



EUROPEAN COMMISSION

Brussels, 20.7.2018
C(2018)4896 final

Mr Peter TEFFER
EU Observer
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1000 Brussels

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/1945**

Dear Mr Teffer,

I refer to your email of 28 May 2018, registered on 4 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 documents² (hereafter 'Regulation 1049/2001').

Through your initial application of 5 April 2018, you requested access to:

‘all documents- including but not limited to minutes, verbatim reports, letters, and presentations – related to meetings during which climate change, the greenhouse effect, and global warming was discussed, held between the European Commission and employees/representatives of the Royal Dutch Shell Group, between 1 January 1986 and 31 December 1997’.

In its initial reply of 28 May 2018, the Directorate-General Climate Action 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.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

In the framework of your confirmatory application, you request a review of this position, noting that ‘the[...] meetings [in question] were held in a mostly pre-digital era, and these documents may currently exist in paper form only’. You also allege that the Directorate-General Climate Action of the European Commission did not provide any explanation as to the reasons why the requested documents did not exist. You enquire whether this lack of any existing document is due to the fact that ‘a) there were no such meetings; b) there were such meetings, but the [European] Commission did not document [their] content[s] in any form; c) there were such meetings, there were minutes, but these have since been destroyed; [or] d) other.’

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

In this instance, as no electronic document could be identified as falling within the scope of your request, and in light of the period specifically stated in your application, the European Commission has re-examined its possibly relevant files from the Historical Archives.

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.

Moreover, I regret to inform you that the European Commission, notwithstanding its efforts, is not in a position to ascertain the reasons for the apparent non-existence of such documents. This is partly due to the long time which has lapsed since your period of interest and that the European Commission, according to its documents retention policy is not compelled to keep documents which do not require any follow up or subsequent action beyond specific periods, depending on the nature of the documents in question.

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

