



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels,
SG.B.4/MF/bb - sg.dsg2.b.4(2014)1738467

Mr Arun DOHLE
AskTheEU

***By e-mail only: ask+request-1023-
422f0373@asktheeu.org***

**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 2013/1462**

Dear Mr Dohle,

I refer to your email of 11 April 2014, registered on 12 May 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 Justice (DG JUST) in reply to your initial application of 13 March 2014.

1. SCOPE OF YOUR REQUEST

Through your initial application, you requested access to documents which contain the following information [...] *[r]elated to the 8th European Forum on the Rights of the Child, Towards integrated child protection systems through the implementation of the EU Agenda for the rights of the child, 17-18 December 2013:*

- *list of organisations/individuals invited;*
- *list of organisations/individuals added at their own request;*
- *list of organisations/individuals whose participation was denied;*

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

² Official Journal L145 of 31.05.2001, p.43.

- *final list of participants;*
- *minutes of the two days;*
- *legal basis for the Forum on the Rights of the Child;*
- *budget line/financial regulation applicable for the Forum on the Rights of the Child.*

The Commission services have identified the following documents as falling under the scope of your request:

- Final list of participants ("document 1");
- Minutes of the two days ("document 2");
- Communication from the Commission – Towards an EU Strategy on the Rights of the Child – COM(2006) 367 final ("document 3");
- Budget line no 33 02 04 of the General Budget of the European Union for 2013 ("document 4");
- Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union ("document 5");
- Commission Implementing Decision C(2012) 9131 final, concerning the adoption of a financing decision for 2013 in the framework of the specific programme "Fundamental Rights and Citizenship" ("document 6");
- **List of organisations/individuals whose participation was denied ("document 7").**
- **List of organisations/individuals invited ("document 8").**
- **List of organisations/individuals added at their own request ("document 9").**

In its reply to your initial application, DG JUST provided access to documents 1-6.

It refused access to documents 7-9 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 am pleased to inform you that partial access is granted to all three documents requested by you, with the exception of the

names of natural persons appearing therein. Please find a copy of these three documents annexed.

As regards the names of natural persons, the refusal of access is based on Article 4(1)(b) of Regulation 1049/2001, as explained 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 45/2001³ ("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*)⁴, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life"*.

The names of natural persons appearing in the lists of organisations/individuals invited, those added at their own request and those whose participation was denied, clearly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

In its judgment in the *Bavarian Lager* case⁵, 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 you have not put forward any arguments to substantiate a need to obtain these personal data. You point out that you would like to have access to the lists of organisations/individuals invited, those added at their own request and those whose participation was denied so as to be able to observe if organisations/persons were treated equally. However, without prejudice to the question whether such a wish would indeed qualify as a "need" in the meaning of Article 2(a) of Regulation 45/2001, the purpose of your request would in my view be satisfied by the lists as redacted, which display the names of the organisations invited, those added at their own request and those whose participation was denied. You have not stated any reason justifying a need to have access to the actual names of the individuals appearing in the lists.

³ 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.

⁴ 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.

⁵ Judgment of 29 June 2010, C-28/08 P.

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.

Furthermore, it cannot be assumed that the disclosure of the personal data would not prejudice the legitimate rights of the individuals concerned.

Indeed, disclosure of the names of individuals who were added to the list of participants at their own request, or whose participation was denied, can have negative impacts for those individuals, as such disclosure would reveal the underlying (negative) assessment, by the Commission services, of the potential merits of the participation of those individuals in comparison to those individuals who were invited at the Commission's initiative.

In this regard, the names of the individuals appearing in these lists differ from those appearing in the final list of participants, which as you rightly point out, are published on the Internet. Indeed, the risks to the privacy and integrity described above were not identified for the names of the final participants. Furthermore, a privacy statement was sent to all invited participants alongside their invitation, so as to make participants aware of the fact that their names would be published. Therefore, I cannot agree with your argument that *[you] do not think that in this case the issue of privacy arises, as the list of participants was published on DG JUST's website, including email addresses.*

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

3. NO PARTIAL ACCESS

I have also examined the possibility of granting wider 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 redacted parts are 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,

A handwritten signature in black ink, appearing to read 'p.o. J. Klingbeil', followed by a large, stylized flourish.

Catherine Day

Cc: - redacted copies of the documents 7-9, to which you request access

- privacy statement accompanying the invitation to the 8th European Forum on the Rights of the Child