



EUROPEAN ANTI-FRAUD OFFICE

Directorate A - Expenditure - Operations & Investigations

The Director

Ms Veronica QUAIX

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Brussels,

Subject: Your application GESTDEM 2021/913 for public access to documents

Dear Ms Quaix,

I refer to your application for access to documents under Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents, submitted via AsktheEU.org website.

The Secretariat-General of the European Commission registered your application on 22/02/2021 under reference number GESTDEM 2021/913, and asked the European Anti-fraud Office (OLAF) to deal with it.

1. Scope of your application

You have requested public access to the following documents:

"documents which contain the following information:

1) Involvement of the Director Mrs Petra Kneuer in the report OF/2012/0617
<https://corporateeurope.org/en/lobbycrac...>

2) Her candidature in the ongoing recruitment for OLAF Deputy Director General".

2. Assessment of the documents under Regulation 1049/2001 – relevant applicable exception

As regards the documents referred to under point 1) of your request, we regret to inform you that OLAF has not identified any document that would correspond to the description given in your application.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such documents, corresponding to the description given in your application,

¹ OJ L145, 31.05.2001, page 43.



are held by OLAF, OLAF is not in a position to fulfil your request.

As regards point 2) of your request, we regret to inform you that your application cannot be granted. The recruitment procedure for the selection of the OLAF Deputy Director-General (COM/2020/1348) is currently ongoing and, in the context of this procedure, applications made by candidates are not public documents. Therefore, OLAF is not in a position to confirm nor deny the existence of documents falling under the scope of point 2) of your request, as this is prevented by the exception to the right of access to documents laid down in Article 4 of Regulation (EC) No 1049/2001, based on the following considerations.

Article 4(1)(b) of Regulation 1049/2001 provides that the EU institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, which provision must be implemented in accordance with the relevant EU law on 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.

According to the definition provided for in Article 3(1) of Regulation (EU) 2018/1725 , personal data means *"any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person."*

The notion of personal data manifestly covers not only the factual elements concerning the candidates' professional experience and qualifications, included in the documents provided by the candidates in a given selection procedure and the selection panel's assessment of the candidate's competences, but also the mere information whether an identified person is (or is not) a candidate in a given selection procedure. Consequently, such information concerning identified natural persons, by its very nature, constitutes personal data within the meaning of the provision quoted above.

Therefore, public disclosure of the above-mentioned personal data, through the release of the documents containing them, or through disclosure of a general description, including through disclosure of information on whether a person is or is not a candidate in a selection procedure, would constitute processing (transfer) of personal data within the meaning of Article 3(3) of Regulation 2018/1725.

In its judgment in case C-28/08 P, *Bavarian Lager*³, the Court of Justice ruled that, when a request is made for access to documents containing personal data, Regulation 45/2001 (now replaced by Regulation 2018/1725 referred to above) becomes fully applicable.

Article 9(1)(b) of Regulation 2018/1725 provides that personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if the 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

² OJ L 295, 21.11.2018

³ Judgement of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378, paragraph 59.

demonstrably weighed the various competing interests.

The processing (transfer) of personal data can occur only if the conditions set out under Article 9(1)(b) of Regulation 2018/1725 are fulfilled and if the transfer constitutes lawful processing in accordance with the requirements of Article 5 of that Regulation.

In that context, whoever requests such a transfer must first establish that it is necessary for a specific purpose in the public interest. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject⁴. Where there is any reason to assume that the data subject's legitimate interests might be prejudiced, the controller of personal data (i.e. the institution concerned) then establishes whether it is proportionate to transmit the personal data for that specific purpose, after having demonstrably weighed the various competing interests⁵. In the *Strack* case, the Court of Justice clarified that the institution does not have to examine itself whether a need for the transfer of personal data exists⁶.

