



EUROPEAN COMMISSION

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C(2020) 9529 final

Ms Laura Tetic
Nieuwstraat 23
4811 Breda
The Netherlands

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2020/5807**

Dear Ms Tetic,

I refer to your email of 22 October 2020, registered on 28 October 2020, by 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 documents² (hereafter ‘Regulation (EC) No 1049/2001’).

On 30 September 2020, you submitted an initial application for access to documents under Regulation (EC) No 1049/2001 to the European Commission, in which you requested access to:

‘documents which contain the following information - number of candidates for promotions although they have disciplinary or criminal proceedings’

This application was registered under reference number GESTDEM 2020/5807

In its initial reply of 20 October 2020, the Directorate General of Human Resources and Security informed you that the Commission does not hold any documents that would correspond to the description given in your application.

¹ OJ L 345, 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

In your confirmatory application, you contested that statement and added I quote:

‘My request concerns the data that are in your possession: general information about existing procedures applicable to persons with disciplinary or court procedures and statistical data of promotions of persons with such procedures. The European Commission has the good practice of making such kind of data available to the public. It is important for the general public to be able to hold the EU accountable for its activities and use of its resources.’

Against this background, the European Commission has carried out a renewed, thorough search for documents that would fall within the scope of your application.

Following this renewed search, I confirm that no documents have been found that match your request.

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’³.

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 1049/2001’⁴.

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 exist⁵. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence⁶. Your general argument that you were surprised about the absence of further documents cannot be construed to constitute such relevant and consistent evidence.

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

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

⁵ 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.

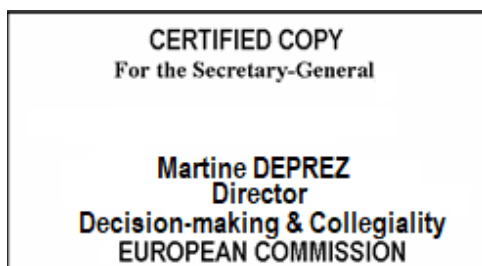
⁶ *Ibid.*

The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed the earlier conclusions by the General Court⁷.

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.

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
Ilze JUHANSONE
Secretary-General

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