Brussels, 21st September 2020
HR/GI

Ms Vicky CANN
CEO
Rue d'Edimbourg 26
1050 Brussels

By email: ask+request-8366-33d2ed66@asktheeu.org

Subject: Your application for access to documents – Ref/GestDem No 2020/4852

Dear Ms Cann,

I refer to your e-mail, dated 16 July 2020 and registered on 13 August 2020 under reference number 2020/4852, in which you make a request for access to documents.

Your request concerns “all declarations of interest by An Jamers when she joined the Commission from the consultancy Apeiron. I would also like to receive all Commission documents including any emails, letters, minutes of meetings which discussed the risk of conflicts of interest in this case, and a note of any restrictions which were applied to Ms Jamers when she joined the Commission”.


I understand that your request refers to documents relating to the recruitment by the Commission of Ms Jamers in 2014.

As regards “all declarations of interests by An Jamers when she joined the Commission from the consultancy Apeiron”, there is no document corresponding to this part of your request, as in the current legal framework it is not provided for the staff members to produce “declarations of interests” upon joining the service, as it is for College Members.

In this context, the documents identified in the framework of your request are:

- the declaration of conflict of interest by candidates for the recruitment of non-managers in the framework of Articles 11 and 11a of the Staff Regulations (SR);
• e-mail exchanges within Commission services concerning the declaration of conflict of interest and the related Appointing Authority opinion based on Article Articles 11 and 11a of the SR.

In accordance with Article 4(1)(b) of Regulation (EC) 1049/2001, it is the Commission's obligation to ensure that the privacy and the integrity of the EU staff member concerned, including in his professional capacity, are correctly protected. The documents you requested contain personal data relating to the past and present occupational activities of Ms Jamers, the disclosure of which would entail a transmission of personal data falling under the provisions of Regulation (EU) 2018/1725.

In the case EC v Bavarian Lager, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EU) 2018/1725 becomes fully applicable. Pursuant to Article 9(1)(b) of that Regulation, personal data shall only be transferred to recipients if they established the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

In your request you did not establish the necessity of having the data transferred and I consider that the legitimate interests of the individual concerned would be prejudiced by the disclosure of his personal data. Consequently, I consider that the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 applies to all the identified documents.

As for the correspondence between the Commission services, in addition to the protection of personal data, the second subparagraph of Article 4(3) of Regulation (EC) 1049/2001 applies. That exception is related to the protection of the Commission's decision-making process even after the decision of the Appointing Authority has been taken. As no overriding public interest in disclosure has been identified in the present case, that exception to the right of access cannot be waived.

While I have also considered the possibility of granting partial access on the basis of Article 4(6) of Regulation (EC) No 1049/2001, I have concluded that this would equally undermine the protection of personal data.

Against this background, in order to address your query to the extent possible, and after having consulted and with the agreement of Ms Jamers, I can nevertheless provide you with the following general information on the process to which your request relates.

Pursuant to Article 11, third indent, of the Staff Regulations, before recruiting an official, the Appointing Authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest.

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1 Regulation (EU) No 2018/1725 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 (OJ L 295, 21.11.2018, p. 39).


3 This judgment specifically cited Regulation (EC) No 45/2001, which was repealed by Regulation (EU) 2018/1725. In accordance with Article 99 of that latter Regulation, references to Regulation (EC) No 45/2001 should be construed as references to Regulation (EU) 2018/1725.
To that end, upon her recruitment in 2014 as Policy Officer in ex-DG ENTR/F2, Ms Jamers was requested, using the specific conflict of interest form upon recruitment, to inform the Appointing Authority of any actual or potential conflict of interest. She declared in her self-assessment not to have any personal interest, in particular family or financial interest nor to represent any other interests of third parties which could actually or potentially impair her independence in the course of her duties in the specific position offered and which might thus lead to any actual or potential conflict of interest relevant to that position. The service requesting her recruitment did not identify any personal interest that could lead to a potential or actual conflict of interest. The Appointing Authority concluded there was no risk of conflict of interest.

I would like to remind you that CEO remains subject to the provisions of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation\(^4\)) according to which personal data must, *inter alia*, be processed fairly and lawfully and subject to the unambiguous consent of the data subject concerned.

Finally, please be informed that a copy of this letter will be sent to the person concerned.

In accordance with Article 7(2) of Regulation (EC) 1049/2001, you are entitled 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 Brussels

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

Yours sincerely,

(e-signed)

Gertrud INGESTAD

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