

DG Competition informal guidance paper on confidentiality claims

March 2012

Introduction

The European Commission can address requests for information to undertakings and associations of undertakings, to governments and competent authorities of the Member States, in order to obtain the information necessary to conduct its investigations.

If the investigation leads to the adoption of a Statement of Objections, the Commission will make available documents that it has obtained during the course of its investigation, as part of the "Access to file" procedure. Access is given to the parties of the proceeding to the non-confidential version of the submissions and documents.

This document drafted by DG Competition staff sets informal guidance for the recipients of a request for information, on how to claim confidentiality for information contained in their submission.

Please note that this informal document does not replace the provisions in EU law concerning professional secrecy and claims for confidentiality¹ that apply to the submissions/documents.

Do's and Don'ts – Practical Issues

1. In General

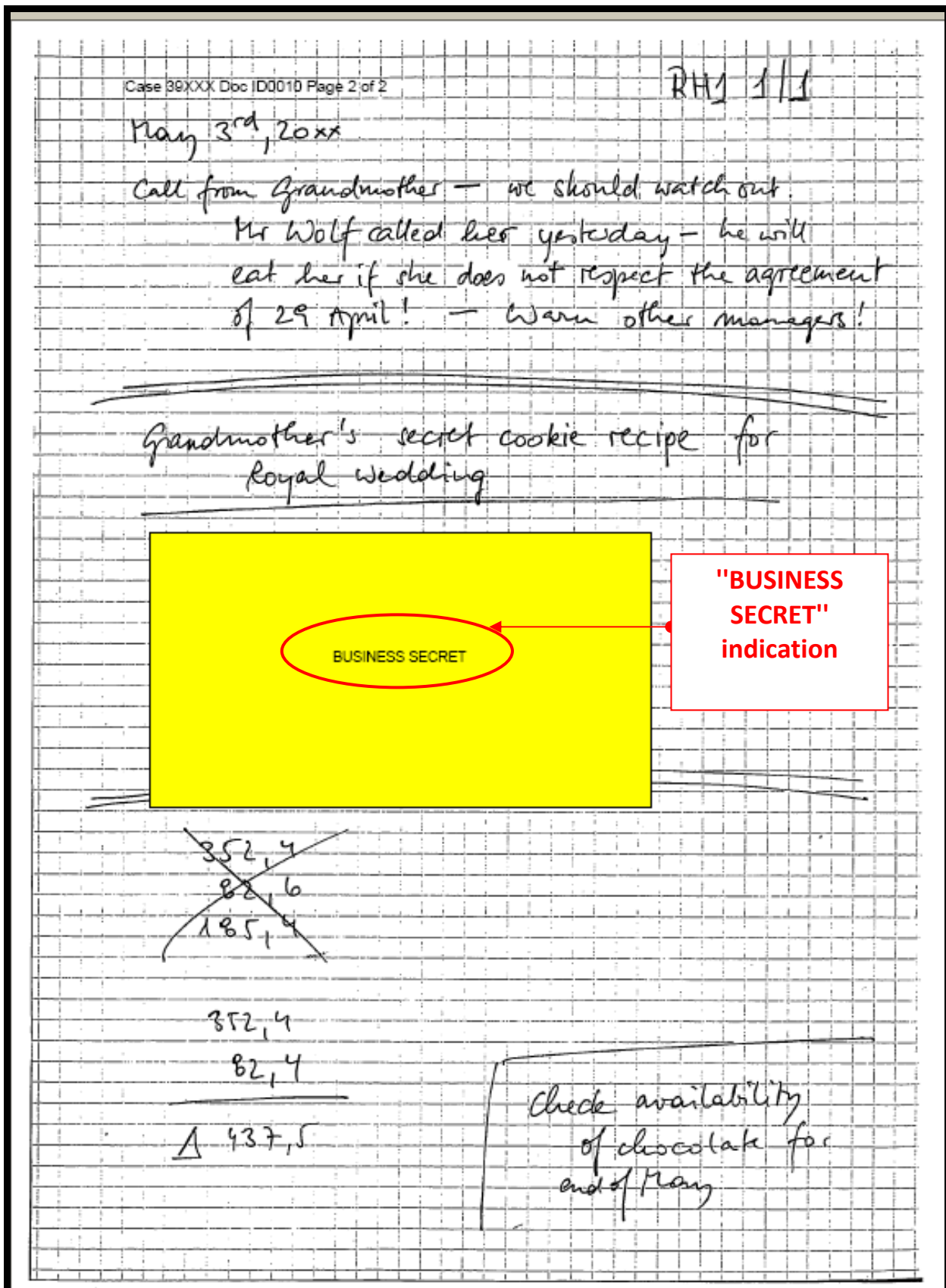
- (a) In order to claim confidentiality for information in your submissions/documents that you regard as business secrets or otherwise confidential, provide a non-confidential version of such documents in which you black out the information considered confidential. From the non-confidential version it has to be clear where information has been deleted. If necessary to understand where redactions have been made, add indications such as “business secret”, “confidential” or “confidential information”.
- (b) In general, confidentiality cannot be claimed for the entire or whole sections of the document as it is normally possible to protect confidential information with limited redactions.
- (c) The non-confidential document should keep the same format as the original version. So, if you claim confidentiality for only some parts of a document, you are requested to provide an accessible non-confidential version of the entire document.
- (d) For administrative efficiency, the Commission may ask you to provide first a draft non-confidential version of your submissions/documents in which you only highlight the information you claim to be confidential in a way that it remains legible.
- (e) A final non-confidential version in which information is blacked out will then only be submitted after the Commission has provisionally accepted your confidentiality claims.

