations specific to OLAF's investigative process and the need to preserve its future effectiveness.

Regulation (EU, Euratom) No 883/2013 seeks to balance two key priorities: on the one hand, the obligation of Member States and EU institutions, bodies, offices or agencies, as well as the willingness of third parties, to provide sensitive information to OLAF so it can carry out its objectives and tasks<sup>20</sup>; and on the other hand, the need to ensure enhanced protection for such information through strict requirements of confidentiality, data protection and professional secrecy.

In this context, the integrity of OLAF's investigative process would be compromised if documents were not protected by a general presumption of non-disclosure. The risks from disclosing such documents are reasonably foreseeable and are not merely hypothetical, as explained in the initial reply<sup>21</sup>.

Disclosing documents, particularly from cases closed at the selection phase, poses a specific and significant risk to OLAF's ability to gather information from sources and whistle-blowers. This phase is designed to assess the initial plausibility and relevance of incoming information before a formal investigation is opened. The documents you have requested are precisely of this nature and, therefore, disclosing them, regardless of how old the closed selection, could compromise OLAF's ability to secure confidential cooperation in future cases.

Sources share often sensitive information in the expectation that, should the case be dismissed at this early stage, the information will not be made public. If documents from selection files could subsequently be disclosed, it would undermine this expectation and discourage future sources from reporting to OLAF. The risk is particularly acute in the selection phase, where the information received may be fragmentary, informal, or uncorroborated, and often provided with requests for anonymity.

This chilling effect could manifest in two ways: individuals may choose not to approach OLAF at all, fearing that the mere act of submitting information could later be exposed; or may

---

<sup>17</sup> According to Article 2(5) of Regulation (EU, Euratom) No 883/2013, 'person concerned' shall mean any person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interests of the Union and who is therefore subject to investigation by the Office.

<sup>18</sup> Article 10(3b) of Regulation (EU, Euratom) No 883/2013.

<sup>19</sup> See to that effect *European Commission v Agrofert Holding a.s.*, C-477/10P, cited above, para 63.

<sup>20</sup> Article 1 of Regulation (EU, Euratom) No 883/2013.

<sup>21</sup> Initial reply, pages 2-3.

filter or sanitise the content of their submissions, withholding names, documents or critical context that might be traceable to them or to the entities involved.

Both outcomes would impair OLAF's capacity to make informed assessments at the selection phase and to initiate investigations where warranted. Furthermore, even without naming individuals, the contextual details in selection-phase documents may be sufficient to infer identities, particularly in small organisations or specific sectors<sup>22</sup>. This risk of indirect identification reinforces the need to treat such material with the same confidentiality as that applied during full investigations.

Consequently, protecting confidentiality of the documents in the case file of investigations closed at the selection stage is essential to ensuring that OLAF continues to receive the raw, unfiltered information it needs to carry out its investigations, which are protected under the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

*Third*, the nature of the documents that you request justifies a general presumption of non-disclosure, due to the sensitive information they contain.

The case file, including those of investigations closed at the selection phase, includes not only the core allegations and OLAF's initial assessment of whether there is sufficient suspicion of fraud or irregularities, but also details of OLAF's investigative process and working methods at that stage. Public disclosure of such material could reveal investigative strategies and techniques, potentially exposing the methods used to evaluate cases and assess evidence.

In the context of selection, this could compromise OLAF's ability to effectively assess future allegations. Disclosing how decisions are made at the selection phase, including the criteria and internal deliberations, could allow potential wrongdoers to anticipate and avoid detection in future investigations. This risk could hinder the ability of OLAF and other investigative bodies to act effectively, as individuals could tailor their actions to bypass these strategies, ultimately undermining the efficiency of ongoing and future investigations.

Protecting the confidentiality of these documents is therefore essential—not only to safeguard past investigations, but also to preserve the effectiveness and integrity of OLAF's current and future operations. Without such safeguards, OLAF's ability to combat fraud, corruption, and other illegal activities affecting the EU's financial interests could be seriously undermined.

In view of this, OLAF considers that access to the requested documents is prevented by the general presumption of non-disclosure of documents in OLAF investigative case-files arising from the exception set out in Article 4(2) third indent of Regulation (EC) No 1049/2001. The disclosure of the documents you request would significantly impair OLAF's ability to conduct its work effectively, both now and in the future.

The general presumption that the disclosure of documents in an investigative case file would undermine the protection of the objectives of investigative activities is not absolute. An applicant may challenge this presumption by demonstrating that it does not apply to specific documents or by proving an overriding public interest justifies their disclosure<sup>23</sup>.

However, OLAF is not required to examine each document individually unless the applicant, in a confirmatory application, provides specific arguments or evidence to contest the presumption<sup>24</sup>. In this case, you have not presented any such evidence to show that the requested documents fall outside the case file or that the general presumption should not apply. Therefore, OLAF may rely on this presumption to justify its refusal.

---

<sup>22</sup> Judgement of 7 March 2024, *OC v European Commission*, C-479/22 P, ECLI:EU:C:2024:215 paragraph 60.

