



EUROPEAN COMMISSION

Brussels, 23.3.2017
C(2017) 2073 final

Vicky Cann
CEO
Rue d'Edimbourg 26
1050 Brussels

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 – GESTDEM 2017/68**

Dear Ms Cann,

I refer to your letter of 8 February 2017, registered on the same day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² ('Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 20 December 2016, addressed to the Directorate-General for Climate Action (DG CLIMA), you requested access to *all documentation (all invitations, attendance lists, agendas, background papers, minutes/notes) relating to the High Level Round Table on Low Carbon Innovation, hosted by the Commission on 9 June 2016*.

The Commission has identified 16 documents as falling under the scope of your request:

- (1) 12 invitations and the programme of the event, dated 19 April 2016 Ares(2016)1841255;
- (2) Participants' list, dated 9 June 2016, Ares(2017)1365812;
- (3) Speakers' list, dated 9 June 2016, Ares(2017)1365892;

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

² Official Journal L 145 of 31.5.2001, p. 43.

- (4) Presentation: ‘Low Carbon Transition – opportunity for Europe or „market failure“?’, Ares(2017)1365682.

In its initial reply of 20 January 2017, DG CLIMA provided wide partial access to the documents requested by refusing only to disclose the personal data contained therein, based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001.

Through your confirmatory application you request a review of this position as regards documents 2 and 3. You, namely, narrow down the scope of your request to the *full list of speakers and attendees* of the High Level Round Table on Low-Carbon Innovation (i.e. the *names of those who attended and spoke*) and explicitly exclude the personal signatures and personal contact details from the scope of your request.

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.

Following this review, I am pleased to inform you that full access is granted to the names of the speakers, moderators and panel members (contained in document 3). This list has been made publicly available in the Agenda of the event at the following address: https://ec.europa.eu/clima/sites/clima/files/docs/0110/agenda_en.pdf.

As regards the redacted parts of the Participants' list (document 2), I regret to inform you that I have to confirm the initial decision of DG CLIMA to refuse access, based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001, for the reasons set out below.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that *[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

In accordance with the *Bavarian Lager* ruling³, when a request is made for access to documents containing personal data, Regulation 45/2001⁴ becomes fully applicable. Article 2(a) of Regulation 45/2001 defines personal data as *any information relating to an identified or identifiable natural person.*

³ Judgment of 29 June 2010 in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378.

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) – hereinafter referred to as ‘Regulation 45/2001’.

In this instance, document 2 contains information related to identified individuals, in particular the names and signatures of the individuals who registered to attend the Round Table on Low Carbon Innovation, organised by the European Commission on 9 June 2016.

Pursuant to settled case law, *the concept of 'private life' must not be interpreted restrictively and [...] there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'*⁵.

The names and signatures of individuals clearly constitute personal data within the meaning of Article 2(a) of Regulation 45/2001. Their public disclosure would therefore constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

Pursuant to Article 8(b) of Regulation 45/2001, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.

Those two conditions are cumulative⁶ and only the fulfilment of both conditions and the lawfulness of processing in accordance with the requirements of Article 5 of Regulation 45/2001 enables one to consider the processing (transfer) of personal data as compliant with the requirement of Regulation 45/2001.

In the *ClientEarth* case, the Court of Justice ruled that the institution does not have to examine *ex officio* the existence of a need for transferring personal data. The Court stated that if the applicant has not established a need to obtain the personal data requested, the institution does not have to examine the absence of prejudice to the person's legitimate interests⁷.

In that context, 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 whether there is reason to assume that that transfer might prejudice the legitimate interests of the data subjects. 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 access⁸.

In the above-mentioned *Bavarian Lager* ruling, the Court of Justice has clarified that the necessity of transfer must be demonstrated *by express and legitimate justifications or convincing arguments*⁹.

⁵ See, *inter alia*, judgment of 20 May 2003 in *Österreichischer Rundfunk*, C-465/00, EU:C:2003:294, paragraph 73.

⁶ Judgment in *Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 77-78.

⁷ Judgment of 16 July 2015 in *ClientEarth v EFSA*, C-615/13P, EU:C:2015:489, paragraph 47-48.

⁸ Judgments in *Bavarian Lager*, EU:C:2010:378, paragraphs 77-78; *Strack*, C-127/13 P, EU:C:2014:2250, paragraphs 107 -108; and also *Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 85.

⁹ Judgment in *Bavarian Lager*, EU:C:2010:378, paragraph 78.

As regards the names of speakers and attendees, you argue that *the event was webstreamed live (implying a huge potential external audience) and it was attended by over 100 people. In those circumstances, there is no logic in refusing to release the names of those who attended and spoke.*

The event was, indeed, webstreamed live and the video recordings of it are publicly available online¹⁰. Nevertheless, only the names of the speakers, moderators and panel members were indicated in writing at the event and are clearly legible in these videos. As indicated in Section 2 above, the list of speakers, moderators and panel members of the event is publicly available online.

As regards *those who attended* the event, on the other hand, please note that not all of the individuals, who registered to attend the event (and who are listed on the Participants' list (document 2)), have actually attended the event. In consequence, the Participants' list, identified as document 2, contains the names of both the individuals who registered for, but did not actually attend, the event, and the names and signatures of the individuals who attended the event. As you narrow down the scope of your request only to the names of those who attended the event, I consider the names of the individuals who registered for, but did not attend, the event as falling outside the scope of your request.

As regards the individuals who attended the event, not all of them are actually visible on the video recordings. In addition, even for the attendees, who are visible on the video recordings, their names are indicated only on their badges, which are not clearly legible in these video recordings. Whereas a few of the attendees did, indeed, introduce themselves by name during the Questions & Answers sections (as visible and audible on the video recordings), most of the attendees did not publicly disclose their names.

The Commission has also not established a list of attendees who spoke and/or are visible on the video recordings, by transcribing the video recordings of the event. I would like to draw your attention to the fact that, for the purpose of Regulation 1049/2001, the Commission is not obliged to create such document.

Article 10(3) of Regulation 1049/2001, namely, stipulates that the *[d]ocuments shall be supplied in an existing version and format* (in this case the video recordings). Furthermore, the EU Court of Justice, in its *Typke* judgment¹¹, confirmed that *an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001.*

In light of the above, I consider that your argument does not substantiate the necessity of transferring the personal data contained in document 2. Neither have you, in your initial or confirmatory application, stated any other grounds to substantiate this necessity.

¹⁰ The video recordings are available at: https://europa.eu/newsroom/events/high-level-roundtable-low-carbon-innovation_en.

¹¹ Judgment of 11 January 2017 in *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

In light of this, the personal data in document 2 may not be disclosed as the need to obtain those personal data has not been substantiated, and there is reason to assume that the data subjects' legitimate interests might be prejudiced.

Against this background, I must conclude that the transfer of personal data contained in document 2 cannot be considered as fulfilling the requirement of Regulation 45/2001 and that such a transfer is consequently also prohibited under Article 4(1)(b) of Regulation 1049/2001.

3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting partial access to the names of the speakers and the participants of the High Level Round Table on Low-Carbon Innovation.

As indicated above, the names of the speakers (contained in document 3) are publicly available online. As regards the names of the participants (contained in document 2), however, for the reasons explained in Section 2.1, no further partial access is possible without undermining the interests described therein.

5. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

*For the Commission
Alexander ITALIANER
Secretary-General*

