



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels,
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Mr Arun DOHLE
AskTheEU

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Decision of the Secretary General pursuant to Article 4 of the Implementing Rules to Regulation (EC) N° 1049/2001¹

Subject: Confirmatory application for access to documents under Regulation 1049/2001 - Gestdem 2013/6373

Dear Mr Dohle,

I refer to your email of 29 January 2014, registered on 25 February 2014, by which you request, pursuant to Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents², a review of the position taken by the Directorate General for Enlargement (DG ELARG) in reply to your initial application of 13 December 2013.

1. SCOPE OF YOUR REQUEST

Through your initial application, you requested access to a letter from Commissioner Rehn to Vice-President Barrot of June 2005 concerning travel arrangements.

The Commission services have identified a letter dated 11 May 2005 as forming the object of your request.³

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

² Official Journal L145 of 31.05.2001, p.43.

³ No documents dated June 2005 were identified as falling under the scope of your request.

In its reply to your initial application, DG ELARG refused access to this document, based on the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and the integrity of the individual).

Through your confirmatory application you request a review of this position.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage in light of the provisions of Regulation 1049/2001.

Having carried out such a detailed examination, I regret to inform you that the decision of DG ELARG to refuse access to the documents requested has to be confirmed based on Article 4(1)(b) of Regulation 1049/2001, for the reasons set out below.

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

Article 4(1)(b) of Regulation 1049/2001 provides that access to documents is refused where disclosure would *undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*.

Article 2(a) of Data Protection Regulation 45/2001⁴ ("the Data Protection Regulation") provides that '*personal data*' shall mean any information relating to an identified or identifiable person [...]. As the Court of Justice confirmed in case C-465/00 (*Rechnungshof*)⁵, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life"*.

The travel arrangements of (former) Commissioners clearly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation. In its judgment in the *Bavarian Lager* case⁶, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable. This means that the necessity to disclose the personal data must be established and that there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. These conditions are cumulative.

In the present case, I note that it cannot be assumed that the disclosure of the personal data would not prejudice the legitimate rights of the (former) Commissioners concerned.

⁴ 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, Official Journal L 8 of 12.1.2001, p. 1.

⁵ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁶ Judgment of 29 June 2010, C-28/08 P.

Furthermore, despite the invitation thereto in the initial reply from DG ELARG, you have not put forward any arguments to substantiate a need to obtain these personal data. The fact that Article 4(1)(b) is an absolute exception which does not require the institution to balance the exception defined therein against any possible public interest in disclosure, only reinforces this conclusion.

Therefore, in accordance with Article 4(1)(b) of Regulation 1049/2001, access to the document requested has to be refused, as it consists of personal data for which the need for public disclosure has not been substantiated, and it cannot be assumed that the disclosure of the personal data would not prejudice the legitimate rights of the individuals concerned.

3. NO PARTIAL ACCESS

I have also examined the possibility of granting partial access to the requested documents, in accordance with Article 4(6) of Regulation No 1049/2001. However, partial access is not possible given the fact that the document concerned is entirely covered by the exception under Article 4(1)(b), as explained above.

4. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,



Catherine Day