



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources
The Director

Brussels, 01 MARS 2019
SG.C/AF -

By registered mail with AR

Mr Peter Teffer
EUobserver
Rue Montoyer 18B
1000 Brussels
Belgium

*Copy by email:
ask+request-6373-
d63098a2@asktheeu.org*

Subject: Your application for access to documents – GESTDEM 2019/0748

Dear Mr Teffer,

We refer to your e-mail of 8 February 2019 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number.

You request access to ‘all documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations - related to the meeting between President Jean-Claude Juncker and Mr Martin Schulz, scheduled for 7 February 2019’.

We regret to inform you that the European Commission does not hold any documents that would correspond to the description given in your application.

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. I would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P (*Strack v Commission*), according to which ‘[n]either Article 11 of Regulation 1049/2001 nor the obligation of assistance in Article 6(2) thereof, can oblige

an institution to create a document for which it has been asked to grant access but which does not exist'.¹

The above-mentioned conclusion has been confirmed in Case C-491/15 P (*Typke v Commission*), where the Court of Justice held that 'the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and [...] Regulation No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist. It follows that, [...], an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001'.²

Furthermore, following the recent order of Court of Justice, ruling on an appeal in Case C-440/18 P, there exists a presumption of lawfulness attached to the declaration by the institution asserting that documents do not exist, unless the applicant can rebut it by relevant and consistent evidence.³

A part of your request concerns e-mails and handwritten notes. Please note in this respect that according to Article 4 of Commission Decision 2002/47/EC of 23 January 2002 amending its Rules of Procedure⁴, a document drawn up or received by the European Commission must only be registered if it contains important information that is not short-lived and/or may involve action or follow-up by the European Commission or one of its departments. Correspondence concerning meetings that contains logistical arrangements is to be qualified as short-lived.

Therefore, given that the European Commission does not hold any documents corresponding to the description given in your application, it is not in a position to fulfil your request.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the European 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

Transparency, Document Management & Access to Documents (SG.C.1)

¹ Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, Case C-127/13 P, EU:C:2014:2250, paragraph 46.

² Judgment of the Court of Justice of 11 January 2017, *Typke v Commission*, Case C-491/15 P, EU:C:2017:5, paragraph 31.

³ Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, Case C-440/18 P, EU:C:2019:77, paragraph 14.

⁴ Commission decision of 23 January 2002 amending its Rules of Procedure 2002/47/EC, ECSC, Euratom, Official Journal L 21 p. 23.

BERL 7/076

B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

ps 

Tatjana VERRIER