¹ Article 339 TFEU; Regulation No 1/2003; and the Notice on access to file.

This guide complements the Annex on Business secrets and other confidential information that is enclosed in all requests for information sent by the Commission. All documents are available on the Competition website of the European Commission (see Antitrust): http://ec.europa.eu/competition/index_en.html

2. Specific examples:

- (a) If necessary to understand where redactions have been made, add indications such as “business secret”, “confidential” or “confidential information”.



- (b) For administrative efficiency, the Commission may ask you to provide first a draft non-confidential version of your submissions/documents in which you only highlight the information you claim to be confidential in a way that it remains legible.

Case:39XXX:Doc:ID0015:Page:1 of 1 ¶
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H
THE ROYAL FOOD TASTER
THE PALACE, ROOM 04/105

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¶
Little Red Riding Hood Cookies ¶
Ms Stepmother ¶
5, Haunted Castle ¶
EX1 2Q5 Far Far Away ¶
¶

London, June 7th 20XX ¶
¶

¶
¶
Subject: → Cookie recipe for Royal Wedding ¶
→ → Ref. 48299/24, please quote this reference in any correspondence ¶

Dear Ms Stepmother, ¶

I confirm receipt of the specimens and recipe proposal for strawberry shortbread submitted as part of your tender for the Royal Wedding. ¶

In order to be able to further process your tender, I should be grateful if you could answer the following questions at your earliest convenience. ¶

1. → In your proposal, you explain that part of your recipe includes "Raindrops on noses" and essence of "Whiskers on kittens", which apparently will make the consumers of your cookies think of their "favourite things", please could you explain what exactly goes into making essence of "Whiskers on kittens"? ¶

2. → You indicate that the eggs used in your receipt are ethically sourced from free range chickens raised by a Mr. H. Dumpty. Our research has shown that Mr. Dumpty lives on a wall and is prone to clumsiness. Please could you confirm that he is a reliable source for the provision of eggs? ¶

3. → You have indicated that the strawberries used in your shortbread are grown in a magic garden which is guarded by gnomes in red hats who discreetly look as though they are fishing. In this garden you state that there are also "silver bells" and "cockle shells" which are grown by a rather irritable young woman called Mary. Please confirm that neither of these two latter items is included in the ingredients for your strawberry shortbread. ¶

Yours sincerely, ¶
¶
THE ROYAL FOOD TASTER ¶
¶

Highlight

- (c) If you received a registered version with internal reference number of your document by DG Competition, indicate this internal reference (ID) number in the list justifying the request for confidentiality.

