



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
HUMAN RESOURCES AND SECURITY

The Director-General

Brussels, 11 December 2020  
HR/GI

Ms Belén BALANYÁ  
CEO  
Rue d'Edimbourg 26  
1050 Brussels  
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**Subject: Your application for access to documents – Ref /GestDem No 2020/6533**

Dear Ms Balanyá,

I refer to your e-mail, dated 29 October 2020 and registered on 30 October 2020 under reference number 2020/6533, in which you make a request for access to documents.

Your request concerns *"[...] am requesting documents which relate to any article 16, article 12B and article 40 (staff regulations) applications made by Christopher Jones, former deputy Director General of DG Energy. In particular, I request a note of all Mr. Jones' job titles at the Commission including dates held; copies of any application(s) that he has made under article 12b, 16 and 40 to undertake a new professional activity; and all documents (correspondence, emails, meeting notes etc) related to the authorisation of the new role or roles.."*

I have examined your request under the provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

I understand that your request refers to documents relating, firstly, to the new roles and new professional activities of Mr Christopher JONES after leaving the service in line with Article 16 of the Staff Regulations<sup>1</sup> (SR). And, secondly, I understand that you refer to the requests submitted by staff members in the context of Article 12b SR in relation with Article 40 SR, that means a staff member request to perform an outside activity (Article 12b SR) while he or she is on leave on personal ground (Article 40 SR).

In this context, the documents identified in the framework of your request are:

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<sup>1</sup> Consolidated text: Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community

- a document extracted from the relevant staff database listing the job titles of Mr Jones;
- a first declaration form submitted by Mr Jones on 20 August 2018 in the framework of Article 16 SR and the related decision from the Appointing Authority;
- a second declaration form submitted by Mr Jones on 20 August 2018 in the framework of Article 16 SR and the related decision from the Appointing Authority,
- Notes and e-mail exchanges within Commission services and between Commission services and Mr Jones pertaining to the underlying internal procedures concerning this type of requests for authorisation.

In accordance with Article 4(1)(b) of Regulation (EC) No 1049/2001, it is the Commission's obligation to ensure that the privacy and the integrity of the EU staff member concerned, including in his professional capacity, are correctly protected. The documents you requested contain personal data relating to the past and present occupational activities of Mr Jones, the disclosure of which would entail a transmission of personal data falling under the provisions of Regulation (EU) 2018/1725<sup>2</sup>.

In the case *EC v Bavarian Lager*<sup>3</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EU) 2018/1725 becomes fully applicable<sup>4</sup>. Pursuant to Article 9(1)(b) of that Regulation, personal data shall only be transferred to recipients if they established the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

In your request you did not establish the necessity of having the data transferred and I consider that the legitimate interests of the individual concerned would be prejudiced by the disclosure of his personal data. Consequently, I consider that the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 applies to all the identified documents.

As for the correspondence between the Commission services and Mr Jones, in addition to the protection of personal data, the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 applies. That exception is related to the protection of the Commission's decision-making process even after the decision of the Appointing Authority has been taken. As no overriding public interest in disclosure has been identified in the present case, that exception to the right of access cannot be waived.

While I have also considered the possibility of granting partial access on the basis of Article 4(6) of Regulation (EC) No 1049/2001, I have concluded that this would equally undermine the protection of personal data.

Against this background, in order to address your query to the extent possible, and after having consulted and with the agreement of Mr Jones, I can nevertheless provide you

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<sup>2</sup> Regulation (EU) No 2018/1725 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 (OJ L 295, 21.11.2018, p. 39).

<sup>3</sup> Judgment of 29 June 2010, Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraph 59.

<sup>4</sup> This judgment specifically cited Regulation (EC) No 45/2001, which was repealed by Regulation (EU) 2018/1725. In accordance with Article 99 of that latter Regulation, references to Regulation (EC) No 45/2001 should be construed as references to Regulation (EU) 2018/1725.

with the following general information on the process to which your request relates.

On 20 August 2018, Mr Jones submitted two declarations to engage in remunerated occupational activities after leaving the Commission, pursuant to Article 16 SR. One as a self-employed consultant for the law firm Baker & McKenzie (Brussels, Belgium) and another one as Visiting Professor on Energy Law and Policy at the European University Institute (Florence, Italy).

In his first declaration, he requested to perform a remunerated occupational activity for an undetermined period of time, starting on 1 October 2018, as a self-employed consultant on all aspects of EU Law and Policy, providing services, via his own company, exclusively to the law firm Baker & McKenzie in Brussels.

Following the consultation process required for this type of request, the Appointing Authority gave its approval to carry out this occupational activity, subject to strict compliance with certain conditions aimed at preventing any potential conflict of interest.

The specific restrictions aiming at preventing any actual, potential or perceived conflict of interests that may rise in the framework of the authorized activity imposed by the Appointing Authority decision can be found in the Annual Report 2019 on occupational activities of senior officials after leaving the service.<sup>5</sup>

In his second declaration, he requested to perform a remunerated occupational activity for a period of 3 years, starting on 1 October 2018, as Visiting Professor on Energy Law and Policy, engaged in research, at the Florence School of Regulation - European University Institute in Florence.

Following the consultation process required for this type of request, the Appointing Authority gave its approval to carry out this occupational activity while reminding Mr Jones of his applicable obligations under the Staff Regulations, in particular:

- not to engage in lobbying or advocacy, during the 12 months after leaving the service, vis-à-vis staff of the Commission for your business, clients or employers on matters for which you were responsible during the last three years in the service (according to the third paragraph of Article 16 SR);
- to continue to refrain, even after having left the service, from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public (as provided in Article 17 SR). This statutory obligation also entails refraining from exploiting insights of confidential nature in policy, strategy or internal processes that Mr Jones may have acquired in the line of service and that have not yet been public or are not commonly available in the public domain.
- to make it clear to his interlocutors that this activity is earned out in his personal capacity, not representing in any way the position or interests of the Commission.

Mr Jones was also reminded of other applicable Staff Regulations provisions.

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<sup>5</sup> Communication to the Commission on the publication of information concerning occupational activities of senior official after leaving the service (article 16, fourth paragraph of the Staff Regulations), C(2019) 9415 final, 23 December 2019.

Furthermore, I can provide you with the information on the last post held by Mr Jones with regard to the relevant period assessed as regards any potential conflict of interest in the framework of Article 16 of the Staff Regulations. Between November 2014 and March 2018 he had the position of Deputy Director-General of DG ENER; while, between April 2018 and September 2018, he was Hors Class Adviser for DG ENER.

I would like to remind you that CEO remains subject to the provisions of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation<sup>6</sup>) according to which personal data must, *inter alia*, be processed fairly and lawfully and subject to the unambiguous consent of the data subject concerned.

Finally, please be informed that a copy of this letter will be sent to the person 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 Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

(e-signed)

Gertrud INGESTAD

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<sup>6</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.