



EUROPEAN COMMISSION

Brussels, 22.7.2019  
C(2019) 5604 final

Ms Josefina Marti  
Calle Juan Bravo 62  
28006 Madrid  
Spain

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory applications for access to documents under Regulation  
(EC) No 1049/2001 – GESTDEM 2019/1477**

Dear Ms Marti,

I refer to your email of 20 May 2019, registered on 21 May 2019, 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 documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

**1. SCOPE OF YOUR REQUEST**

On 11 March 2019, you submitted an initial application for access to documents under Regulation (EC) No 1049/2001 to the Directorate-General for International Cooperation and Development, in which you requested access to:

- ‘All the correspondence (including phone calls, emails and files attached, letters) between the Special Envoy for the promotion of freedom of religion or belief outside the EU, Ján Figel’, and churches, religious communities or any organizations, representing churches and religious communities. The information I ask is from May 2016;
- A list of all the meetings (from May 2016) and all documents produced and exchanged in those meetings between Ján Figel’ and churches, religious communities or any organizations representing churches and religious communities.’

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

This application was registered under reference number GESTDEM 2019/1477.

The Directorate-General for International Cooperation and Development identified the following documents as falling under the scope of your request:

1. Email invitation to the 19th Annual EPP Group Dialogue with churches and religious institutions (Ares(2019)2572220, document 1) and Official invitation to the 19th Annual EPP Group Dialogue with churches and religious institutions (Ares(2019)2572220, document 1b);
2. Letter from Bahá'í International Community to EU Special Envoy (Ares(2019)109449, document 2);
3. Internal flash note - Meeting with EU Special Envoy Ján Figel' and Cardinal Bo of Myanmar (Ares(2019)1891351, document 3);
4. Meeting between Ján Figel' and His Holiness Dalai Lama (Ares(2019)02211007, document 4);
5. Meeting between Ján Figel' and a representative of the Christian Catholics in Syria (Ares(2019)2673260, document 5);
6. Invitation to the annual meeting of the European Platform against Religious Intolerance and Discrimination (Ares(2019)2576671, document 6);
7. Email request for a meeting from the Jehovah's Witnesses to Ján Figel' (Ares(2019)2576385, document 7a) and letter from Jehovah's Witnesses for a meeting with Ján Figel' (Ares(2019)2576385, document 7b);
8. Minutes of the meeting between Ján Figel' and the Jehovah Witnesses' international delegation (Ares(2019)2653205, document 8);
9. Email to send the congratulatory note on the extension of the Special Envoy mandate (Ares(2019)2575192, document 9a) and Congratulatory note on the extension of the Special Envoy mandate (Ares(2019)2575192, document 9b);
10. Letter to Ján Figel' on the role of religion in society (Ares(2019)109590, document 10);
11. Invitation to a working lunch at the EJA headquarters in Brussels (Ares(2019)1956871, document 11);
12. Meeting between Ján Figel' and the patriarchs from Middle East (Ares(2019)2649428, document 12);
13. Exchange of emails with an evangelical organisation in India on the signature of HD declaration (Ares(2019)19585681, document 13).

At the initial stage, the Directorate-General for International Cooperation and Development:

- granted wide partial access to documents 1, 2, 3, 4, 6, 7a, 8, 9a, 9b, 10, 11, 12 and 13 only with personal data redacted on the bases of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001;
- refused access to document 7 and parts of document 5 on the basis of the exception protecting the public interest as regards international relations (Article 4(1)(a), third indent of Regulation (EC) No 1049/2001).

The reason for your confirmatory application was the absence of a list of meetings between Ján Figel' and churches, religious communities or any organizations representing churches and religious communities.

In your confirmatory application, you do not question the redactions of personal data in the documents disclosed to you nor the refusal of document 7b and parts of document 5 at the initial stage which is why I consider these parts as falling outside the scope of this confirmatory decision.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this renewed search, I confirm that the European Commission does not hold any list of meetings that would correspond to the description given in your confirmatory application.

Indeed, 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 European 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'.<sup>3</sup>

The above-mentioned conclusion has been confirmed in Case C-491/15 P (*Typke v European 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'.<sup>4</sup>

Furthermore, the General Court held in Case T-468/16 (*Verein Deutsche Sprache v European Commission*) that there exists a presumption of lawfulness attached to the declaration by the institution asserting that documents do not exist.<sup>5</sup> This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence.<sup>6</sup>

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<sup>3</sup> Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

<sup>4</sup> Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

<sup>5</sup> Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v European Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

<sup>6</sup> *Ibid.*

The Court of Justice, ruling on an appeal in Case C-440/18 P, has recently confirmed these conclusions.<sup>7</sup>

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

### **3. 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*

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<sup>7</sup> Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, C-440/18 P, EU:C:2019:77, paragraph 14.