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Internal
reference
number

AGENDA

29 April 2011, 2 p.m, London Eye

Participants: Ms Grandmother, Mr Wolf, Mr Man, others TBC

1. Approve agenda.
2. Approve minutes of last meeting.
3. Supply situation regarding sugar and chocolate
4. AOB *→ side issues*

eking re royal wedding.

24
01/ to get more than 1/3

- (d) Provide a comprehensive justification for your claim, as well as, a meaningful non-confidential description of the highlighted or already blacked-out/replaced information. Please use the list below:

ID # (if available)/Page # of original confidential version/paragraph # (please indicate annex # where relevant)	Reasons for confidentiality request	Suggested summary version
ID0015, point 1	Business secret: ingredients and their properties which are not known to third parties. If disclosed our company is likely to suffer significant losses since our competitors would be able to manufacture similar products. Our know-how is not legally protected.	Company strategy
ID0015, points 2 and 3	Our supplier's identity is not known to third parties and it would give a competitive advantage to our competitors if details of individual recent business relations were disclosed. This is likely to cause serious harm to us and our supplier.	Suppliers' details

- (e) Standard confidentiality stamps in letterheads from law firms, or automatic disclaimers in e-mails, are not regarded as a properly justified request for confidential treatment. The Commission will make such documents accessible, unless confidentiality has been claimed in accordance with the applicable rules set out in the annex on business secrets and other confidential information which is attached to the Commission's requests for information.

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CONFIDENTIAL

REPLY-TO-COMMISSION'S REQUEST
DATED DD/MM/YYYY - REFER

From: Little Red Riding Hood

1. → Reminder: Does your reply contain any parts that you regard as business secrets?

YES → ☒ → NO → ☐

2. → If yes, have you provided a non-confidential version of your reply? (see Annex III for details and instructions)

YES → ☒ → NO → ☐

III. Contact details and undertaking information

3. → In order to facilitate possible further enquiries, please indicate the person responsible for the replies to this questionnaire

Company:	Little Red Riding Hood Cookies		
Contact person:	Wicked Stepmother	Phone:	+322-29X-XXXX
Position:	Internal Counsel	Fax:	+322-29X-XXXX
e-mail: w.stepmother@LRRHCookies.eu			
Address:	The Green and Pleasant Industrial Estate	Country:	UK

- (f) Do not redact the headings of the documents and/or the headings of the columns, nor empty columns or spaces, contained in tables and pictures.

Leave the headings

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4. → Please provide a list of your 5 main customers. Indicate the yearly values and volumes of cookies supplied to each of them in the last 10 years. ¶

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Value:¶					
Customer					
2001	1.423·EUR	12600·EUR	91,50·EUR	5490·EUR	173,85·EUR
2002	0	10110·EUR	5490·EUR	915·EUR	366·EUR
2003	12554·EUR	56914·EUR	4625·EUR	0	0
2004	1753·EUR	0	0	2580,75·EUR	0
2005	124007·EUR	1499,1·EUR	53200·EUR	95000·EUR	92,50·EUR
2006	12543·EUR	15777·EUR	18813,50·EUR	2091,45·EUR	47500·EUR
2007	24.332·EUR	1475,53·EUR	0	0	1309·EUR
2008					
2009					
2010					
TOTAL	105040EUR	151000,32EUR	69005,88EUR	250396EUR	259888,28EUR


¶

Volume (boxes):¶					
Customer					
2001	8789	7000	50	3000	95
2002	0	5525	500	500	200
2003	6860	31101	2355	0	0
2004	947	0	0	1395	0
2005	65266	789	28000	500000	50
2006	6567	9910	9850	1095	25000
2007	13011	72345	0	0	700
2008					
2009					
2010					

Do's and Don'ts – Substantial Issues

- 1) The Commission does not accept confidentiality claims in oral corporate statements made in the framework of the Leniency Notice.

