



EUROPEAN COMMISSION

Secretariat-General

Directorate C – Transparency, Efficiency & Resources
The Director

Brussels
SG.C.1/MC

By registered mail with AR

Mr Alexander Fanta
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Subject: Your application for access to documents – GESTDEM 2022/1721 and 2022/2364

Dear Mr Fanta,

I refer to your applications of 22 March 2022, registered on 24 March 2022, and of 25 April 2022, registered on 26 April, in which you make requests for access to documents in accordance with Article 6(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter ‘Regulation (EC) No 1049/2001’) under the above-mentioned reference numbers.

Please note that your requests of 25 April 2022 addressed to Directorate General for Environment, Directorate General for Justice and Consumers, Directorate General for Communication, Directorate General for Climate Action, Directorate General for Economic and Financial Affairs, Directorate General for Internal Market, Industry, Entrepreneurship and SMEs, Directorate General for Migration and Home Affairs, Directorate General for Human Resources and Security, Directorate General for International Partnerships, Directorate General for Maritime Affairs and Fisheries, Directorate General for Regional and Urban Policy and Directorate General for Health and Food Safety were attributed to the Secretariat-General for a joint reply.

You request access to:

¹ OJ L 145, 31.5.2001, p. 43.

I ‘Documents which contain the following information:

1. Memos, guidance, guidelines, or training material (or any other document) for staff on record creation and/or record keeping. I am particularly interested in documents that refer to creation/keeping of text messages.
2. Memos, guidance, guidelines, or training material (or any other document) for SG staff on the processing of access to information requests.’ (Gestdem reference 2022/1721)

II ‘Documents which contain the following information:

1. Memos, guidance, guidelines, or training material (or any other document) for staff on record creation and/or record keeping. I am particularly interested in documents that refer to creation/keeping of text messages.
2. Memos, guidance, guidelines, or training material (or any other document) for staff on the processing of access to information requests.’ (Gestdem reference 2022/2364).

In your reply of 2 May 2022 to our clarification letter of 28 April 2022, by which we asked if you specifically ask for documents ‘on the processing of access to information requests’ or your request pertains to processing of access to documents requests, you clarified that both requests pertain to the processing of access to documents requests.

1. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

The Secretariat-General of the European Commission has identified the following documents as falling under the scope of your request:

1. Commission Decision (EU) 2021/2121 of 6 July 2020 on records management and archives²;
2. SEC(2020) 800 Implementing Rules for Decision C(2020) 4482 on records management and archives³;
3. Note ‘Document management and access to documents’ of 16 November 2018, Ref. Ares(2018)5874624;
 3. a) Annex- Guidelines on document registration of 16 November 2018, Ref. Ares(2018)5874624;
4. TRANSPARENCY_Access to documents_Info36_EN_11-04-2018;
 - 4.a) Annex-mapping_business_cycle_application;
5. DIGIT message to all users on e-mails’ Ares(2015)535007 09.02.2015
 - a. 5.a) DIGIT message to all users on e-mails’ Ares(2015)535007 09.02.2015_Annex_EN;
6. Document management and automatic deletion of emails_02.02.2015_Ares(2015)408716_en_Redacted
7. Note ‘Document management and access to documents’ of 16 January 2015, Ares(2015)182108;
8. Article ‘Une bonne gestion documentaire passe aussi par nos e-mails’ internally published on ‘Commission en Direct’ on July 2015;

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D2121&from=IT>.

³ [https://ec.europa.eu/transparency/documents-register/detail?ref=SEC\(2020\)800&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SEC(2020)800&lang=en).

9. Poster 'New rules for email' of 2015;
10. Poster 'Areslook' of 2015;
11. 'Ares User guide of 24 March 2022;
12. AresBridge User Guide of 25 January 2019;
13. AresLook User Guide of 8 March 2022;
14. The last version of the slides 'Introduction to document management in the Commission' of 5 December 2021;
15. The last version of the slides 'File and document management in the unit - for secretaries' 5 December 2021;
16. Manual 'e-Domec : The role of the Document Management Officer (DMO), of the Document Management Centre (CAD), and of DMO correspondents' of 8 June 2011;
17. The slides 'The role of the DMO, of the CAD and of the contact persons - for DMOs' of 08 June 2011;
18. The slides 'e-Domec; Responsibilities of Heads of Units and desk officers on files management' of 4 October 2021.

I can inform you that documents 1 and 2 are publicly available on the links provided in the footnotes. Full access is granted to documents 3.a, 4, 4.a, 5, 5a, 9, 10, 16 and 17 and wide partial access is granted to documents 3, 6, 7, 8, 11, 12, 13, 14, 15, and 18 only subject to redactions due to the protection of personal data as per point (b) of Article 4(1) of Regulation (EC) No 1049/2001 for the reasons set out below.

1.1. 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*)⁴, 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 data⁵ (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

⁴ 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.

⁵ OJ L 8, 12.1.2001, p. 1.

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/EC⁶ (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 the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’⁷.

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’⁸.

The requested documents contain personal data such as the names, functions, contact details of persons, including those who do not form part of the senior management of the European Commission.

The names⁹ 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 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.

⁶ OJ L 295, 21.11.2018, p. 39.

⁷ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

⁸ 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.

⁹ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

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.¹⁰ 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 request for access to documents, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subjects' legitimate interests might be prejudiced.

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.

2. 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.

3. 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 wider partial access is possible without undermining the interests described above.

¹⁰ 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.

4. 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.

Yours sincerely,

Tatjana Verrier
Director

Enclosure: 19 documents