



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate B

Brussels,  
SG/B.3/MIA-DCB

Ms Vicky Cann  
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By e-mail:

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**Subject: Your application for access to documents in accordance with  
Regulation 1049/2001– Ref. GestDem 2015/5486**

Dear Ms Cann,

I refer to your e-mail dated 21 October 2015 and registered on the same day under the above-mentioned reference number.

*In your e-mail, you request "...all documents which relate to the authorisation of former Commissioner Tonio Borg's role at the University of Malta. I would like to receive all applications for authorisation, any emails, correspondence and meeting notes which relate to these applications; all opinions from the ad hoc ethical committee; and copies of the Commission's final decision..."*

I have identified 5 documents falling within the scope of your request:

1. Letter of Mr Borg to Mr Italianer of 17.09.2015 [Ref. Ares(2015)4046218];
2. Legal Service Consultation: e-mail of 05.10.2015 and e-mail of 08.10.2015 [Ref. Ares (2015)4092142 ];
3. Commission decision C(2015)6996 of 9 October 2015;
4. PV (2015)2142 of 14 October 2015;
5. Letter of Mr Italianer to Mr Borg of 14.10.2015 [Ref. Ares(2015)4288069].

You will find a detailed list enclosed.

## 1. PUBLIC DOCUMENTS

Document n° 4 contains the extract of the minutes of the Commission meeting in which

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the decision on Mr Borg post-mandate activity was adopted. Please note that the minutes are already available to the public and therefore, a copy is not enclosed.

## **2. CONCLUSIONS UNDER REGULATION 1049/2001**

Following the examination of your request and of the documents concerned, I am pleased to grant you:

- Full access to document n°3.
- Partial access to documents n° 1, and to the cover note to document n° 5. Partial access is also granted to the cover e-mails accompanying document n° 2. You will find copies enclosed.

The reasons for the refusal of the deleted parts of the above-mentioned documents are set out below.

The deleted parts of documents n° 1 and n° 5 contain the e-mail and the postal address of the former Commissioner which are personal data covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. This is also the case of the deleted parts in the cover e-mails in document n° 2 which contain the names and the e-mail addresses of the Commission's officials in charge of the file. Disclosing this information would reveal personal data and may undermine the privacy of the concerned Commissioner as well as of Commission officials.

In its judgment in the *Bavarian Lager* case<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<sup>2</sup> (hereinafter the 'Data Protection Regulation') becomes fully applicable.

The concerned documents contain elements which constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an identified or an identifiable person. 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.<sup>3</sup> Those two conditions are cumulative.<sup>4</sup>

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<sup>1</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *Commission v Bavarian Lager*.

<sup>2</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 on the free movement of such data, Official Journal L 8 of 12.1.2001

<sup>3</sup> Cf. Judgment of the Court of Justice 20 May 2003, joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between Rechnungshof and Österreichischer Rundfunk, paragraph 73.

<sup>4</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08 P, *Commission v Bavarian Lager*, paragraphs 56, 63, 68, 76-79.

I consider that in the present case the necessity of disclosing the aforementioned personal data to you has not been established in your request.

Consequently, access to personal data contained in the relevant parts of the above-mentioned documents has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

If you wish to appeal against this decision, you should write to the Commission Secretary-General at the address [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu). You have fifteen working days from receipt of this letter in which to appeal.



Paraskevi Michou  
Director SG B f.f.

Annexes

Cc: [SG-DOSSIERS-ACCES@ec.europa.eu](mailto:SG-DOSSIERS-ACCES@ec.europa.eu)