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EUROPEAN COMMISSION
DG Competition

Brussels, 10/02/20XX

Case COMP/XXXXX
LITTLE RED RIDING HOOD COOKIES Inc.

Submission 1

This document records an oral corporate statement made in the context of an application for immunity or/and reduction of fines under the Commission Notice on immunity from fines and reduction of fines in cartel cases¹. This document is the property of the Commission of the European Communities. Any mechanical or electronic reproduction of this document or any part of it is prohibited. The information obtained from this document may only be used for the purposes of judicial or administrative proceedings for the application of the Community competition rules at issue in the related administrative proceedings.

QUOTE

Following an internal investigation, and interviews with Ms. S. White, Head of Sales, Little Red Riding Hood Cookies has discovered the following:

1. Telephone conference call on 15th March 20XX conducted with the following competitors:

Big Bad Wolf Industries Inc (BE) (represented by Mr. Wolf)
Muffin Man Bakeries (NL) (represented by Mr. Man)

Ms. White informs us that party to the call were also three of her sales team of seven, and Ms. F. Grandmother, CEO of Grandmother Biscuits Inc.

Mr. Wolf of Big Bad Wolf Industries Inc indicated that he was extremely eager to secure at least part of the tender for the Royal Wedding, as he wished to extend his range of fine chocolate biscuits into the UK market. It was indicated that should Big Bad Wolf Industries Inc. secure a large part of this tender, it would mean that Grandmother Biscuits Inc. would be given priority for future tenders for the supply of cookies in other parts of Europe. Mr. Man indicated that his company was more inclined to secure the tender for the delivery of bread for the Royal Wedding. The cookie side of their company is quite small. They were willing to forego bidding on the cookie tender in this instance, in return for securing the tender for the

¹ OJ C298 of 8.12.2006

supply of bread which Big Bad Wolf and Grandmother were also scheduled to bid on. A further meeting was scheduled to be held in a pod in the London Eye on 29th March.

2. Meeting in a pod in the London Eye – 29th March

Having conducted further interviews with Ms. White, we can now inform you of the outcome of this meeting. Present at the meeting were, Ms. Grandmother, Mr. Wolf, Ms. White and Mr. Man. During this meeting it was decided that Big Bad Wolf would be the only supplier of cookies, and would tender for the supply of chocolate biscuits. Little Red Riding Hood Cookies would submit a tender for the supply of strawberry shortbread – a speciality of the company, and one which The Palace had indicated they would require. In this way, Big Bad Wolf would acquire at least 65% of the value of the tender, and Little Red Riding Hood either the rest of the tender or a smaller part. Muffin Man Bakeries would bid for the tender for the supply of bread. Grandmother Biscuits would also bid for this tender, but at a higher price.

Having agreed to the above, it was decided that collusion would take place between these four competitors in the future as and when similar tenders in the future arose.

We hereby supply at annexes 6, 7, 8, 9 and 10 an agenda and minutes of the meeting of 29th March, along with copies of Ms. White's diary entry for that day and a handwritten note made following a phone call with Ms. Grandmother. As the travel arrangements from Belgium and the Netherlands to London for this meeting were organised by Ms. White's office, we also include travel documents for Mr. Wolf and Mr. Man.

- 2) Public information as well as evidence pertaining to the alleged infringement cannot be accepted as confidential.