In your application, you have not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

The EU Courts have confirmed that a mere *interest* of the public in obtaining certain personal data cannot be equated with a *necessity* to obtain the said data in the meaning of Regulation 45/2001⁷. Furthermore, if the condition of necessity laid down in Article 8(b) of Regulation 45/2001, which is to be interpreted strictly, is to be fulfilled, it must be established that the transfer of personal data is the most appropriate means for attaining the applicant's objective, and that it is proportionate to that objective⁸. The requirement for necessity requires from the applicant to show that the transfer of personal data is the most appropriate of the possible measures for attaining the applicant's objective and that it is proportionate to that objective, which requires the applicant to provide express and legitimate reasons to that effect⁹.

In light of the above, the transfer of personal data referred to above cannot be considered as fulfilling the requirements of Regulation 2018/1725. In consequence, the exception under Article 4(1)(b) of Regulation 1049/2001 applies, as no need to publicly disclose personal data is established.

3. Partial access

OLAF has also examined the possibility of granting partial access to the requested documents in accordance with Article 4(6) of Regulation No 1049/2001.

No meaningful partial access to the documents requested is possible, as the entirety of the information falling under the scope of your application and included therein is covered

⁴ Ibidem.

⁵ In the *ClientEarth* case, the Court of Justice ruled that "whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access", (judgement of the Court of Justice of 16 July 2015, *ClientEarth and PAN Europe v EFSA*, C-615/13 P, EU:C:2015:489, paragraph 47).

⁶ Judgement of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 106.

⁷ Ibidem, paragraphs 107 and 108.

⁸ Judgement of the General Court of 15 July 2015, *Dennekamp v European Parliament*, T-115/13, EU:T:2015:497, paragraph 77.

⁹ Ibidem, paragraphs 54 and 59; see also judgement of the General Court of 25 September 2018, *Psara et al. v European Parliament*, cited above, paragraph 72.

by the exception in Article 4(1)(b) of Regulation (EC) 1049/2001.

4. No overriding public interest in disclosure

The exception laid down in Article 4(1)(b) of Regulation 1049/2001 is an absolute exception, i.e. its applicability does not need to be balanced against any possible overriding public interest in disclosure.

5. Confirmatory application

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting OLAF to review this position. Pursuant to Article 4 of Commission Decision 2001/937/EC, ECSC, Euratom, such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director-General of OLAF.

Any confirmatory application to OLAF should be sent to the following address:

Mr Ville ITALA
Director-General OLAF
European Commission
Rue Joseph II, 30
B-1000 BRUSSELS.

Your attention is drawn to the privacy statement below.

Yours sincerely,

Margarete HOFMANN

Privacy notice

Pursuant to Articles 15 and 16 of Regulation No 2018/1725 on the protection of natural persons with regard to the processing of personal data by Union Institutions, bodies, offices and agencies and of the free movement of such data, please be informed that your personal data are stored in OLAF's electronic and paper files concerning this matter for the purposes of or in relation to the activities carried out in order to fulfil OLAF's tasks referred to in Article 2 of Decision 1999/352/EC, ECSC, Euratom and Regulation (EU, Euratom) 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). The categories of your personal data being processed are contact data, identification data, professional data, and case involvement data. Your data may originate from various sources, including publicly accessible information. Your data may be transferred to other EU institutions, bodies, offices and agencies, competent Member State and third country authorities and international organisations. There is no automated decision process by OLAF concerning any data subject. Your data will be stored for a maximum of 15 years.

You have the right to request access to, rectification or erasure, or restriction of processing of your personal data and to object to their processing on grounds relating to your particular situation. If you wish to request access to your personal data processed in a specific file, please provide the relevant reference or description in your request. Any such request should be addressed to the Controller (OLAF-FMB-Data-Protection@ec.europa.eu).

The complete privacy statement for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud. If you have questions as regards the processing of your personal data or your rights you may contact the OLAF Data Protection Officer (OLAF-FMB-DPO@ec.europa.eu)

You may lodge a complaint concerning the processing of your personal data with the European Data Protection Supervisor (edps@edps.europa.eu) at any time.