



CHRISTOPHER DOCKSEY  
THE DIRECTOR

Mr Kurt Weiss  
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Brussels, 5 July 2013  
CD/ABu/et/D(2013) 1431 C 2013-0489  
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correspondence

**Subject: Your confirmatory application of 14 June 2013 (our ref. 2013-0489)**

Dear Mr Weiss,

By letter dated 10 June 2013, we informed you that, following a consultation with FRA in accordance with Article 4(4) of Regulation (EC) No 1049/2001, we decided to refuse access to the letter from the Fundamental Rights Agency dated 18 December 2008 (our ref. 2008-0643 A-08).

On 14 June 2013, you submitted a confirmatory application reiterating your request for access to the letter in question.

Following further assessment, we are pleased to inform you that we have decided to grant access to the above mentioned letter, subject to the following exceptions.

First, we are required to refuse access to Annex 1. This refusal is based on Article 4(1)(b) of Regulation (EC) No 1049/2001 in conjunction with Article 8(b) of Regulation (EC) No 45/2001 which governs the processing of personal data by Union institutions and bodies, including the EDPS. Article 4(1)(b) requires that any undermining of privacy and integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with the Regulation No 45/2001<sup>1</sup>.

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<sup>1</sup> See the ruling of the Court of Justice of 29 June 2010 in Case C-28/08 P *Bavarian Lager*

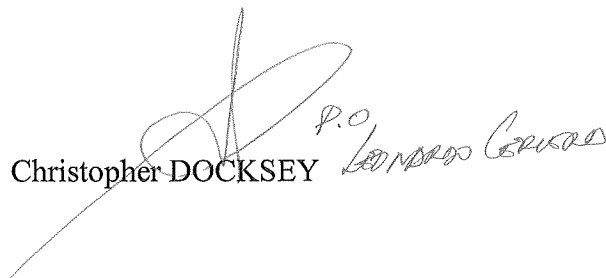
Pursuant to Article 8(b) of Regulation (EC) No 45/2001, personal data may only be transferred if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. In this respect you have advanced the jurisprudence of the Civil Service Tribunal as justification for your request<sup>2</sup>. However this does not satisfy the requirements of either of the cumulative conditions under Article 8(b).

Second, we have redacted personal data in the letter. This follows your agreement in the confirmatory application to redacting names in order to preserve privacy.

Please find attached the document to which you have been granted partial access.

Finally please note that pursuant to Article 8(1) of Regulation (EC) No 1049/2001 you are entitled to make a complaint to the European Ombudsman or institute proceedings before the Court of Justice of the European Union against the EDPS, under the conditions laid down in, respectively, Articles 228 and 263 of the Treaty on the Functioning of the European Union.

Yours sincerely,

  
Christopher DOCKSEY *P.O. LEONARD CERUARD*

Annex: Letter from the Fundamental Rights Agency dated 18 December 2008  
(our ref. 2008-0643 A-08), with the exception of Annex 1

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<sup>2</sup> The ruling in Case F-23/05 of 2 May 2007