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CONFIDENTIAL

REPLY TO COMMISSION'S REQUEST FOR INFORMATION
DATED DD/MM/YYYY – REFERENCE D/XXXX

From Little Red Riding Hood Cookies

1. **Reminder: Does your reply contain any parts that you regard as business secrets?**

YES ☒ NO ☐

2. **If yes, have you provided a non-confidential version of your reply? (see Annex III for details and instructions)**

YES ☒ NO ☐

III. Contact details and undertaking information

3. *In order to facilitate possible further enquiries, please indicate the person responsible for the replies to this questionnaire*

Company:	Little Red Riding Hood Cookies		
Contact person:	Wicked Stepmother	Phone:	+322 29X XXXX
Position:	Internal Counsel	Fax:	+322 29X XXXX
e-mail:	w.stepmother@LRRHCookies.eu		
Address:	The Green and Pleasant Industrial Estate	Country:	UK
Company web-site:	www.LRRHCookies.com		

4. *Please provide a short description of your undertaking. What are the most important activities of your business and the countries in which you are active? Does your undertaking belong to a group of undertakings?*

Little Red Riding Hood Cookies is a wholly-owned subsidiary of Grandmother Biscuits Inc. Both the parent company and subsidiary are based in the UK. Our main areas of activity

involve the baking and supply of cookies. We are also active in researching new flavours and recipes.

5. Which corporate structure and organisation does your undertaking have? Which are the most significant developments that occurred in it since 1 January 20XX?

Please see attached graph

Red Riding Hood Cookies was originally a small family-owned business which was purchased by Grandmother Biscuits Inc. in June 20XX upon the retirement of its founder, Miss Hood.

Answers to Section IV: Questions relating to the Royal Wedding Tender:

Please provide the following information:

1. Any documentation received from The Palace, along with any correspondence of your undertaking to The Place in relation to the offer of supply of cookies.

See attached annexes 2 through 5

2. Please provide a detailed description of the procedure followed with regards to the composition and submission of your offer and any delivery of cookies.

The Royal Wedding Tender was a public tender, announced officially on the Palace's website.

All offers had to be submitted by 17h00 on 30th May 20XX directly and by hand to the Palace. Little Red Riding Hood Inc. submitted its tender on time and in the manner requested (sealed in a double envelope and hand delivered to a Palace Official).

Our offer dealt solely with the supply of strawberry shortbread, a speciality of Little Red Riding Hood Cookies. We were granted a tender for part supply (25%) of the cookies for the Royal Wedding. The other 75% of the cookies were eventually supplied by Big Bad Wolf Industries Inc, a company based in Belgium, which specialises in fine chocolate biscuits. Big Bad Wolf Industries Inc. is the largest of our competitors in the EU market.

3. The Commission is in possession of information which indicates that your undertaking had contact with competitors on 15th March 20XX and on 29th April 20XX regarding the Royal Wedding tender. Please specify the type of contact (meetings, telephone conversations); where such contacts took place and who participated in them. If possible provide travel expense records, agendas, invitations, minutes, diary entries, hand written notes.

We have undertaken a full internal investigation with regards to the alleged contact with competitors which you indicate took place on 15th March 20XX and on 29th April 20XX regarding the Royal Wedding tender. After extensive interviews with colleagues, in particular, Ms. S. White, Head of Sales. This information has been provided in an oral statement under the Commission's Leniency programme.

- 3) The Commission presumes that information pertaining to the parties' turnover, sales, market share data and similar information which has lost its commercial sensitivity, for example, due to the passage of time can no longer be considered as confidential.

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4. Please provide a list of your 5 main customers. Indicate the yearly values and volumes of cookies supplied to each of them in the last 10 years.

Value:

Customer	Little mermaid	The first piglet	The second piglet	The third piglet	Frau Holle
2001	1.427 EUR	12600 EUR	91,50 EUR	5490 EUR	173,85 EUR
2002	0	10110 EUR	5490 EUR	915 EUR	366 EUR
2003	12554 EUR	56914 EUR	4625 EUR	0	0
2004	1753 EUR	0	0	2580,75 EUR	0
2005	124007 EUR	1499,1 EUR	53200 EUR	95000 EUR	92,50 EUR
2006	12543 EUR	15777 EUR	18813,50 EUR	2091,45 EUR	47500 EUR
2007	24.332 EUR	1475,53 EUR	0	0	1309 EUR
2008	0	0	0	0	179629,80 EUR
2009	0	44865,90 EUR	22737,93 EUR	1045 EUR	0
2010	1889 EUR	0	0	0	0

