



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
HUMAN RESOURCES AND SECURITY
The Director-General

Brussels, 28th September 2020
HR/GI

Ms Margarida DA SILVA
CEO
Rue d'Edimbourg 26
1050 Brussels
By email: ask+request-8393-27287e7e@asktheeu.org

Subject: Your application for access to documents – Ref /GestDem No 2020/4876

Dear Ms Da Silva,

I refer to your e-mail, dated 23 July 2020 and registered on 17 August 2020 under reference number 2020/4876, in which you make a request for access to documents.

Your request concerns "[...] documents which relate to any article 16, article 12B and article 40 (staff regulations) applications made by Reinald Krueger, Deputy Director-General at DG CNECT since August 2018. This request is a follow up to the request lodged under Ref/GestDem No 2018/4258. In particular, I request a note of all Mr. Krueger's job titles at the Commission including dates held; copies of any application(s) that he has made under article 12b, 16 and 40 to undertake a new professional activity; and all documents (correspondence, emails, meeting notes etc) related to the authorisation of the new role or roles; the appointing authority's opinion and assessment of the role."

I have examined your request under the provisions of 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.

I understand that as a follow-up to your previous request registered under reference number 2018/4258 on 6 August 2018, to which you received a reply from Ms Irene SOUKA (ref. Ares(2018)4782775 - 18/09/2018), your present request refers to documents since August 2018 relating to the new role and new professional activity of Mr Krueger while on leave on personal grounds.

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

- a document extracted from the relevant staff database listing the job titles of Mr Krueger;

- a request for outside activity while on leave on personal grounds submitted by Mr Krueger on 28 July 2019 in the framework of Article 40 of the Staff Regulations, read in conjunction with Article 12b thereof; (hereafter “ the first request”)
- the related decision from the Appointing Authority adopted on 7 August 2019;
- a request for outside activity while on leave on personal grounds submitted by Mr Krueger on 15 July 2020 in the framework of Article 40 of the Staff Regulations, read in conjunction with Article 12b thereof; (hereafter “the second request”);
- e-mail exchanges within Commission services and between Commission services and Mr Krueger pertaining to the underlying internal procedures concerning this type of requests for authorisation.

In accordance with Article 4(1)(b) of Regulation (EC) No 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 Mr Krueger, the disclosure of which would entail a transmission of personal data falling under the provisions of Regulation (EU) 2018/1725¹.

In the case *EC v Bavarian Lager*², the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EU) 2018/1725 becomes fully applicable³. 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 and Mr Krueger, in addition to the protection of personal data, the second subparagraph of Article 4(3) of Regulation (EC) No 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.

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).

² Judgment of 29 June 2010, Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraph 59.

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.

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

Since 1 October 2018, Mr Krueger is not in active employment and has submitted two requests on the basis of Articles 40 and 12b of the Staff Regulations.

The first request that Mr Krueger submitted on 28 July 2019 to engage in an outside activity relates to a remunerated occupational activity for a period of one year as of 1 October 2019 to 30 September 2020, as Group Public Policy Development Director for Vodafone Group Limited in London.

Following the consultation process required for this type of request, the Appointing Authority gave its approval to carry out this activity, under certain limited conditions aimed at preventing any potential conflict of interest.

Mr Krueger was reminded of the statutory provisions which require him:

- to follow the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefit;
- to refrain from any unauthorised disclosure of information received in the line of duty during his work at the Commission, unless that information has already been made public or is accessible to the public (Article 17 of the Staff Regulations), and, in this context, to refrain from exploiting insights of confidential nature in policy, strategy or internal processes that he may have acquired in the line of service and that have not yet been public or are not commonly available in the public domain;
- in accordance with Article 40 of the Staff Regulations, to refrain from engaging in any activity or role which involves lobbying or advocacy vis-à-vis staff of the European Commission and which could lead to the existence or possibility of a conflict with the legitimate interests of the Institution.

Mr Krueger was further submitted to specific restrictions aiming at preventing any actual, potential or perceived conflict of interests that may rise in the framework of the authorized activity.

The second request that Mr Krueger submitted on 15 July 2020 to engage in an outside activity relates to a remunerated occupational activity for a period of one year as of 1 October 2020 to 30 September 2021, as Group Public Policy Development Director for Vodafone Group Limited in London, and is currently under consideration.

Furthermore, I can provide you with the information on the last post held by Mr Krueger during the reference period, which was the position of a Senior Expert in DG CNECT (from 16 April 2018 till 30 September 2018). Please note that Mr Krueger, in contrast to what you state in your request, has been never Deputy Director-General at DG CNECT.

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

Regulation⁴) 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) No 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

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.