



EUROPEAN COMMISSION

Brussels, 5.12.2019
C(2019) 8866 final

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10600 Plasencia (Cáceres)
Spain

**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 2019/4666**

Dear [REDACTED],

I refer to your e-mail of 10 October 2019, registered on 11 October 2019, in which you submitted 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’).

1. SCOPE OF YOUR REQUEST

In your initial application of 12 August 2019, addressed to the Directorate-General for Employment, Social Affairs and Inclusion, you requested access to, I quote:

‘[...] the following file: CHAP 2014(0148) (If the said file contains more than one complaint, the undersigned only requests access to one that can be considered as a ‘model’ complaint); in addition to all correspondence of the Commission with respect to it [with the personal data anonymised]’.

The European Commission has identified, as falling within the scope of your request, the following documents that are part of CHAP(2014)00148:

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145, 31.5.2001, p. 43.

- Letter sent by a complainant to the European Commission, 27 December 2013, reference Ares(2019)5748925 (hereafter ‘document 1’);
- letter from the European Commission, 13 May 2014, reference Ares(2019)6281321 (hereafter ‘document 2’);
- letter sent by a complainant to the European Commission, 7 May 2014, reference Ares(2019)5748925 (hereafter ‘document 3’);
- letter from the European Commission, 15 February 2015, reference Ares(2019)6281321 (hereafter ‘document 4’).

In its initial reply of 10 October 2019, the Directorate-General for Employment, Social Affairs and Inclusion granted partial access to documents 2 and 4 pursuant to Article 4(2), third indent (protection of the purpose of the inspections, investigations and audits) of Regulation (EC) No 1049/2001. It refused to grant access to documents 1 and 3 as it did not obtain a reply to its consultation with the author(s) of the documents and after concluding that disclosure could undermine judicial proceedings and/or the commercial interests of the complainant(s). It redacted the personal data as falling outside the scope of your request.

In your confirmatory application, you request a review of this position and you put forward a series of arguments in support of your request for additional documents pertaining to the file, notably as regards documents originating from the complainant(s).

In particular, you argue that the European Commission erred in refusing access to ‘the remaining documents, especially [the documents submitted by the complainant]’, based on ‘hypothetical’ arguments, as the complainant did not oppose the disclosure of the documents he/she submitted to the European Commission. Moreover, you consider that the European Commission ‘has no evidence that [the possible judicial proceedings] exist, nor has the complainant alleged anything in that regard to prevent [your access to the documents]’. You did not contest the assessment of the Directorate-General for Employment, Social Affairs and Inclusion regarding documents 2 and 4.

Please be informed that the European Commission does not hold documents pertaining to CHAP(2014)00148 other than those which were identified at the initial stage as matching the criteria under your request, with the exception of the English version of document 4, which is already in your possession.

Therefore, the scope of this confirmatory decision is circumscribed to the review of documents that were submitted by the complainant(s) and which are included in the file of CHAP(2014)00148.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Your request relates to complaints received by the European Commission in 2013 regarding the employment status of certain judicial officers in Spain. Given the large number of complaints received, the European Commission processed them together and provided a single reply addressing the arguments invoked by the complainants. Therefore, the identity of the authors of the documents identified under your request may not necessarily be the same.

In this context, I would like to inform you that the third party author of document 1 has agreed with its disclosure, subject to the redaction of personal data. Moreover, on the basis of Article 4(4) of Regulation (EC) No 1049/2001, the Secretariat-General of the European Commission undertook consultations with the third party author of document 3 with a view to assessing whether an exception provided for under Article 4 of the Regulation could be applicable to the document in question. The Secretariat-General did not obtain a reply to this consultation within the set deadline. However, it considers that, with the exception of personal data, disclosure of content of this document would not undermine any of the interests protected by the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001.

Following the confirmatory review, I can inform you that full access is granted to document 3 and the version of document 1 which is included in the dossier under reference CHAP(2014)00148. The personal data reflected in the documents has been redacted as it does not fall within the scope of your application.

With regard to document 1, please be informed that the European Commission has carried out a search for the parts of the document which are missing from the version attached to this decision, including a search in the archives of the Directorate-General for Employment, Social Affairs and Inclusion. However, the European Commission has unfortunately not been able to locate a full version of the document in question.

As explained in documents 2 and 4, the relevant services of the European Commission were not able to register all the mails in the complaint-management system given the large number of complaints submitted at the time (2013). While the digital copy of the main part of the complaint document was uploaded in the CHAP file, the original version of the complaint is not retrievable from the archives of the responsible Directorate-General of the European Commission.

As explained above, the document is herewith fully disclosed in the version available in the file of CHAP(2014)00148.

3. MEANS OF REDRESS

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




Enclosures: (2)