



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels,

Mrs. Lise Witteman-Latour
Opperstraat 35, bus 2
B-1050 Elsene, Brussel

***By registered letter with
acknowledgment of receipt***

Advance copy by email:
Lise.witteman@gmail.com, request-6312-899c2720@asktheeu.org

Subject: Your application for access to documents Ref GestDem No 2019/522

Dear Ms Witteman-Latour,

We refer to your e-mail of 22 January 2019 via which you made a request for access to documents, registered by the European Commission on 28 January 2019 under the above-mentioned reference number.

You request access to the list of all meetings held by Directorate General Home Affairs and Migration (DG HOME) with representatives of the European Organisation for Security (EOS) for the time period of 1 January 2014 until 1 January 2018, as well as emails, minutes and reports relating to these meetings.

More specifically your application concerns the following documents:

1. Letter from EOS on flagship initiatives on 07/10/2014 - Ares(2014)3338126;
2. Briefing contribution for the meeting with EOS on 19/12/2014 - Ares(2016)3205078;
3. Letter from EOS on first call for proposals under the Horizon 2020 Programme on 30/03/2015 - Ares(2015)1512780
4. Letter to EOS on first call for proposals under the Horizon 2020 Programme on 10/06/2015 - Ares(2015)2421142;
5. Report of the meeting between members of the Commissioner's cabinet and EOS on 15/10/2015 - Ares(2016)3713523;
6. Letter from EOS to Commissioner King on 05/12/2015 - Ares(2019)1398006;
7. Document regarding equipment standards for soft target protection, September 2017, classified document.

You will find enclosed a list of all meetings held between EOS and DG HOME during the requested timeframe, which also contains a summary of all existing emails, minutes and reports related to them. This information is not contained in any existing document, but it was created for the purpose of your request, with a view to identifying the relevant documents for your request.

Following the examination of the documents 1 to 7 requested, I have concluded that, according to the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, they may be partially disclosed for the reasons set out below:

According to Article 4(1)(a) of Regulation (EC) No 1049/2001 “*the institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards public security*”. **Document No 7** of the above-mentioned list, relating to the meeting of September 2017 on equipment standards for soft target protection contains information on public security issues. Its disclosure would put at risk public security because the nature of technical discussions covered among other vulnerabilities of the detection equipment and should such details become public, terrorist groups could exploit such information to conduct attacks against aviation and other public areas. Moreover, Document 7 is EU classified according to Commission Decision 444/2015¹. Consequently, the document is accessible to only a limited number of staff members within the European Commission. The explicit provisions requiring the European Commission to give these documents classified status reinforces the view that, given the nature and substance of the information included therein, it was not the intention of the legislator that they are publically disseminated. In consequence, there is a real and not hypothetical risk that public access to this document would undermine the public interest as regards public security. I conclude therefore, that **access to this document has to be refused on the basis of the exception laid down in Article 4(1)(a) of Regulation (EC) No 1049/2001.**

According to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the “*protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data*”.

The applicable legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC2 (‘Regulation 2018/1725’).

The **documents 1 to 6** to which we give you partially access contain personal data related to identified or identifiable individuals involved in the meetings held between DG HOME and EOS, in particular their names, functions, contact data and opinions. These parts of the documents have been redacted as their disclosure is prevented by the exception laid down in Article 4(1)(b) of Regulation No 1049/2001. Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by

¹ Official Journal L 72 of 17.3.2015, p. 53–88.

² Official Journal L 205 of 21.11.2018, p. 39.

reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.³ Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁴ In its judgment in Case C-28/08 P (*Bavarian Lager*)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶. Pursuant to Article 9(1)(b) of Regulation 2018/1725, *'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'*. Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

⁴ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁶ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

As to the handwritten signatures of third-party are concerned, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Finally, we regret to inform you that the Commission does not hold documents other than the seven referred to above, e.g. emails, minutes and reports related for all meetings, listed in in Annex 1 (list of all meetings held between EOS and DG HOME during the requested timeframe).

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request, regarding those meetings, mentioned in Annex 1.

I draw your attention to the means of redress available against this decision. In case you would disagree with our assessment of your request explained in detail above, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Paraskevi MICHOU
[E-signed]

Enclosures:

1. List of meetings DG HOME and EOS in the period 01.01.2014 – 01.01.2018
2. Letter from EOS on flagship initiatives on 07/10/2014 - Ares(2014)3338126
3. Briefing contribution for the meeting with EOS on 19/12/2014 - Ares(2016)3205078
4. Letter from EOS on first call for proposals under the Horizon 2020 Programme on 30/03/2015 - Ares(2015)1512780
5. Letter to EOS on first call for proposals under the Horizon 2020 Programme on 10/06/2015 - Ares(2015)2421142
6. Report of the meeting between members of the Commissioner's cabinet and EOS on 15/10/2015 - Ares(2016)3713523
7. Letter from EOS to Commission King on 05/12/2015 - Ares(2019)1398006