

THE COMMISSION'S PRELIMINARY COMMENTS TO THE COMPLAINANT'S ARGUMENTS

In its confirmatory decision registered under Gestdem 2020-7446 of 10 August 2022, the Commission granted partial access to one document, redacting some parts to protect personal data and commercial interests, in accordance with Article 4(1)(b) and the first indent of Article 4(2) of Regulation (EC) No 1049/2001. It refused access to the remaining two documents in their entirety, based on the protection of commercial interests.

The complainant is dissatisfied with this decision, and has put forward arguments to contest both the substance of the reply and the delay it has taken for the Commission to reply to his request.

In relation to the latter, the Secretariat-General has the following preliminary observations.

As explained in the confirmatory decision, the Secretariat-General had to consult the third-party originator of the documents, the consortium, in accordance with Articles 4(4) of Regulation (EC) No 1049/2001, as regards the possible disclosure of the documents requested.

The content of the documents in question (project report and deliverables) is complex, containing technical and scientific data covered by intellectual property. Indeed, these documents relate to a research project (MOBI-KIDS), co-financed by the EU, the aim of which was to assess the potential link between the risk of brain tumours and environmental risk factors, including use of communication devices. As explained in the confirmatory decision, the documents are the detailed working versions containing the preliminary findings of the study.

In the context of the consultation, the third-party originator argued that the 'disclosure would undermine the protection of the intellectual property of a natural or legal person. [...] In short, the results [of the project] were preliminary and unvalidated and are superseded by results of analyses conducted since then with additional funding and data, and the final results and products are being prepared for publication. Thus, making the results of these deliverables and report public would jeopardise the publications of the study results (the intellectual property) as well as disseminate information which is not validated or up to date'.

Given the technical nature of the documents requested, as well as the possible concurrence of specific and legitimate reasons to protect these documents, the Secretariat-General re-consulted the third-party originator to better understand the position of the latter and determine whether any of the exceptions under Article 4 of Regulation (EC) No 1049/2001 were applicable to the documents requested. In doing so, the Secretariat-General paid attention to the time-limits set out in that Regulation and provided clear deadlines to the third party concerned. The Secretariat-General has provided to the European Ombudsman a copy of the exchanges with the third-party originator.

Moreover, in the course of the handling of the confirmatory application, there was a change of circumstances, as the final results of the research project had been published in the meantime. The Secretariat-General had to accommodate the changed factual circumstances in its draft confirmatory decision prior to its adoption. Whereas the processing of the request was, unfortunately, delayed, the applicant was duly informed about the progress of the file and the reasons for this additional delay.

In conclusion, this case illustrates the complexity in the handling of requests concerning highly technical matters, which is the case in an increasing number of confirmatory requests handled by the Commission, for example containing scientific data covered by intellectual property as in the case in hand.

The difficulty in processing an application by the Secretariat-General is further accentuated when there is a change in the factual circumstances, which has to be taken into account at confirmatory level, as explained above.