

Reply of the European Commission to the proposal for a solution from the European Ombudsman on the European Commission's refusal to give public access to documents concerning the follow-up to an OLAF investigation
Complaint ref. 132/2025/ACB

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 19 June 2024, the complainant lodged under Regulation (EC) No 1049/2001¹ a request for public access to documents concerning an investigation of the European Anti-Fraud Office ('hereinafter OLAF'). The investigation concerned possible financial irregularities and breaches of statutory obligations by an EU staff member.

Namely, the complainant requested access to:

- 'Copies of all communications between OLAF and the EU Commission relating to this matter, including the recommendation issued by OLAF to the Commission.

- the EU Commission's case file on [these] proceedings, which should include (but not be limited to): a. a copy of any final written report and appendices; b. a copy of any preliminary report and appendices; c. correspondence between the EU Commission and the staff member in question'.

In its initial reply of 11 July 2024, the Directorate-General for Human Resources and Security (hereinafter 'DG HR') identified the following 23 documents ('the documents requested') as falling within the scope of the complainant's request. It refused access to these documents based on the exception of Article 4(1)(b) (protection of privacy and integrity of individuals) of Regulation (EC) No 1049/2001.

	Author	Addressee	Date	Title	Ref. number
1	OLAF	Secretariat-General	4/5/2022	Transmission of Recommendation and Final Report (with three annexes)	Ares(2022)3625901
2	Secretariat - General	DG HR	18/5/2022	OLAF final report with recommendation	Ares(2022)3762460
3	DG HR	DG HR/IDOC ²	20/6/2022	Mandate to open pre-disciplinary	Ares(2022)4527178

¹ OJ L 145, 31.5.2001, p. 43.

² Investigation and Disciplinary Office.

				proceedings provided for by Article 3 of Annex IX to the Staff Regulations	
4	DG HR/IDOC	Person concerned	23/6/2022	Notification that proceedings under Article 3 of Annex IX to the Staff Regulations have been opened (with five annexes)	Ares(2022)4616655
5	Person concerned	DG HR/IDOC	6/7/2022	Reply to letter of 23/6/2022	Ares(2022)4924962
6	DG HR	Person concerned	16/9/2022	Notification about referral to the Panel (with one annex)	Ares(2022)6397391
7	DG HR	Panel provided for in Article 93(1) of the Financial Regulation	20/9/2022	Referral to the Panel (with six annexes)	Ares(2022)6494840
8	Panel		25/1/2023	Opinion No 2023/01	Ares(2023)561146
9	Person concerned	DG HR/IDOC	8/2/2023	Reply to Panel opinion	-
10	DG HR	Disciplinary Board	24/2/2023	Referral to the Disciplinary Board; Disciplinary Report (with ten annexes)	Ares(2023)1370013
11	DG HR	Person concerned	24/2/2023	Information of the person concerned	Ares(2023)1371193
12	DG HR/IDOC	OLAF	6/3/2023	Information of opening of disciplinary procedure	Ares(2023)1616577
13	Disciplinary Board	Person concerned	10/10/2023	Invitation to drawing by lot (with two	Ares(2023)6878666

				annexes)	
14	Disciplinary Board	Person concerned	27/10/2023	Results of the drawing by lot	Ares(2023)7336839
15	Disciplinary Board	Person concerned	7/11/2023	Invitation to hearing	Ares(2023)7550925
16	Secretary general	Two DGs	21/12/2023	Constitution de l'AIPN tripartite	Ares(2023)8790251
17	Disciplinary Board		28/2/2024	Opinion of the Disciplinary Board	Ares(2024)1538488
18	DG HR/IDOC	Person concerned	1/3/2024	Invitation to hearing before the tripartite AA	Ares(2024)1609058
19	DG HR/IDOC	Person concerned	26/4/2024	Transmission sanction decision	Ares(2024)3083381
20	DG HR/IDOC	Disciplinary Board	26/4/2024	Information about sanction decision	Ares(2024)3092829
21	DG HR/IDOC	DG HR and PMO ³	26/4/2024	Information about sanction decision	Ares(2024)3092611
22	DG HR/IDOC	Legal service	26/4/2024	Information about sanction decision	Ares(2024)3092720
23	DG HR/IDOC	OLAF	26/4/2024	Information about sanction decision	Ares(2024)3093302

On 17 July 2024, pursuant to Article 7(2) of Regulation (EC) No 1049/2001, the complainant submitted a confirmatory application requesting a review of the initial reply.

On 8 January 2025, the Secretariat-General adopted the confirmatory decision C(2025)128 final. In its reply, the Secretariat-General noted that document 2 had already been assessed by OLAF⁴ in another request submitted by the complainant⁵. The Secretariat-General protected

³ Paymaster Office.

