



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
HUMAN RESOURCES AND SECURITY
Director-General

Brussels, **27 MARS 2014**
DG HR/IS hr.b.1(2014)593471

Ms Vicky Cann
By email: ask+request-1111-5d59b21e@asktheeu.org

Dear Madam,

Subject: Your application for access to documents – Ref GestDem No 2014/31

We refer to your e-mail dated 20/12/2013 in which you make a request for access to documents, registered on 6/01/2014.

Your application concerns the *"documents which relate to Magnus Ovilius:*

- has Mr Ovilius now returned to work at the Commission following his sabbatical at Smiths Group?

- if so, when was this and what assessment of possible conflicts of interest have been made as a result of his sabbatical?"

You also request *"all relevant emails, correspondence and meeting notes."*

I have examined your request under the provisions of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents. The documents identified consist in non-exhaustive email exchanges within the Commission services (DG Home Affairs and DG HR) and between the Commission services (DG Home Affairs) and Mr M. Ovilius over a few weeks' period (from 14 November 2012 to 31 January 2013).

I regret to inform you that access cannot be granted to the requested documents, as they fall under the exception in Article 4(1)(b) of Regulation 1049/2001¹. The reasons for this decision are set out below.

Article 4(1)(b) of Regulation 1049/2001 reads that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."

The applicable legislation in this field is Regulation 45/2001². The Court of Justice has confirmed that *"where a request based on Regulation No 1049/2001 seeks to obtain*

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001, p.43.

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data, OJ L 8 of 12.1.2001, p. 1.

*access to documents including personal data, the provisions of Regulation 45/2001 become applicable in their entirety, including Articles 8 and 18 thereof*³. Pursuant to Regulation 45/2001, personal data must be processed fairly and lawfully. Any processing must be necessary and proportionate for a specific purpose.

Furthermore, pursuant to Article 8(b) of Regulation 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.⁴

The documents you requested contain personal data relating to Mr Ovilius previous and current jobs. In evaluating your request, I have taken into consideration an already on-going public campaign, including publication of information and comments on a named-basis regarding Mr Ovilius on the Corporate Europe Observatory-RevolvingDoorWatch website, as well as a complaint by Alter-EU addressed to the Secretary General of the European Commission on 25 May 2012 regarding the leave of of personal grounds of Mr Ovilius, and a complaint by Corporate Europe Observatory addressed to the European Ombudsman on 16 October 2012 on the same matter. It is the Commission's obligation to ensure that the privacy and integrity of the EU official concerned, also in his professional capacity, are correctly protected. This is why I consider that the exception foreseen in Article 4(1)(b) of Regulation 1049/2001 applies.

Additionally, Article 4(3) paragraph 2 of Regulation 1049/2001 reads that "*Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*" The documents identified consisting in internal exchanges between the Commission services, and between the Commission services and Mr Ovilius, fall under the above-mentioned exception.

I have further considered whether partial access could be granted to the documents requested. However, partial access is not possible, as the entirety of the documents, given the reasoning above, must be covered by the protection granted under Article 4(1)(b) and Article 4(3) paragraph 2 of Regulation 1049/2001.

Nevertheless, I also consider that this does not preclude us from providing you with general information on the process to which those documents were related.

Mr Ovilius reintegrated the Commission's service on 1 March 2013. Since then Mr Ovilius has been working in the Directorate-General for Home Affairs, Directorate Migration, Asylum, Unit B1 on Immigration and integration. He holds a post of Policy Officer whereby he contributes to the further development of a European immigration and integration policy, in particular by ensuring the proper management and functioning of the European Migration Network (EMN). Before the reintegration of Mr Ovilius, the absence of links between his former position at Smiths Group (a multinational diversified engineering company) and his future possible post at the Commission, and any potential risks of conflict of interests were thoroughly assessed, so as to ensure that there was a complete absence of conflict of interest on his return to the Commission.

³ Judgment of 29 June 2010 in Case C-28/08 P, *Bavarian Lager*, paragraph 63.

⁴ *Bavarian Lager*, paragraph 78.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully

A handwritten signature in black ink, appearing to read 'Irene Souka', with a stylized flourish at the end.

Irene SOUKA

