



Brussels,  
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Ms Josefina Martí  
Juan Bravo 62  
28006 Madrid  
Spain

*By registered letter with acknowledgment of receipt*  
*Advance copy by e-mail: [ask+request-6599-fb281xxx@xxxxxxxxx.xxg](mailto:ask+request-6599-fb281xxx@xxxxxxxxx.xxg)*

**Subject: Your application for access to documents –  
Ref. GestDem No 2019/1477**

Dear Ms Martí,

I refer to your e-mail dated 18 March 2019 registered on 18 March 2019 under the abovementioned reference number in which you make a request for access to documents. I also refer to our e-mail of 20 March 2019 by which we informed you of the extension of the time limit to handle your request by 15 working days.

### **1. SCOPE OF YOUR REQUEST**

In your request, you ask for access to:

“1) All the correspondence (including phone calls, emails and files attached, letters) between the Special Envoy for the promotion of freedom of religion or belief outside the EU, Ján Figel’, and churches, religious communities or any organizations representing churches and religious communities. The information I ask is from May 2016.

2) A list of all the meetings (from May 2016) and all documents produced and exchanged in those meetings between Ján Figel’ and churches, religious communities or any organizations representing churches and religious communities.”

I consider your request to cover documents held up to the date of your application, namely 11 March 2019.

Based on your application I have identified the documents listed in annex.

### **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be partially disclosed.

However, exceptions under Article 4 of Regulation (EC) No 1049/2001 apply, and your application cannot be granted for document (7.b) (as listed in annex). Its disclosure is prevented by exceptions to the right of access pursuant to Article 4 of Regulation (EC) No 1049/2001. While I have considered whether partial access could be granted to this document by providing an expunged version of it, disclosing such expunged remaining parts would be meaningless, as lacking any substantive content. As regards document (5) listed in Annex part of it are expunged.

The detailed reasons for the redactions and the refusal are set out below.

## **2.1. Protection of the public interest as regards international relations**

Article 4(1)(a), third indent of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]”.

As far as the protection of international relations is concerned, EU Courts have acknowledged that the institutions enjoy a wide discretion when considering whether access to a document may undermine that public interest.<sup>1</sup>

Freedom of religion or belief is a fundamental right enshrined in the Charter of Fundamental Rights of the European Union. Following a resolution adopted by the European Parliament in February 2016, the function of the Special Envoy for the promotion of freedom of religion or belief outside the European Union was created and Ján Figel’ was appointed to this role in May 2016.

The *EU Guidelines on the promotion and protection of freedom of religion or belief* approved by EU Member States in 2013 provide the policy framework for the Special Envoy’s mandate. The mandate focuses on promoting freedom of thought, conscience, religion and belief, and the rights to non-belief, also paying attention to the situation of (non-) believers at risk. To carry out his duties, the Special Envoy pays country visits, participates in international initiatives and multilateral processes and conducts dialogues with governmental and non-governmental actors, including religious organisations, civil society, religious actors, and academia.

Stakeholders often operate in contexts marked by a wide range of violations and are themselves at risk. It is essential to the fulfilment of the Special Envoy’s role that his interlocutors may exchange information, express their opinions and share views in an atmosphere of trust and confidentiality. The sensitivity of the issues dealt with by the Special Envoy reinforces the expectations of confidentiality.

Document (7.b) and the withheld parts of document (5) reflect the position of representatives of religious communities on the situation of freedom of religion or belief and set out specific concerns on the status of specific religious groups in certain geographical areas. Disclosure of this information would render the specific concerns of these religious communities public and breach expectations of confidentiality, would result in a less effective implementation of the Special Envoy’s mandate, and would harm the external relations of the EU in the pursuit of the EU’s policy objectives.

I therefore conclude that document (7.b) and parts of document (5) have to be withheld based on Article 4(1)(a) third indent (protection of international relations) of Regulation (EC) No 1049/2001.

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<sup>1</sup> Judgment of the Court of First Instance of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, EU:T:2007:114, paragraph 40.

## 2.1. Protection of privacy and the integrity of the individual

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC2 ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names, (e-mail) addresses, phone numbers, signatures, political opinions, religious beliefs of natural persons.

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data "means any information relating to an identified or identifiable natural person [...]". The Court of Justice of the European Union has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.<sup>3</sup>

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.<sup>4</sup>

In its judgment in Case C-28/08 P (Bavarian Lager)<sup>5</sup>, the Court of Justice of the European Union ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.<sup>6</sup>

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if "[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests".

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

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<sup>2</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>3</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case [C-434/16](#), *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

<sup>4</sup> Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

<sup>5</sup> Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

<sup>6</sup> Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

As to the signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

In accordance with Article 7(2) of Regulation EC (No) 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 Secretariat-General of the Commission at the following address:

**European Commission**  
**Secretariat-General**  
**Unit C.1. 'Transparency, Document Management and Access to Documents'**  
**BERL 7/076**  
**Rue de la Loi 200**  
**B-1049 Brussels**

or by e-mail to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

*[e-signed]*  
Stefano MANSERVISI