Volume (boxes):

Customer	Little mermaid	The first piglet	The second piglet	The third piglet	Frau Holle
2001	6789	7000	50	3000	95
2002	0	5525	500	500	200
2003	6860	31101	2355	0	0
2004	947	0	0	1395	0
2005	65266	789	28000	500000	50
2006	6567	9910	9850	1095	25000
2007	13011	72345	0	0	700
2008	0	0	0	0	94542
2009	0	2340	23423	98345	0
2010	983	0		0	0

5. Please explain your undertaking's internal decision making procedure for the submission of a tender for cookies.

In this instance it was decided to make up a special recipe for the supply of the strawberry shortbread. This was finally called "Royal Strawberry Shortbread". Ms. Goldie Locks is head of Research and Recipe Testing, and she is assisted by three staff members, Mr, Mrs and Master Bear. The "Royal Strawberry Shortbread" recipe was made into cookies, which were then sampled by Mr. Charming (Head of Distribution) and Ms. White (Sales Director). The final decision is always taken by Ms. Magic Mirror, a senior employee of Grandmother Biscuits Inc. in whom our CEO Ms. Stepmother puts a lot of trust, and apparently consults on many issues, including pricing, distribution and exports.

Once the recipe was established, the tender was packaged and sealed and forwarded to the palace. The documents were signed by our CEO Ms. Stepmother. Upon request from the "Royal Taster" a sample of the "Royal Strawberry Shortbread" was hand delivered to The Palace about a week after the original tender was delivered.

6. Please provide the estimated market share of your company in the following geographical areas:

Far Far Away
Never Never Land
No-Man's Land
FairyLand

AREA	ESTIMATED MARKET SHARE
Far Far Away	15%
Never Never Land	23.2%
No-Man's Land	17.5%
Fairy Land	28%

- 4) Possible corroborating evidence and information, the disclosure of which would not cause serious harm cannot be considered as confidential.

[illegible]

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RHJ 1/1

May 3rd, 20xx

Call from Grandmother — we should watch out.
Mr Wolf called her yesterday — he will
eat her if she does not respect the agreement
of 29 April! — Warn other managers!

Grandmother's secret cookie recipe for
Royal wedding

600 kg sugar
2000 kg chocolate
480 eggs
80 l rum
120 kg of the secret ingredient
1800 kg flour

For this piece of
information
confidentiality will not
prevail as it constitutes
proof of the
infringement.

