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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	7061/25
Subject:	Public access to documents - Confirmatory application No 04/c/01/25

Delegations will find attached a draft reply to confirmatory application No 04/c/01/25
(see 7061/25).

REPLY TO CONFIRMATORY APPLICATION 04/c/01/25
made by email on 12 March 2025 and registered on the same day

The Council has considered the confirmatory application under [Regulation \(EC\) No 1049/2001](#) of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents and Annex II to the [Council's Rules of Procedure](#) and has come to the following conclusion:

1. On 29 January 2025, the Applicant introduced a request for access to documents concerning:
“The service requests / specific contracts within the Framework, their values and who they were awarded. The evaluation summary report showing the bidders, scores and comments for the tender competition. Regarding this tender - Provision of Support to the General Secretariat of the Council of the European Union in its Digital Communication Activities Reference number: UCA 21/051”.
2. This access request was registered by the General Secretariat of the Council (GSC) under reference number 25/0284.
3. On 5 March February 2025, the GSC replied to the Applicant, denying access to the 61 documents identified as falling under the scope of the request (the evaluation report and 60 specific contracts). This refusal was made on the basis of the exceptions concerning the commercial interests of a natural or a legal person (Article 4(2), first indent, of Regulation (EC) No 1049/2001) and concerning the protection of personal data (Article 4(1)(b) of Regulation (EC) No 1049/2001).
4. On 12 March 2025, the Applicant introduced a confirmatory application as regards the evaluation report of procurement procedure UCA 21/051. The Applicant expressed that *“there may be parts of the document that could arouse commercial interest from the bidders, but that does not justify your decision to withhold the document from me”*, asking that access be partially granted to the document *“with those parts that could harm the commercial interests of the bidders duly redacted so that they cannot be viewed”*.

5. The Council has carefully considered this confirmatory application. It has assessed, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and on account of the Applicant's arguments, whether public access can be provided to the requested document.

**ASSESSMENT OF THE REQUESTED DOCUMENT UNDER REGULATION (EC)
NO 1049/2001**

6. Article 4(2), first indent, of Regulation 1049/2001, provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure”.
7. The Court has already found that “...contract award procedures are founded on a relationship of trust between the contracting authorities and participating economic operators. Those operators must be able to communicate any relevant information to the contracting authorities in the procurement process, without fear that the authorities will communicate to third parties items of information whose disclosure could be damaging to them”¹.
8. In particular, the Court has already found that the protection afforded by Article 4(2), first indent, of Regulation No 1049/2001 covers commercially sensitive information relating to the expertise of the undertaking concerned, the prices of their offers, the financing arrangements, as well as the reasons why the offer in question would have been attractive and the information particular to a certain undertaking which reveal its expertise².
9. Moreover, the Court has considered that, in order for the exception in question to apply, the institution is not required to establish that there is a definite risk of undermining the protection of the commercial interests of the undertakings concerned. According to the Court, it is sufficient for the institution “to indicate tangible elements which would allow the conclusion to be drawn that the risk of the commercial interests of the undertaking concerned would be undermined was [...] reasonably foreseeable and not purely hypothetical, and to mention the existence [...] of objective reasons on the basis of which it could be reasonably foreseen that those commercial interests would be undermined if the information requested by the applicants were disclosed”³.

¹ Judgment of 14 February 2008, *Varec SA v Belgian State*, [C-450/06](#), EU:C:2008:91, paragraph 36.

² See Judgment of 7 February 2018, *PTC Therapeutics International v European Medicines Agency (EMA)*, T-718/15, EU:T:2018:66, paragraph 85 and Judgment of 7 September 2022, *Saure v European Commission*, T-448/21, EU:T:2022:525, paragraphs 88 and 89.

³ Judgment of 17 July 2024, *Auken, Metz, Paulus and van Sparrentak v European Commission*, T-689/21, EU:T:2024:476, paragraph 82 and 83.

10. Procurement award procedures are subject to the publicity and transparency requirements laid out in the [Financial Regulation](#), notably on advertising or ex-ante publicity of the procedures, on the publication of the calls for proposals, and the ex-post publicity requirements.
11. In such public procurement award procedures, all necessary precautions must be undertaken to ensure the protection of information concerning firms which is covered by the obligation of professional secrecy.
12. The document requested is the evaluation report of a procurement procedure concerning the provision of support to the General Secretariat of the Council of the European Union in its Digital Communication Activities ([procurement procedure UCA 21/051](#)).
13. The evaluation report of procurement procedure UCA 21/051 contains a wide range of commercially sensitive information about the various tenders received concerning the provision of support concerning digital communication activities. All the tenders are therein listed. An evaluation of these tenders is performed based on the exclusion, selection and award criteria including minimum requirements, and the required administrative documents. The financial offers are analysed and ranked. The rankings per price and per quality, as well as the combined ranking, are laid out. The report also includes a recommendation to whom the contract shall be awarded, as well as its total value (including a margin and indexation cost). Five annexes complement the information in the evaluation report. The annexes contain, respectively, the assessment of the compliance by the candidates with the minimum requirements, the technical evaluation, the financial evaluation, the assessment of the compliance with the exclusion and selection criteria and the target value calculation.
14. The requested release of this document, including its annexes, would entail the public disclosure of information which is by its nature commercially sensitive for the tenderers.
15. Giving access to this information could be used to distort competition in future award procedures, on the one hand due to its commercial value, and on the other since it could prejudice the legitimate interests of economic operators who participated in the procedure. Competitors could then exploit this information during future calls for tenders or other commercial relations with the General Secretariat of the Council or with other entities.

