



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 6 December 2019

Mrs Aisha Down
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Sarajevo
Bosnia and Herzegovina

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BY EMAIL AND REGISTERED MAIL WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Request for access to documents

Ref.: Your request of 3 October 2019 registered on 4 October under reference GestDem 2019/5641

Dear Mrs Down,

I refer to your application mentioned above by which you request access to documents under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹.

Your request concerned:

1. *"All documents related to contacts between Michel Petite, any other lawyers employed with Clifford Chance staff, and officials in Legal Services since January 1, 2011--including correspondence, minutes of meetings, and emails."*
2. *"All documents related to revisions of the Tobacco Products Directive and the Implementing Acts of the Tobacco Products Directive since January 1, 2013."*

Second point of your request was attributed to Directorate-General for Health and Food Safety (DG SANTE) and registered under reference GestDem 2019/5642. DG SANTE sent you a reply on 15 October 2019.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31.05.2001, page 43).

1. CLARIFICATION OF YOUR REQUEST AND IDENTIFICATION OF DOCUMENTS

As regards point 1, by email dated 23 October the Legal Service asked you, under Article 6(2) of Regulation (EC) No 1049/2001, to clarify the scope of your request. By email of 25 October, you informed the Legal Service that point 1 was split into the following 2 parts:

1. *"All documents related to contacts between Michel Petite and officials in Legal Services since January 1, 2011--including correspondence, minutes of meetings, and emails.*
2. *All documents related to lawyers employed with Clifford Chance AND officials in Legal Services RELATED to the Tobacco Products Directive between January 1, 2011 and January 1, 2015."*

In the framework of your request, the Legal Service has conducted internal searches within all its teams and the following 2 documents have been identified as matching the terms of your request:

1. Email sent on 22 June 2011 by Mr Petite of Clifford Chance to Mr Van Rijn, a former Director in the Legal Service.
2. Email sent on 27 January 2012 by Mr Petite of Clifford Chance to Mr Hetsch, former Deputy Director-General of the Legal Service.

2. DOCUMENTS PREVIOUSLY MADE PUBLIC UNDER REGULATION (EC) No 1049/2001

Please note that those documents have already been disclosed under Regulation (EC) No 1049/2001, following a previous request made via the *AsktheEU.org* website. The Legal Service's reply and the disclosed documents are publicly available through the following link:

https://www.asktheeu.org/en/request/contacts_with_michel_petite_and#outgoing-640

For ease of reference, both documents are hereby attached. Please note, however, that a person's name and information on this person have been redacted in document under number 1, as explained below.

Protection of personal data

As stated above, a person's name and information on this person have been redacted in document under number 1, since that data must be protected under the exception provided for in Article 4 (1)(b) of Regulation (EC) No 1049/2001 ("*protection of personal data*")², in accordance with the European Union legislation regarding the protection of personal data. For ease of reference, you will find attached a redacted version of this document.

As the Court of Justice has ruled in Case C-28/08P (*Bavarian Lager*), when access to documents containing personal data is requested, the Data Protection Regulation, *i.e.* Regulation (EU) 2018/1725³, becomes fully applicable.

² "The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

³ 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/EC (OJ L 205 of 21.11.2018, page 39).

Article 3(1) of Regulation (EU) 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.⁴

Only if the conditions for transfer defined in the Regulation (EU) 2018/1725 are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 that Regulation, can the transmission of personal data occur.

In your application, you indicate that your address is outside EU/EEA. The public disclosure of the personal data contained in the document requested would therefore constitute processing of personal data within the meaning of Chapter V of Regulation (EU) 2018/1725.

According to Article 47(1) of that Regulation, and unless the conditions of Article 48 are met, a transfer of personal data to a third country or international organisation may take place only where the Commission has decided pursuant to Article 45(3) of Regulation (EU) 2016/679 or to Article 36(3) of Directive (EU) 2016/680 that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection and where the personal data are transferred solely to allow tasks within the competence of the controller to be carried out.

I consider that, with the information available, the fulfilment of these conditions has not been established. Accordingly, the above mentioned personal data has been redacted in document under number 1.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

3. MEANS OF REDRESS

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission
Secretariat-General
Unit C.1. “*Transparency, Document Management & Access to Documents*”
BERL 7/076
B-1049 Bruxelles

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

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 2

⁴ Judgment of the Court of Justice of 20 December 2017, Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.