



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels,
SG/B.3/MIA-DCB

Ms Vicky Cann
CEO
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By e-mail:

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Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2015/3703

Dear Ms Cann,

We refer to your e-mail dated 13 July 2015 and registered on the same date under the above-mentioned reference number.

In your e-mail, you request " *...further to Gestdem 2015/337,[...] all documents which relate to the authorisation of Ms Hedegaard's sixth new activity, as mentioned in your letter dated 3 February 2015*".

I have identified 14 documents falling within the scope of your request.

1. E-mail of Ms Hedegaard to Ms Day of 11.11.2014 [Ref. Ares(2014)3749987];
2. Note of Ms Day to Ms Hedegaard of 21.11.2014 [Ref. Ares(2014)3890470];
3. Letter of Ms Hedegaard to Ms Day of 26.11.2014 [Ref. Ares(2014)3961852 - 27/11/2014];
4. Note of Ms Day to the Ad Hoc Ethical Committee of 02.12.2014 [Ref. Ares(2014)4025675];
5. Note of the Ad Hoc Ethical Committee of 05.12.2014 [Ref. Ares(2014)4084497];
6. Letter of Ms Day to Ms Hedegaard of 11.12.2014 [Ref. Ares(2014)4162493];
7. LS Consultation [Ref Ares (2014)4126365];
8. Commission Decision C(2014) 9879 of 05.12.2014;
9. Letter of 16.12.2014 [Ref. Ares(2014)4235347];
10. E-mail of Ms Hedegaard to Ms Day of 22.02.2015 [Ref. Ares(2015)750263];
11. Note of Ms Day to the Ad Hoc Ethical Committee of 24.02.2015 [Ref. Ares (2015)779876];
12. Note of the Ad Hoc Ethical Committee of 26.02.2015 [Ref. Ares(2015)820545];

13. E-mail of Ms Day to Ms Hedegaard of 02.03.2015 [Ref. Ares(2015) 901165];
14. E-mail of Ms Hedegaard to Ms Day of 05.03.2015 [Ref. Ares(2015) 901165]

You will find a detailed list enclosed.

I recall that partial access to documents (1) to (9) was granted in the framework of your previous request 2015/337.

The disclosed parts of the above-mentioned documents are related to the decision taken by the Commission on 16 December 2014 authorising five post-mandate activities envisaged by former Commissioner Ms Hedegaard. The non-disclosed parts of those documents that refer to the request to exercise a sixth post-mandate activity by former Commissioner Ms Hedegaard fall within the scope of your new initial request.

Since the initial reply of the Commission, 5 further documents; documents (10) to (14) have been either established or received by the Commission in relation to the request by Ms Hedegaard to exercise a sixth post-mandate activity and also fall within the scope of your request 2015/3703.

I would like to call your attention to the fact that document n° 4 contains in its enclosures "templates" also called "information fiches" to the attention of the Ad Hoc Ethical Committee. The information in these documents can be found in the opinion of the Committee and in the Commission's decision disclosed below. Consequently, I understand that the content of these fiches are of no further interest to you. If you do not share this view, please let us know.

Finally, I must inform you that the request for authorisation of a sixth mandate activity has been formally withdrawn by former Commissioner Ms Hedegaard.

Taking into account this fact, I have carefully assessed your request as regards the non disclosed parts of documents (1) to (9) and the entirety of documents (10) to (14) mentioned above under the provisions of Regulation 1049/2001 and I have come to the conclusions set out below.

Following the examination of your request and of the documents concerned, I have to

- refuse access to the non disclosed parts of documents (1) to (9). You will find copies enclosed;
- refuse access to the entirety of documents n° (10) to (14);

The reasons for the refusal of access to the above-mentioned documents and parts thereof, are set out below.

The deleted parts of the documents (1) to (9) and the entirety of documents (10) to (14) concern a post-mandate activity that has not been submitted to the College for a decision and contain information communicated to the Commission on the basis of the Code of Conduct for Commissioners.

As already pointed out in the initial reply to your request 2015/337, the need to protect this kind of information is reinforced in those cases where the request is withdrawn before the College has taken a decision.

The intended activity should be considered as a personal initiative to exercise a professional activity and all information in this regard including the reasons behind her decision to withdraw her request is part of the private life of the former Commissioner. This choice remains personal and of a private nature. This appraisal is to be extended to the personal opinions of the former Commissioner contained in the above-mentioned documents.

Therefore, disclosure of documents (10) to (14) and the parts of documents (1) to (9) containing the information on the post-mandate activity in question should remain private in so far that the former Commissioner has decided to withdraw her request and therefore, the procedure foreseen in the Code was interrupted before the College could examine the request and the information gathered on this issue and take a decision.

In its judgment in the *Bavarian Lager* case¹, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001² (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of Data Protection Regulation provides that "*personal data*" shall mean any information relating to an identified or identifiable person [...]. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*)³, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life."

The concerned documents contain elements on the envisaged professional activity which undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an identified or an identifiable person. According to Article 8(b) of the Data Protection Regulation, which is fully applicable in this case, personal data shall only be transferred to recipients 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 Those two conditions are cumulative.⁵

¹ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

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 on the free movement of such data, Official Journal L 8 of 12.1.2001

³ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁴ Cf. Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁵ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *Commission v Bavarian Lager*, paragraphs 56, 63, 68, 76-79.

I consider that in the present case the necessity of disclosing the aforementioned personal data to you has not been established in your request.

Consequently, access to personal data contained in the relevant parts of the above-mentioned documents (1) to (9) and in the entirety of documents (10) to (14) has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

Please note that the above-mentioned considerations apply equally to the deleted parts of documents n° 2, n° 6 and n°10 and to certain parts of documents 13 and 14, namely the letters and e-mail of the Secretary General to the former Commissioner informing her on the decisions taken by the Commission regarding her notifications or requesting complementary information and the replies by the former Commissioner. These documents contain the address and/or the e-mail of the former Commissioner and for obvious reasons this is personal data covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. This is also the case of the deleted parts in the cover e-mails accompanying document n° 7 and of some of the deleted parts documents 1 and n° 5 which contain personal data of Commission officials.

Finally, granting partial access to documents (10) to (14) or extending the access already granted to documents (1) to (9) is not possible, since third parties with some knowledge of the facts and events could easily identify the envisaged activity and the entity concerned.

Moreover, any attempt to grant or to extend partial access would lead to releasing parts of text with no substantial content.

If you wish to appeal against this decision, you should write to the Commission Secretary-General at the address sg-acc-doc@ec.europa.eu. You have fifteen working days from receipt of this letter in which to appeal.



Marianne Klingbeil
Director SG B f.f.

Annexes

Cc: SG-DOSSIERS-ACCES@ec.europa.eu