⁴ In accordance with Article 4 of the Detailed rules for the application of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 345, 29.12.2001, p. 94)), which were in force at the time of the complainant's request for public access to documents, the decision-making power is delegated to the Director of OLAF where the confirmatory application relates to documents concerning OLAF activities referred to in Article 2(1) and (2) of Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office. A similar regime is established in Article 16 of the Detailed Rules for the application of Regulation (EC) No 1049/2001, annexed to the Rules of Procedure of the Commission (Commission Decision (EU) 2024/3080 of 4 December 2024

from public access documents 1, 3-23 based on the exceptions of the third indent (protection of the purpose of investigations) of Article 4(2) and Article 4(1)(b) (protection of privacy and integrity of individuals) of Regulation (EC) No 1049/2001. The Secretariat-General invoked the general presumption of confidentiality based on the protection of the purpose of investigations with respect to the Commission's Investigation and Disciplinary Office ('IDOC') investigations.

The complainant lodged a complaint with the European Ombudsman against the confirmatory decision C(2025)128 final.

III. EUROPEAN OMBUDSMAN'S INQUIRY AND PROPOSAL

On 20 January 2025, the Ombudsman opened an inquiry against the Commission's decision to protect the documents requested from public access.

In the course of the inquiry, the Ombudsman received copy of the documents it had requested for inspection.

On 25 August 2025, the Ombudsman issued a proposal for a solution in this case. In its proposal, the Ombudsman took the view that the Commission should reconsider its decision to refuse public access with a view to providing meaningful partial access to the documents requested, whilst protecting the privacy and integrity of the individuals mentioned in the documents. More concretely:

- The Ombudsman considered that the Commission's reliance on a general presumption of confidentiality of IDOC investigations files was not reasonable for the following reasons: 1) the Court has not yet recognised the existence of a general presumption of confidentiality for documents included in the administrative file of an IDOC investigation; 2) even if a general presumption were to be recognised by the Court for documents included in the administrative file of an IDOC investigation, such general presumption would not be applicable after the disciplinary sanction has been imposed.
- The Ombudsman took the view that only limited parts of the documents requested would need to be redacted to protect the purpose of investigations. However, the Ombudsman found reasonable for the Commission to conclude that the applicant did not prove the existence of an overriding public interest in the disclosure of the documents requested.
- In the Ombudsman's view, the documents requested do not contain personal data and could therefore be partially disclosed to provide an overview of the facts, the applicable staff rules and the analysis and conclusions at each step of the proceedings

establishing the Rules of Procedure of the Commission and amending Decision C(2000) 3614 (OJ L, 2024/3080, 5.12.2024)), currently in force.

⁵ Confirmatory decision OCM (2024)33460.

from the different bodies involved, as well as the ultimate outcome, including the nature of the sanction imposed. With respect to the disclosure of the personal data, the Ombudsman considered that the complainant did not establish a necessity for disclosure of the personal data, as required by Regulation 2018/1725⁶.

IV. THE REPLY OF THE COMMISSION TO THE OMBUDSMAN'S PROPOSAL FOR A SOLUTION

1. With respect to the existence of a general presumption of confidentiality for documents in the administrative file of IDOC investigations

The Court of Justice has acknowledged that it is open to the EU institutions to rely on general presumptions applying to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature⁷.

As explained in the confirmatory decision, IDOC investigations hold many similarities with State aid investigations and OLAF investigations for which the Court acknowledged the existence of a general presumption of confidentiality.

In both State aid and OLAF investigations:

1. Documents related to IDOC investigations form part of an administrative file which contains documents of similar nature.
2. IDOC investigations are governed by a specific legal framework⁸ that outlines clear rules regarding accessibility and confidentiality⁹. Pursuant to Article 2(2) of Annex IX to the Staff Regulations, the conclusions of the investigation report that are directly related to the allegations can be communicated only to the person concerned and only when the investigation is concluded. Moreover, the IDOC administrative file is accessible only on 'need to know' basis pursuant to the definition enshrined in Article

⁶ OJ L 295, 21.11.2018, pp. 39–98.

⁷ See the 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, not published, EU:T:2019:80, paragraph 34.

⁸ Article 12 and Article 86 and Annex IX of European Commission's 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 (Staff Regulations), OJ P 045 14.6.1962, p. 1385 and Commission Decision C(2019) 4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings (General Implementing Provisions), https://rail-research.europa.eu/wp-content/uploads/2019/12/GB-Decision_10-2019_Annex_EC-decision.pdf.

⁹ Article 2(2) of Annex IX of the Staff Regulations and Article 3(1), 7(1) and (4), 15(1), 23(2), 33 and 41(4) of the General Implementing Provisions.

9(5)(b) and 9(6) of Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission¹⁰.

3. The *ratio legis* of limited accessibility is to ensure the proper conduct of the investigation and that its objectives are not undermined. Access to the documents related to IDOC investigations is incompatible with the nature of these investigations, which always concern personal data of natural persons. Furthermore, it would undermine the rights of the person investigated by Article 2(2) of Annex IX of the Staff Regulations.

