



**EUROPEAN COMMISSION**

Secretariat-General

Directorate C – Transparency, Efficiency & Resources  
**The Director**

Brussels  
SG.C.1/ED

*By registered mail with AR*

Mr Arun Dohle  
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**Subject: Your applications for access to documents – GESTDEM 2021/5166 and 5167**

Dear Mr Dohle,

I refer to your requests of 22 August 2021, registered on 23 August 2021, in which you make a request for access to documents, under the above-mentioned reference numbers.

**1. SCOPE OF YOUR REQUEST**

You request access to, I quote:

‘The Ares registration fiche of the letters which MEP Ana Gomes sent to FVP Timmermans in July 2015, and in 2017 related to Mrs. Roelie Post, including all related correspondence in whatever form.’ (GESTDEM 2021/5166)

‘Ares Registration fiches and related correspondence related to the letters to Commissioners Oettinger and Timmermans sent per registered mail by Mrs. Roelie Post in August 2018.’ (GESTDEM 2021/5167)

As regards the part of your request on ‘Ares Registration fiches and related correspondence related to the letters to Commissioners Oettinger sent per registered mail by Mrs. Roelie Post in August 2018’, this was registered under a separate reference, GESTDEM 2021/5327 and attributed to the Directorate-general for DG Human Resources and Security.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001, I regret to inform you that your application cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4(1)b of this Regulation, concerning the protection of personal data.

The reasons are set out below.

### **2.1. Protection of the privacy and the integrity of the individual**

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides 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’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>1</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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 on the free movement of such data<sup>2</sup> (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725 of the European Parliament and of the Council 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>3</sup> (hereafter ‘Regulation (EU) 2018/1725’).

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of

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<sup>1</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>2</sup> OJ L 8, 12.1.2001, p. 1.

<sup>3</sup> OJ L 295, 21.11.2018, p. 39.

the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’.<sup>4</sup>

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.<sup>5</sup>

All the documents specifically requested by you relate to a certain person and the information included in the requested documents is personal data, as this information cannot be disassociated from the natural person it concerns.

These data are not in the public domain, and no consent has been given for their disclosure. They are therefore covered by the exception provided for in Article 4(1)b of Regulation (EC) No 1049/2001, and may not be rendered public.

In the *Nowak* judgment<sup>6</sup>, the Court of Justice has acknowledged that ‘[t]he use of the expression “any information” in the definition of the concept of “personal data”, within Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign a wide scope to that concept, which is not restricted to information that is sensitive or private, but potentially encompasses all kinds of information, not only objective but also subjective, in the form of opinions and assessments, provided that it “relates” to the data subject’(emphasis added). As regards the latter condition, it is satisfied where the information, by reason of its content, purpose or effect, is linked to a particular person.

The requested documents contain in addition personal data such as the names, functions, contact details of persons (addresses, email addresses, phone numbers), including those who do not form part of the senior management of the European Commission.

The names<sup>7</sup> of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is

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<sup>4</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

<sup>5</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

<sup>6</sup> Judgment of the Court of Justice of 20 December 2017, *Peter Nowak v Data Protection Commissioner* (Request for a preliminary ruling from the Supreme Court), C-434/16, EU:C:2017:994, paragraphs 34-35.

<sup>7</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.<sup>8</sup> This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your email of 14 September 2021 in relation to your request for access to documents, you argue that your request concerns ‘whistle-blower protection’ and there would be a ‘personal interest of a civil servant’, ‘but also [...] the public interest of this case’. However, you do not identify this public interest nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, your arguments are not sufficient to establish the necessity of the transmission of the requested personal data.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the requested documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by the disclosure of the personal data concerned.

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<sup>8</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

### **3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

Please note that point (b) of Article 4(1) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

### **4. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting (further) partial access to the documents requested.

However, for the reasons explained above, no partial access is possible without undermining the interests described above.

### **5. MEANS OF REDRESS**

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 Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Unit C.1. 'Transparency, Document Management and Access to Documents'  
BERL 7/076  
B-1049 Brussels,

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

Yours sincerely,

Tatjana Verrier  
Director