



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate A - Policy coordination
A.4 - Legal issues & Enforcement

Brussels,
ARES (2019)

Mr Bryan Carter
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1050 Brussels

E-mail: ask+request-6318-dc245383@asktheeu.org

Dear Sir,

Subject: Your applications for access to documents – Ref GestDem No 2019-0432, No 2019-0456 and No 2019-0457

We refer to your letters dated 23/01/2019 and 25/01/2019 in which you make requests for access to documents, registered on 23/01/2019 and 25/01/2019 respectively, under the above-mentioned reference numbers. We also refer to our letter of 7/03/2019 and your e-mail from 7/03/2019.

In our letter of 7/03/2019 we have provided the documents that we had identified following your initial request. However, in your e-mail from the same day you refer to certain documents that we would not have identified. In particular, you refer to the documents related to certain meetings held by the Commissioner Violeta Bulc, or members of her staff, with Hidria on 17/11/18, 26/10/18, 19/04/17 and 27/05/16 including a visit of a Hidria factory on 02/07/18.

In your e-mail you also manifested your intention to fil a confirmatory application with regards to your access to documents request 'Meetings with ERTRAC'. However, we are not sure whether you have sent that confirmatory request to Secretariat General of the Commission as it was indicated in our letter of 7/03/2019 that is the normal procedure.

Since the object of your eventual confirmatory request would concern the identification of further documents related to your request we have done an additional research and identified further documents with the indications you provided in your email from 7/03/2019.

In addition, in your e-mail from 7/03/2019 you also refer to your request concerning the “*minutes and all the documents related to the meetings between DG move and ERTRAC or any of its members, like Hidria*”. The documents concerning Hidria are provided in this answer. However, in order to clarify the situation, the request concerning documents with other members of ERTRAC will be examined in the framework of a new request for access to documents.

Having examined the documents concerning Hidria under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents (The Regulation), I have come to the conclusion that they may be partially disclosed.

Please find enclosed copy of such documents. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The redacted parts of the documents contain personal data, in particular the personal details of European Institution staff.

Pursuant to Article 4(1)(b) of the Regulation, 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/EC¹ ('Regulation 2018/1725').

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 reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.² 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.³

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

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

¹ Official Journal L 205 of 21.11.2018, p. 39.

² 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.

³ 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.

⁴ 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.

⁵ 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.

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

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to make 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, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Barbara JANKOVEC
Head of Unit