<sup>23</sup> See judgment of 11 December 2018, *Arca Capital Bohemia v Commission*, T-440/17, EU:T:2018:898, paragraph 61 and the case-law cited.

<sup>24</sup> See, to that effect, judgment of 11 December 2018, *Arca Capital Bohemia v Commission*, T-440/17 EU:T:2018:898, paragraph 62 and the case-law cited.

#### 4. Partial access

As previously explained, 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 1049/2001<sup>25</sup>.

#### 5. Overriding public interest in disclosure

The exception laid down in Article 4(2), third indent of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in the disclosure of the requested documents. For such an interest to exist, it must firstly be a public interest and secondly outweigh the interest protected by the exception to the right of access<sup>26</sup>. According to case law, it is the applicant's responsibility to demonstrate an overriding public interest that justifies the disclosure of the documents concerned<sup>27</sup>.

In your confirmatory application, you argue that there is an overriding public interest in disclosure that outweighs the protection of OLAF's processes, rooted in need to protect whistleblowers, allowing the public to assess whether EU institutions adequately safeguard those who report wrongdoing. In particular, how the allegations were handled in this case and what is the European Commission's role in the reform of child protection in Romania.

The documents identified are an internal note summarising the meeting between OLAF officials and the Director of "Against Child Trafficking" on 10 September 2014, and an email exchange to arrange this meeting. These documents do not contain information on whether EU institutions adequately safeguard those who report wrongdoing, nor about the Commission's role in the reform of child protection in Romania. Therefore, disclosure of the identified documents would not advance the interests you allege.

In any event, the interests you allege do not constitute specific circumstances justifying the disclosure, but are only mere general considerations, which cannot provide an appropriate basis for establishing that an overriding public interest prevails over the reasons justifying the refusal stated in section 4 above<sup>28</sup>.

In light of the above considerations, OLAF considers that the existence of an overriding public interest in disclosing the documents requested has not been demonstrated in this particular case. To the contrary, OLAF considers the public interest to be better served by ensuring the protection of the purpose of its investigations.

#### 6. Means of redress

In case you would disagree with this position, I draw your attention to the possible means of redress available against this decision. You may either bring proceedings before the General Court of the European Union or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Your attention is drawn to the privacy statement below.

---

<sup>25</sup> *European Commission v Odile Jacob*, cited above, paragraph 133.

<sup>26</sup> Judgments of 9 October 2018, *Anikó Pint v European Commission*, T-634/17, EU:T:2018:662, paragraph 48; of 23 January 2017, *Association Justice & Environment, z.s v European Commission*, T-727/15, EU:T:2017:18, paragraph 49; of 5 December 2018, *Falcon Technologies International LLLC v European Commission*, T-875/16, EU:T:2018:877, paragraph 84.

<sup>27</sup> *Strack v Commission*, cited above, paragraph 128; *CLPN and Finland v Commission*, C-514/11 P and C-605/11 P, cited above, paragraph 94.

<sup>28</sup> Judgment of 11 May 2017, *Kingdom of Sweden v European Commission*, C-562/14 P, ECLI:EU:C:2017:356, paragraph 55-56.

Yours sincerely,

Signed Electronically

#### Privacy notice

Pursuant to Articles 15 and 16 of Regulation (EU) 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 ensuring conformity with the requirements of Regulation (EC) No 1049/2001 and Commission Decision (EU) 2024/3080.

The categories of your personal data being processed are identification and contact data and any other personal data provided by or to you in relation to your request. Officials within OLAF and other Commission services responsible for dealing with requests for access to documents, and third parties, within the meaning of Articles 4(4) and 3(b) of Regulation (EC) No 1049/2001, and Article 12 of the Annex to Commission Decision (EU) 2024/3080, have access to your personal data. Personal data that appear on the requested document may only be disclosed to the applicant following an assessment under Article 9(b) of Regulation (EU) 2018/1725. There is no automated decision process by OLAF concerning any data subject.

All documentation concerning OLAF investigations are stored in the relevant OLAF investigation files and are retained for a maximum of 15 years. Thus personal data contained in requests for public access to documents concerning OLAF investigations are retained for a maximum of 15 years.

You have the right to request access to your personal data, rectification or erasure of the data, or restriction of their processing. Any request to exercise one of those rights should be directed to the Controller ([OLAF-FMB-DATA-PROTxxxxxx@xx.xxropa.eu](mailto:OLAF-FMB-DATA-PROTxxxxxx@xx.xxropa.eu)). You may contact the Data Protection Officer of OLAF ([OLAF-FMB-DPO@ec.europa.eu](mailto:OLAF-FMB-DPO@ec.europa.eu)) with regard to issues related to the processing of your personal data under Regulation (EU) 2018/1725.

You have the right to have recourse to the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)) if you consider that your rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of your personal data by OLAF.

The complete privacy statements for this and all other OLAF personal data processing operations are available at: <http://anti-fraud.ec.europa.eu>