



## EUROPEAN COMMISSION

Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 of the TEU

Deputy Chief Negotiator

**04 JUL. 2018**

Brussels,  
tf50(2018)3918002

*By registered mail with AR*

**Mary Peterson**  
15 Church Green  
Myatt Fields South  
Stockwell  
London  
SW9 6NL  
United Kingdom

*Advanced copy by e-mail:*  
[ask+request-5623-  
bbaa739b@asktheeu.org](mailto:ask+request-5623-bbaa739b@asktheeu.org)

**Subject: Your request registered under *Gestdem* reference No 2018/3157**

Dear Ms Peterson,

We refer to your e-mail dated 30/05/2018 and 13/06/2018, registered on 13/06/2018 under the above-mentioned reference number, by which you made a request pursuant to Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>.

You requested: *Any form of correspondence between an EU Commission politician or staff member, and - Eloise Todd, Clive Cowdery, Shaks Gosh, Anatole Kaletsky, Peter Norris, Stephen Peel, or any other 'Best for Britain' representative (in the following periods: March-July 2017, August-December 2017 and January-May 2018.)*

We identified the following documents falling within the scope of your request:

- Ares (2018)364137: Correspondence between Eloise Todd and Mr Barnier's office (dated 6 November 2017 and 22 January 2018);
- Ares (2018)1358503: Correspondence between Mark Malloch-Brown and Michel Barnier (dated 28 February and 12 March 2018).

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<sup>1</sup> Official Journal L145 of 31.05.2001, p.43.

After consultation of third parties in accordance with Article 4(4) of Regulation 1049/2001, wide partial access is granted to both documents, subject to the redaction of personal data (i.e. the names of the Commission staff members not holding any senior management position, the names and information related to other organisations and supporters of 'Best for Britain' and the personal telephone numbers) on the basis of the exception of Article 4(1)(b) of Regulation 1049/2001 related to the protection of the privacy and 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.*

The documents contain personal data in the meaning of Article 2(a) of Regulation 45/2001<sup>2</sup>, which defines it as *any information relating to an identified or identifiable natural 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.*

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<sup>3</sup>.

Only if both conditions are fulfilled and the transfer constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the transfer of personal data occur.

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

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<sup>2</sup> 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.

<sup>3</sup> Ibid, paragraphs 77-78.

that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject<sup>4</sup>.

Indeed, in the judgment in the *ClientEarth* case, where 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*<sup>5</sup>. In the *Strack* case, the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data<sup>6</sup>.

Against this background, 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 included therein, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

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

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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Sabine Weyand

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<sup>4</sup> Judgment of the Court of Justice of 16 July 2015 in case C-615/13P, *ClientEarth v EFSA*, (EU:C:2015:489), paragraph 47.

<sup>5</sup> Ibid, paragraph 47.

<sup>6</sup> Judgment of the Court of Justice of 2 October 2014 in case C-127/13 P, *Strack v Commission*, (EU:C:2014:2250), paragraph 106.