



EUROPEAN COMMISSION

DIRECTORATE-GENERAL  
HUMAN RESOURCES AND SECURITY  
Director-General

Brussels, **13 DEC. 2013**  
DG HR/IS hr.b.1(2013)3783454

Ms Vicky Cann

*By e-mail only:*  
*ask+request-874-*  
*af933693@asktheeu.org*

Dear Madam,

**Subject: Your application for access to documents – Ref. GestDem 2013-5046**

I refer to your e-mail dated 07/10/2013 sent to the EEAS, in which you make a request for access to documents. Your request has been transmitted to the European Commission and has been registered on 11/10/2013 under the reference number GESTDEM 2013/5046.

**I. Scope of your application and documents concerned**

Your application reads as follows:

*"Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting all documents which relate to the job move by Serge Abou to Huawei and any other external activities which he may be undertaking. In particular, I request a note of all Mr Abou's job titles at EEAS and its predecessors, including dates held; copies of any application(s) that Mr Abou made under Article 16 of the Staff Regulations to undertake a new professional activity; and all correspondence or emails related to the authorisation of the new role or roles."*

I can inform you that in 2012, Mr Abou has informed the Commission in accordance with Article 16 of the Staff Regulations of his intention to exercise an occupational activity at Huawei's. To this, the Commission replied negatively for the period until the end of 2012, at which date the two years period foreseen in Article 16 of the Staff Regulation has ended. The Commission has also imposed precautionary restrictions for the period after 2012.

## 2. Conclusions

Having carefully examined your request, I regret to inform you that access cannot be granted to the requested documents, as they fall under the exception in Article 4 (1) (b) of Regulation 1049/2001. The reasons for this decision are set out below.

## 3. Analysis

Article 4 (1) (b) of Regulation 1049/2001 reads that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.”

The applicable legislation in this field is Regulation 45/2001<sup>1</sup>. The Court of Justice has confirmed that “where a request based on Regulation No 1049/2001 seeks to obtain access to documents including personal data, the provisions of Regulation 45/2001 become applicable in their entirety, including Articles 8 and 18 thereof”<sup>2</sup>. Pursuant to Regulation 45/2001, personal data must be processed fairly and lawfully. Any processing must be necessary and proportionate for a specific purpose.

Furthermore, pursuant to Article 8(b) of Regulation 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject’s legitimate interests might be prejudiced.<sup>3</sup>

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<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data, OJ L 8 of 12.1.2001, p. 1.

<sup>2</sup> Judgment of 29 June 2010 in Case C-28/08 P, *Bavarian Lager*, paragraph 63.

<sup>3</sup> *Bavarian Lager*, paragraph 78.

principles –public access to documents and the protection of privacy – and in the light of the reasons mentioned above, I consider that the protection of the former official's interest overrides the public interest of disclosure of documents.

**5. Means of redress**

In accordance with Article 7(2) of Regulation 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 unit SG-B-5  
BERL 5/327  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,



Irene SOUKA

a) Documents originating from Mr Serge Abou

Since your application concerns documents that relate to a third party, specifically personal data of a former official, this latter has been consulted in accordance with Article 4 (4) of Regulation 1049/2001 and with Article 18 of Regulation 45/2001.

The author of the documents has objected to disclosure of the documents that he sent to the Commission and has motivated his position as follows: the release of the documents will impinge on his privacy, given the media attention which have already cast a negative light on him and his reputation.

Mr Abou has indeed been subjected to negative media attention following a report by the German journal "Der Spiegel" and, among others, the South China Morning Post.

According to Mr Abou, he was contacted by strangers, following these media reports, both on his private phone and on his private e-mail address numerous times. This negative attention is all the more distressing as the Commission is not aware that Mr Abou would have failed in any way to adhere to his obligations under Article 16 of the Staff Regulations.

I therefore conclude that these documents are protected by the absolute right of protection of privacy as laid down in Article 4 (1) (b) Regulation 1049/ 2001.

b) Documents originating from the Commission

With regard to the Commission's own documents, Mr Abou has objected to their disclosure on the same grounds. I consider that their disclosure would likewise undermine the protection of the right to privacy as laid down in Article 4 (1) (b) Regulation 1049/2001. Notably, the procedure under Article 16 of the Staff Regulations comprises a certain number of documents which all relate to the same file. Commission documents cannot thus be treated separately or in a different manner from the third party's documents as this would undermine his rights under Article 4 (1) (b) Regulation 1049/2001.

**4. No partial access**

I have further considered whether partial access could be granted to the documents requested. However, also a partial access would, due to the fact that all documents under the relevant procedure of Article 16 relate to the same file, undermine the protection granted under Article 4 (1) (b) Regulation 1049/2001.

As explained above, media attention has cast a negative light on the former official and his reputation, and has impinged on his right to privacy. In the presence of two conflicting