



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

Brussels, **06 SEP. 2016**
GROW C4/SPR/cdp(2016)5426184

Mr Peter Teffer
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Belgium

Sent by email only:

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Subject: Requests for access to documents – GESTDEM Nos. 2016/1933 and 2016/1938 – third reply

Dear Mr Teffer,

Referring to my letters of 30 May 2016 and 21 June 2016, in which I informed you that you were receiving partial replies to your access to documents requests GestDem 2016/1933 and 2016/1938, I am happy to provide you with a follow-up reply.

1. OVERVIEW OF PREVIOUS REPLIES

In the first and second batch of replies, you were given access to 22 documents and to 10 documents respectively. For the remaining documents, third-party consultations were still ongoing. These consultations have now been completed.

2. DISCLOSURE OF FOUR DOCUMENTS

Access is granted to four documents.

The four documents being released originate from third parties. I can confirm that DG Internal Market, Industry, Entrepreneurship and SMEs has consulted according to Article 4, paragraph 4 of Regulation 1049/2001 the third parties with a view to assessing whether an exception in paragraph 1 or 2 is applicable, and has obtained their permission to release the documents.

Please note that the documents received from third parties are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

Three of the documents being released contain personal data.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its 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. The applicable legislation in this field is 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

If you wish to receive the personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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 Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

¹ Official Journal L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

3. NON-DISCLOSURE OF EIGHT DOCUMENTS

As stated above, the originators of the documents have been consulted.

The authors of documents 1 (France), 2 (Denmark), 5 (Austria), 6 (Denmark), 7 (Germany), 8 (Czech Republic), 9 (United Kingdom) and 10 (France) have objected to the disclosure of the document that they have sent to the Commission.

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, I regret to inform you that access to these eight documents cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4 of this Regulation.

The documents relate to an ongoing investigation regarding a possible infringement of EU law (EU PILOT 8380/16/GROW).

The EU Pilot procedure is a form of co-operation between the European Commission and the Member States, and takes the form of an informal exchange of information to assess whether EU law is being properly applied and respected; it aims to rectify any infringements rapidly and effectively and thereby avoid infringement proceedings within the meaning of Art. 258 TFEU (see ECJ judgment in Case 306/12, *Spirlea and Spirlea v Commission*, paragraphs 45, 55 ff). The possibility that infringement proceedings will be opened during the EU Pilot procedure cannot therefore be ruled out either. For this reason, disclosure of documents in the context of the EU Pilot procedure is also likely to affect the outcome of subsequent infringement proceedings.

The confidentiality of the dialogue aimed at an amicable settlement between the Member State authorities and the European Commission is therefore, as in the case of infringement proceedings at the pre-litigation stage (see ECJ Case C 514/11 P and C 605/11 P, *LPN v Commission*, para. 61 ff), to be maintained even in the context of this ongoing redress procedure in the EU pilot procedure (see also ECJ Case 306/12, *Spirlea and Spirlea v Commission*, paragraph 57 ff).

The confidentiality of the dialogue aimed at an amicable settlement between the Member State authorities and the Commission cannot be guaranteed if a third party is granted access to confidential procedural documents. Disclosure of the documents could alter the nature of the proceedings and undermine their outcome. We therefore consider that disclosure would fundamentally undermine protection for the purpose of investigations within the meaning of the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

According to Regulation (EC) No 1049/2001, an exception to the right of access must be waived if there is an overriding public interest in disclosing the document concerned, which outweighs the interest protected by the exception to the right of access. In this case the Commission has reached the conclusion that there appears to be no overriding public interest in their disclosure in the sense of the Regulation.

The possibility of granting partial access in accordance with Article 4(6) of regulation (EC) No 1049/2001 has also been examined. However, this is not considered possible since the documents in question are covered by the above- mentioned exception in their entirety.

4. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation 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 Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Lowri Evans

Annexes: Document register
Zipped file of documents