For the effective conduct of IDOC investigations the Commission's investigative strategy, preliminary assessments, administrative inquiry, planning of procedural steps and final decision must remain confidential. Their disclosure would seriously undermine the protection of the confidential character of the investigation as set out in the specific rules governing IDOC investigations. In fact, the protection of confidentiality is of utmost importance to encourage the full cooperation of the person concerned, the witnesses and the other actors involved. The prospect of disclosure of information would jeopardise the purpose and the effectiveness of pending and future investigations by discouraging the cooperation of the person(s) subject to the investigation.

Furthermore, pursuant to Article 4(2)(j) of the Detailed Rules on the application of Regulation 1049/2001¹¹ 'There is a presumption that access to the following documents, inter alia, undermines interests protected by Article 4(1) to (3) of Regulation (EC) No 1049/2001: [...] (j) documents being part of investigations of the Investigation and Disciplinary Office of the Commission'.

The Commission made use of its power under the Treaties to adopt its own rules of procedure that include as an annex the detailed rules in question. Article 15(3) of the Treaty on the Functioning of the European Union (TFEU) and Regulation (EC) No 1049/2001 recognise the power of the Commission to adopt specific provisions regarding access to its documents.

With respect to the Ombudsman's argument according to which the general presumption cannot be invoked after the disciplinary sanction has been imposed, the Commission observes that the nature of the interests protected requires that the applicability of a general presumption of confidentiality is extended to closed cases.

The Court has extended the applicability of a general presumption of confidentiality to closed cases related to State aid investigations¹² and to OLAF investigations. In fact, even in closed

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D0443&from=EN>

¹¹ Annex to the 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.

¹² Judgment of 5 October 2022, *Ondřej Múka v European Commission*, T-214/21, EU:T:2022:607.

OLAF cases, the Court has found that public access to OLAF's files or OLAF's final reports would undermine the protection of the objectives of OLAF's investigation activities¹³.

The Commission concludes that IDOC investigations meets the criteria for the applicability of a general presumption of confidentiality and the latter can be invoked also with respect to closed IDOC investigations.

2. With respect to the partial disclosure of the documents

When a general presumption of confidentiality applies for the purpose of the application of the exception provided for in the third indent of Article 4(2) of Regulation (EC) No 1049/2001, it is not necessary for the Commission to carry out a specific, individual examination of the document(s) in a file covered by this presumption¹⁴. For this reason, the Commission was not required to assess if a partial disclosure was possible.

The Court stated that 'the requirement to ascertain whether the general presumption in question actually applies cannot be interpreted as meaning that the Commission must examine individually each document requested in the case. Such a requirement would render that general presumption meaningless, that is to say it would permit the Commission to reply to a global request for access in a manner equally global'¹⁵.

Nonetheless, the Commission notes that it undertook an individual assessment of the documents concerned and concluded that redacting the documents would result in a meaningless access for the applicant. The case-law of the Court stated that the Commission is entitled to refuse partial access in cases where examination of the documents in question shows that partial access would be meaningless because the parts of the documents that could be disclosed would be of no use to the applicant¹⁶. In the present case, extensive redactions are required to protect the purpose of IDOC investigations, including future investigations and the privacy and integrity of the person concerned. Moreover, large parts of the documents would need to be redacted to protect not only the names of the persons involved (person investigated, witnesses and the other actors involved) but also any other elements that would make the persons identifiable.

Therefore, it is not possible to disclose parts of the documents to 'provide an overview of the facts taken into account, the applicable staff rules and the analysis and conclusions at each step of the proceedings from the different bodies involved, as well as the ultimate outcome, including the nature of the sanction imposed' without making the persons identifiable.

¹³ Judgment of the General Court of 26 May 2016, *IMG v Commission*, T-110/15, EU:T:2016:322, paragraph 33-36.

¹⁴ Judgment of 27 February 2014, *European Commission v EnBW Energie Baden-Württemberg AG*, C-365/12P, EU:C:2014:112, paragraph 93.

¹⁵ Judgment of the Court of Justice of 14 November 2013 in case C-514/11 P and C-605/11 P, *LPN and Finland v Commission*, EU:C:2013:738, paragraph 68.

¹⁶ Judgment of the Court of first Instance of 12 July 2001 in case T-204/99, *Mattila v Council and Commission*, EU:T:2001:190, paragraph 69 and Judgment of the General Court of 20 March 2014 in case T-181/10, *Reagens v Commission*, EU:T:2014:139, paragraph 161.

An overview of the facts would reveal, for instance, the Unit/Directorate-General where the person concerned works/worked. The higher the seniority of the person involved, the easier it is to identify him/her, as there are fewer individuals holding that position. Moreover, there are different staff rules applicable for the IDOC investigations and different possible sanctions depending on the level of seniority of the person involved. The disclosure of this information would therefore make the person identifiable. Moreover, it would reveal IDOC investigation methods and breach the protection given to whistleblowers, hence harming the purpose of IDOC investigations.

Consequently, the Commission is of the view that protecting from public access the documents concerning the follow-up to an OLAF investigation was justified in this case.

For the Commission
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Member of the Commission