



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate B  
Director

Brussels, 12.06.2014  
SG.B4/BdC/rc – sg.dsg2.b.4(2014) 2009363

Mr Alyn Smith

*Only by email to:*  
*ask+request-1204-fb1a7c1e@asktheeu.org*

**Subject: Your request for access to documents - ref. GestDem 2014/933**

Dear Mr Smith,

I refer to your application, submitted on 18 February 2014, in which you request documents containing information regarding the issue of Scottish independence and the referendum on Scottish independence which will take place on 18 September 2014.

More specifically, you requested:

- 1) *Communication, and meetings, between the office of President Barroso and the United Kingdom Government on the issue of Scottish independence.*
- 2) *Communication, and meetings, between the office of President Barroso and the Spanish Government on the issue of Scottish independence.*
- 3) *Communication between, and meetings of, the College of European Commissioners on the issue of Scottish independence.*
- 4) *Communication, and meetings, between the office of President Barroso and the British Broadcasting Corporation, and Agence France-Presse on the issue of Scottish independence.*
- 5) *Communication, and meetings, between the office of President Barroso and the following organisations on the issue of Scottish independence: the European Central Bank, the Bank of England, the OECD, the World Trade Organisation, NATO and the United Nations.*
- 6) *Communication, and meetings, within the office of President Barroso on the issue of Scottish independence.*
- 7) *Any other communication, or meetings, within the European Commission, and with the UK Government, Spanish Government, BBC and AFP on the issue of Scottish independence.*

We have not been able to identify any document as falling within the scope of the requests 2, 5 and 6, which are therefore devoid of purpose.

As regards the first request, we have identified

- an exchange of letters between President Barroso and Lord Tugendhat (annexes 1 and 2),
- an e-mail sent to Mrs Sutton, member of the private office of President Barroso, with two enclosures (annexes 3, 4 and 5), and
- exchanges of-mails between Mrs Sutton and the UK's Representation to the European Union (annexes 6 to 10)

As regards the third request, the subject of Scottish independence as such has not been debated between the Commissioners. However, in early 2013, the issue of regional independence came up and was briefly addressed in a Commission seminar, in a more general context, with the following record:

*"As regards the on-going debates in several parts of Europe on regional independence and in the UK on its relationship with the EU, Commissioners felt that these issues were sensitive and potentially had long term consequences for the integrity of the EU. They agreed on the need to be cautious and not to be drawn into purely domestic debates or to speculate on hypothetical situations."*

As regards the fourth request, we have transcribed the relevant parts of interviews given by President Barroso to the BBC on 15 December 2012 and 16 February 2014 (annex 11).

Finally under the seventh request, we have identified an e-mail exchange between a journalist, the United Kingdom's Representation to the European Union and DG COMM of the Commission (annex 12).

Access to all these documents is herewith granted, as none of the exceptions of Article 4 of Regulation 1049/2001 is applicable to these documents, with the exception of the name of the journalist and the names and functions of officials of the United Kingdom's Representation to the European Union which have been redacted for the reasons set out below. Please find redacted copies of the documents attached to this letter.

## **1. PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL**

The name of the journalist and the names and functions of officials of the United Kingdom's Representation to the European Union were redacted from the documents based on the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and the integrity of the individual), for the reasons set out below.

Article 4(1)(b) of Regulation 1049/2001 provides that access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

Article 2(a) of Data Protection Regulation 45/2001 ("the Data Protection Regulation") provides that "personal data" shall mean any information relating to an identified or identifiable 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".

The name of the journalist and the names and functions of officials of the United Kingdom's Representation to the European Union undoubtedly constitute personal data in the meaning of Article 2(a) of Data Protection Regulation 45/2001. In its judgment in the Bavarian Lager case, the Court of Justice ruled that, when a request is made for access to documents containing personal data, the Data Protection Regulation, and in particular its Article 8(b), becomes fully applicable.

According to Article 8(b) of the Data Protection Regulation, personal data shall only be transferred to recipients 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. Those two conditions are cumulative.

However, I note that you have not put forward any specific interest in, nor demonstrated any necessity for, obtaining access to these personal data. Therefore, access to these personal data shall be denied pursuant to Article 4(1)(b) of Regulation 1049/2001. The access granted is therefore partial access in the meaning of Article 4(6) of Regulation 1049/2001.

I would like to point out that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

## **2. MEANS OF REDRESS**

To the extent that access is partially granted to some documents, you are entitled to make a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001.

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-4  
BERL 5/327  
B-1049 Bruxelles

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

Yours sincerely,

Marianne Klingbeil

Enclosure: 12 documents