~~352,4
82,6
185,4~~

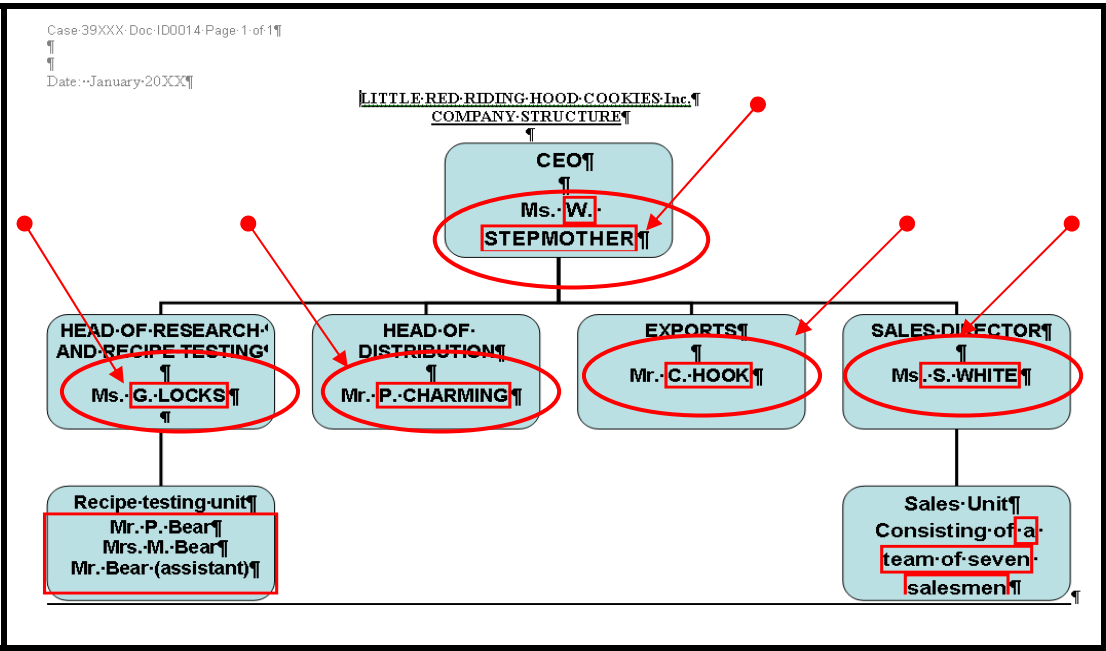
This piece of
information must
stay in as it
summarizes the
information deleted
below.

352,4
82,4
—
Δ 437,5

check availability
of chocolate for
end of May

This piece of information cannot
be claimed as confidential as
disclosure would (on the basis of
the information available) not
cause serious harm.

- 5) Employees' names involved in the alleged infringement cannot be considered as confidential.



Case:39XXX-Doc:ID0017-Page:1-of:1¶
¶

Itinerary---Detailed---MR. MAN---

Travel-Date:-29-April-20XX¶

This-itinerary-has-been-brought-to-you-by-xxx.-For-the-latest-information-on-your-travel-plans,-view-your-itinerary-at-xxx.com¶

Itinerary-Information:¶
Reservation-Number:.....IKL563¶

Traveller:.....MAN, MR.¶

Train:.....RKL683¶
Date:.....29-April-20XX¶
Depart:.....08:00.....Amsterdam, Centraal¶
Arrive:.....10:00.....London, St-Pancras¶
Class-of-Service:.....Economy¶
Seat:.....B23-(Window, Non-Smoking)¶

Ticket-Number-(E-tickets):.....08697324566588238KNLDOP¶
Status:.....Confirmed¶
Passenger:.....MAN, MR.¶

Itinerary Information:

Reservation Number:	IKL563
Traveller:	MAN, MR.
Train:	RKL683
Date:	29-April-20XX
Depart:	08:00 Amsterdam, Centraal
Arrive:	10:00 London, St-Pancras
Class-of-Service:	Economy
Seat:	B23-(Window, Non-Smoking)
Ticket-Number-(E-tickets):	08697324566588238KNLDOP
Status:	Confirmed
Passenger:	MAN, MR.

6) Possible proof of an infringement under investigation cannot be considered as confidential.

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29 avril 20XX

vendredi

avril 2011

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TaskPad

☒ TaskPad

Notes

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17⁰⁰

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19:00 - 19:30

Dentist Appointment

Lunch with my daughter

Meeting - Ms. Grandmother, Mr. Wolf, Ms. Man - Topics to be discussed: Big Bad Wolf, Tender, Little Red Riding Hood Cookies, The Palace, Muffin Man Bakeries, Grandmother Biscuits Kind regards, Ms. White (Pod - London Eye)

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AGENDA

29 April 2011, 2 p.m, London Eye

Participants: Ms Grandmother, Mr Wolf, Mr Man, others TBC

1. Approve agenda.
2. Approve minutes of last meeting.
3. Supply situation regarding sugar and chocolate
4. AOB \rightarrow side issues

- Propose further meeting re royal wedding.

€ 15,24 / 100kg

\rightarrow 12 Δ 3,24

- Don't allow Wolf to get more than $\frac{1}{3}$