



**EUROPEAN COMMISSION
SECRETARIAT-GENERAL**

**Directorate B
The Director**

Brussels,
SG/B3/MIA

Ms Margarida da Silva
CEO
Rue d'Edimbourg 26,
B-1050 Bruxelles

By e-mail:
ask+request-4126-99825b96@asktheeu.org

**Subject: Your application for access to documents in accordance with
Regulation 1049/2001– Ref. GestDem 2017/1937**

Dear Ms da Silva,

We refer to your e-mail dated 29 March 2017 and registered on the same day under the above-mentioned reference number. I also refer to the holding reply sent on 19 April 2017.

In your e-mail, you request access to:

".- copies of all applications by former Commissioner Jonathan Hill which sought Commission authorisation for new professional activities with Freshfields Bruckhaus Deringer LLP and The Times Newspapers Ltd, and any other roles, under the commissioner's code of conduct;

- any emails, correspondence and meeting notes which relate to this application;*
- all opinions from the ad hoc ethical committee."*

1. SCOPE OF YOUR APPLICATION

I have identified 24 documents and its annexes falling within the scope of your request (see list enclosed).

2. PUBLIC DOCUMENT

Document n° 22 contains the extracts of the minutes of the Commission meeting in which the decision authorising Lord Hill's post-mandate activities was adopted. Please note that the minutes are already available to the public and therefore a copy is not enclosed.¹

3. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

3.1. Documents fully disclosed

I am pleased to grant full access to documents n° 4, n° 13, n° 19, n° 21 and n° 24, and to the annexes of documents n° 5, n° 15, n° 16, n° 17, n° 20, n° 23 and n° 24. You will find copies enclosed.

3.2. Documents concerning a withdrawn authorisation request fully refused

Please note that a request for authorisation of one post-mandate activity has been formally withdrawn by former Commissioner Lord Hill.

In order to safeguard the privacy of the former Commissioner and the purpose of the applicable exception, the documents concerning in its entirety the withdrawn request for authorisation have not been identified in the enclosed list. Access to the entirety of those documents is fully refused under the exception set out in Article 4(1), (b) of Regulation 1049/2001.

Documents n° 1, n° 2, n° 6, n° 7, n° 8, n° 9, n° 10, n° 11, n° 12 and n° 17 related to *The Times Newspapers* and/or *Freshfields Bruckhaus Deringer LLP* partially refer or contain information on the withdrawn request. Therefore, these documents have been identified in the enclosed list.

The parts in the above-mentioned documents concerning the withdrawn request have been redacted and are fully refused under the exception set out in Article 4(1), (b) of Regulation 1049/2001.

3.3. Documents partially disclosed concerning two authorised post-mandate activities in The Times Newspapers Ltd and Freshfields Bruckhaus Deringer LLP

Partial access is granted to parts of documents n° 1, n° 2, n° 3; n° 5, n° 6, n° 7, n° 8, n° 9, n° 10, n° 11, n° 12, n° 14, n° 15, n° 16, n° 17, n° 18, n° 20 and n° 23. Partial access is also

¹ http://ec.europa.eu/transparency/ethics-for-commissioners/decisions_en.htm

granted to the annexes of documents n° 2, n° 4, n° 7 and n° 19. You will find copies enclosed.

4. ASSESSMENT UNDER REGULATION 1049/2001

The reasons for the refusal to grant access to the entirety of the documents mentioned under points 3.2 and to the deleted parts of the documents mentioned under point 3.3 are set out below.

4.1.1. Documents fully refused concerning a withdrawn authorisation request

The documents or parts thereof mentioned under point 3.2 refer to an envisaged post-mandate activity that has not been submitted to the College for a decision and contain information communicated to the Commission on the basis of the Code of Conduct for Commissioners. The protection of this kind of information has to be reinforced in those cases where the request is withdrawn, before the College has taken a decision. Withdrawn applications show that whilst the former Commissioner notified an envisaged activity in accordance with the Code of conduct, this notification did not lead to an incompatibility or a possible conflict of interest since the request was later withdrawn.

Therefore, the non-disclosed documents or parts of documents containing information on the withdrawn request for authorisation of a post-mandate activity should remain private in so far that the former Commissioner has decided to withdraw his request and therefore, the procedure foreseen in the Code was interrupted before the College could examine the information available and take a decision.

The request for authorisation should be considered in this case as a personal initiative to exercise a professional activity and all information in this regard including the reasons behind Lord Hill decision to withdraw his request are part of his private life. This choice remains personal and of a private nature.

For that reason, the disclosure of information or documents on withdrawn requests for authorisation would harm the privacy and integrity of the former Commissioner by making known to the public information on intentions of post-mandate professional activities eventually not materialised.

Any withdrawn request for authorisation that has not been followed by a Commission decision is covered by Article 4(1)(b) of Regulation 1049/2001 which 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.

4.1.2. *Documents refused fully or partially concerning two authorised post-mandate activities*

The documents or parts thereof mentioned under point 3.3 contain e-mail addresses and signatures of the former Commissioner and/or the names, surnames office addresses, signatures and telephone numbers of Commission staff members and/or the e-mail addresses of the Ad Hoc Ethical Committee members.

For obvious reasons the above-mentioned documents under point 3.3 contain personal data covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. Disclosing this information would reveal personal data and may undermine the privacy of the concerned individuals.

In its judgment in the *Bavarian Lager* case², the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001³ (hereinafter the 'Data Protection Regulation') becomes fully applicable.

The concerned documents contain elements which undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an identified or an identifiable person. According to Article 8(b) of the Data Protection Regulation, which is fully applicable in this case, 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.⁴ Those two conditions are cumulative.⁵

I consider that in the present case the necessity of disclosing the aforementioned personal data to you has not been established in your request. Consequently, access to personal data contained in the above-mentioned documents and in the relevant parts thereof has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

5. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

² Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

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

⁴ Cf. 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 the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *Commission v Bavarian Lager*, paragraphs 56, 63, 68, 76-79.

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 unit SG-B-4
BERL 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Pascal Leardini

Annexes

Cc: SG-DOSSIERS-ACCES@ec.europa.eu