

EUROPEAN COMMISSION



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Ms Julia REDA
European Parliament
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**DECISION OF THE EUROPEAN 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 2018/1952**

Dear Ms Reda,

I refer to your e-mail of 25 May 2018, registered on 29 May 2018, 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 (hereafter ‘Regulation 1049/2001’).

1. SCOPE OF YOUR REQUEST

In your initial application of 3 April 2018, you requested access to documents containing ‘all information concerning the Interservice Group on Copyright and its meetings since September 2014’.

In its initial reply of 24 May 2018, unit E.2 (‘Knowledge and Infrastructure’) of the Secretariat-General identified eight documents³. It gave wide partial access, subject to the redaction of personal data only on the basis of Article 4(1)(b) of Regulation 1049/2001 (protection of privacy and the integrity of the individual).

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

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

³ Please see the documents listed in the initial reply.

Through your confirmatory application, you request a review of this position. Consequently, your confirmatory application regards the personal data that was redacted on the basis of Article 4(1)(b) of Regulation 1049/2001.

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 have to inform you that the decision of unit E.2 of the Secretariat-General to refuse access to the personal data in question has to be confirmed on the basis of the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of privacy and the integrity of the individual), for the reasons set out below.

Article 4(1)(b) of Regulation 1049/2001 provides that ‘the 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’.

The requested documents contain personal data such as names of natural persons not occupying any senior position in the European Commission’s Cabinets or its administration, or information from which their identity can be deduced. They also contain biometric data, namely handwritten signatures and there is undeniably a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

In its judgment in the *Bavarian Lager* case, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001⁴ (hereafter ‘Data Protection Regulation’) becomes fully applicable⁵.

Article 2(a) of the Data Protection Regulation provides that personal data ‘shall mean any information relating to an identified or identifiable person [...]; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity’. According to the Court of Justice, ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of “private life”’⁶. The names⁷ of the persons concerned as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

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 January 2001, p. 1.

⁵ Judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 63.

⁶ Judgment of 20 May 2003, *Rechnungshof v Österreichischer Rundfunk and Others*, C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁷ Judgment in *Commission v Bavarian Lager*, cited above, EU:C:2010:378, paragraph 68.

It follows that public disclosure of the above-mentioned information would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001. According to Article 8(b) of that Regulation, 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 cumulative.⁸ Only if both conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

In its judgment in the *ClientEarth* case, the Court of Justice ruled that '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 that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. 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 access'.⁹ I refer also to the *Strack* case, where the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data¹⁰.

Your confirmatory request does not contain any motivation as to the necessity of the transfer of the non-disclosed personal data. I have to conclude, therefore, that you did not establish the necessity of having the data in question transferred to you.

Therefore, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data in question, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

3. ERRONEOUSLY DISCLOSED PERSONAL DATA

Please note that the redacted version of the document 'Minutes of 6th and 7th ISG meetings on Copyright, 14 and 27 June 2016' (Ares(2016)3180782), which you received through the initial reply, contains personal data that should have been redacted in accordance with the assessment and conclusions made under point 2.

Please find attached the correctly redacted version of this document (see document 1).

Please discard and destroy both the electronic and paper versions of the insufficiently redacted version of the document which you erroneously received through the initial reply, undo any possible transmissions of that version to third parties and do not process that document further.

⁸ Idem, paragraphs 77-78.

⁹ Judgment of 16 July 2015, *ClientEarth v European Food Safety Authority*, C-615/13 P, EU:C:2015:489, paragraph 47.

¹⁰ Judgment of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 106.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(b) of Regulation 1049/2001 is an absolute exception which does not require the institution to balance the exception defined therein against a possible public interest in disclosure.

5. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting further partial access to the documents requested. However, for the reasons explained above, no further partial access is possible without undermining the interests described above.

6. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European 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
Martin SELMAYR
Secretary-General*

Enclosure: 1