16. The disclosure of the information contained in the evaluation report, including its annexes, and concerning the company that was awarded the contract, as well as other tenderers, has therefore to be refused pursuant to Article 4(2), first indent, of Regulation (EC) No 1049/2001 as their disclosure would undermine *“the protection of the commercial interests of a natural or legal person, including intellectual property”*.
17. In addition, following this renewed assessment, the Council confirms that some elements contained in the evaluation report, including its annexes, fall within the scope of the exception relating to the protection of the privacy and the integrity of the individual in accordance with Union legislation regarding the protection of personal data (Article 4(1)(b) of Regulation (EC) No 1049/2001). Such Union legislation, as applicable to the GSC, is contained in [Regulation \(EU\) 2018/1725](#) of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (hereinafter “Regulation (EU) 2018/1725”).
18. In accordance with Article 3(1) of Regulation (EU) 2018/1725, personal data is defined very broadly as *“any information relating to an identified or identifiable natural person”*. The Court of Justice has constantly rejected any attempt to interpret restrictively the notion at issue. It has, in particular, stressed that professional data or information provided as part of a professional activity may well be characterised as personal data⁴; it has also further stressed that the fact that some information has already been made public does not exclude its characterisation as personal data⁵; finally, names and forenames, even when alone, qualify as personal data⁶.
19. In accordance with the principles set out in Regulation (EU) No 2018/1725, when the personal data collected is to be used for a different purpose than the one for which it was originally collected, including disclosure to the public, a balance needs to be established between the public interest in having access to such data and the legitimate right of individuals to protect their personal data.

⁴ See, among others, judgment of 19 September 2018, *Port de Brest v Commission*, T-39/17, EU:T:2018:560, paragraphs 38 and 43.

⁵ Judgment of 25 September 2018, *Psara et al. v European Parliament*, T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 52.

⁶ Judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

20. Specifically, in accordance with established case-law, the transmission of personal data in the context of a public access request requires, as a precondition, the demonstration of its necessity for a specific purpose in the public interest, by derogation to the principle underlying Article 6(1) of Regulation (EC) No 1049/2001, pursuant to which there is no obligation to state reasons for the application. According to the case-law, the applicant for access must first demonstrate that the transmission of personal data is necessary for a specific purpose in the public interest. It is only if that demonstration is made that it is then for the institution concerned to verify whether there is any reason to believe that the transmission at issue might adversely affect the data subject's legitimate interests and, in such a case, to weigh up, in a verifiable manner, the various competing interests with a view to assessing the proportionality of the transmission of personal data sought⁷.
21. It is therefore for the Applicant to first establish the need to have the data transferred, the institution concerned not being obliged to verify itself whether reasons justifying the transfer of personal data exist⁸. In the case at hand, considering that the Applicant has not demonstrated that the transmission of the relevant personal data is necessary for a specific purpose in the public interest, the Council has concluded that disclosure of the personal data contained in the requested document would undermine the protection of privacy and the integrity of the data subjects.
22. As far as the refusal is based on the exception laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001, the Council has also examined the existence of an overriding public interest in the disclosure of the requested document. In this context, the Council has carefully assessed the arguments provided on this point by the applicant in the confirmatory application. The Council notes that those arguments are based on general considerations that do not provide an appropriate basis for establishing that, in the present case, the principle of transparency could prevail over the reasons outlined above and justifying the refusal to the requested documents. Considering the above, the Council concludes that, in the specific case at hand, the public interest in releasing the documents does not outweigh the need to preserve the interests protected under Article 4(2), first indent, of Regulation (EC) No 1049/2001.

⁷ Judgment of 6 April 2022, *Hans-Wilhelm Saure v European Commission*, T-506/21, EU:T:2022:225, paragraph 25.

⁸ See, among others, judgment of 2 October 2014, *Strack v Commission*, C-127/13, EU:C:2014:2250, paragraphs 106-107.

23. The Council has also considered the possibility of providing partial access to the document, as provided for in Article 4(6) of the Regulation, and has concluded that the parts of the documents to which access could be granted would be meaningless as the fragments that could be disclosed would be of no use for the applicant⁹. As provided for in the case-law, the institutions are not obliged to grant partial access to documents when such partial access would entirely deprive the document in question of its content¹⁰.

CONCLUSION

24. Having regard to the above, the Council has concluded that access to the requested document has to be refused on the basis of the exceptions laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 (protection of commercial interests of a natural or legal person, including intellectual property), and in Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of the privacy and the integrity of the individual).

⁹ In this sense, see, among others, the Judgment of 12 July 2001, *Mattila v Council and Commission*, T-204/99, EU:T:2001:190, paragraph 69.

¹⁰ See judgment of 20 March 2014, *Reagens v Commission*, T-181/10, EU:T:2014:139, paragraph 161, 162 and 165.