



EUROPEAN COMMISSION

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Mr Pascoe SABIDO  
Corporate Europe Observatory  
Rue d'Edimbourg 26  
1050 Brussels

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2018/1236**

Dear Mr Sabido,

I refer to your email of 5 June 2018, registered on 7 June 2018, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter 'Regulation 1049/2001').

Through your initial application of 27 February 2018, you requested access to:

‘[d]ocuments which contain the following information: [...] a list of all the lobby meetings of [Director Klaus-Dieter Borchardt of the Directorate-General for Energy of the European Commission] in the past two years [...] [; including the] date[s], [...] name[s] of the organisation(s) attending, topic.’

In its initial reply of 1 June 2018, the Directorate-General for Energy of the European Commission informed you that it was not able to handle your request, as no document was found that would correspond to the description given in your application. The latter further explained that:

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

- The European Commission systematically publishes information about meetings only of Members of the European Commission, Members of Cabinets and Directors-General with organisations and self-employed individuals, and not of other Commission officials including Directors ;
- As a list of meetings of Director Borchardt does not exist, it would have to be newly created on the basis of agenda entries or other information.

In the framework of your confirmatory application, you maintain your request for access to ‘a list of meetings’.

Against this background, the European Commission has carried out a renewed, thorough search for the document requested, as per the express formulation of your initial application.

Following this renewed search, I confirm that the European Commission does not hold any document which would correspond to the description given in your application.

Article 2(3) of Regulation 1049/2001 provides that the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Pursuant to Article 3(a) of Regulation 1049/2001, “‘document” shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility.’

Pursuant to settled case-law, for data to qualify as an existing ‘document’ within the meaning of the above-mentioned provisions, they must be extracted from a database ‘by means of a normal or routine search’<sup>3</sup>.

The General Court further stressed that ‘[a]n application for access that would require the [European] Commission to create a new document, even if that document were based on information already appearing in existing documents held by it [...] does not come within the parameters of Regulation No 1049/2001. That conclusion is implicitly confirmed by the rule in Article 10(3) of that regulation, according to which documents to which access is granted “shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant’s preference”’.<sup>4</sup>

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<sup>3</sup> Judgment of 26 October 2011, T-436/09, *Dufour v European Central Bank*, EU:T:2011:634, paragraph 153. See also Judgment of 2 July 2015, T-214/13, *Typke v European Commission*, EU:T:2015:448, paragraph 59.

<sup>4</sup> Judgment in Case T-214/13, *Typke v European Commission*, *op.cit.*, paragraph 55.

In your confirmatory application, you argue that ‘if [you] were to ask for all evidence of lobby meetings of Klaus-Dieter Borchardt (minutes, correspondence in advance as well as afterwards, follow up actions) it would have led to a list, as a way of ordering the information. Therefore a list would have been created, and has been done so many times in the past.’ According to you ‘[r]efusing it on the grounds it does not exist is simply obfuscation, and not good administrative practice as required under article 15 of Regulation 1049/2001.’

Firstly, I would like to reassure you that the European Commission fully abides by Article 15 of Regulation 1049/2001 which provides in particular that ‘[t]he institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation . [...]’.

This strong commitment is illustrated *inter alia* by the high disclosure rate of documents following access requests, which has resulted in a large number of documents being made available. The European Commission remains by far the European institution handling the largest number of access-to-documents requests, each of which can cover one or several documents.

Moreover, in addition to providing access to documents in its possession under Regulation 1049/2001, the European Commission also proactively publishes on a regular basis, in a user-friendly way, a wide range of information and documents, both in its various public registers and on its webpages.

However, as explained above, your application concerns a document that does not exist. The European Commission cannot handle applications for public access to documents which it does not hold.

In this instance, the preparation of a document with the requested contents would indeed require the creation of a new document, as it would necessitate the compilation of information from a number of other documents and database which is not extractable through a routine query.

Consequently, the European Commission is not in a position to handle your request.

Secondly, in respect to your allegation that, should your request had been formulated differently (i.e. so as to ask for all evidence of lobby meetings of Klaus-Dieter Borchardt in the past two years), the European Commission would have provided the equivalent of the requested list, I would like to draw your attention to Article 6(2) and (3) of Regulation 1049/2001.

These provisions provide respectively that ‘[i]f an application is not sufficiently precise, the institution shall ask the applicant to clarify the application [...]’; and that ‘[i]n the event if an application relating to [...] a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution’.

Moreover, as per settled case-law, the institution, in order to safeguard the interest of good administration, may balance the interest in public access against the burden of work so caused, in accordance with the principle of proportionality, in particular cases where the handling of a request would give rise to an unreasonable amount of administrative work.<sup>5</sup> Accordingly, an institution does not have to identify all documents potentially related to a so-called ‘wide-scope request’ if such an identification would incur a disproportionate workload<sup>6</sup>.

Therefore, contrary to your assumption, had you drafted your initial request differently as you suggest above, the European Commission would not have been compelled, under the current regulatory framework, to establish an exhaustive list of all the documents (and thus meetings) concerned by your application, especially taking into account the particularly wide material and temporal scope of the latter.

Against this background, I conclude that the European Commission is unable to handle your request.

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions provided respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission*  
*Martin SELMAYR*  
*Secretary-General*

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<sup>5</sup> Judgment of 19 July 1999, *Hautala v Council*, T-14/98, EU:T:1999:157, paragraph 86. See also, Judgement of 7 February 2002, *Kuijer v Council*, T-211/00, EU:T:2002:30, paragraph 57.

<sup>6</sup> Judgment of 3 May 2018, *Malta v European Commission*, T-653/16, EU:T:2018:241, paragraph 83.