



EUROPEAN COMMISSION

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Advance copy by email:

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DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2016/2477**

Dear Mr Dohle,

I refer to your email of 17 May 2016, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² ('Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 2 May 2016, addressed to the Directorate-General for Justice and Consumers (DG JUST), you requested access to *campaign letters received by DG JUST related to EU funding for a Database on Adoptions (Romania)* in the period of October/November 2014.

DG JUST informed you that no documents were found corresponding to the description given in your application.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

Through your confirmatory application you request a review of this position, arguing that within the framework of a reply to one of your previous applications (registered under Reference Gestdem 2016/1990), access was granted to an email between DG JUST and DG REGIO which referred to such campaign letters.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review and after having re-consulted DG JUST, I would like to clarify that the term 'campaign letters' was used within a wide meaning in the framework of the email in question between the latter and DG REGIO.

Indeed the 'campaign letters' referred to in the email of 27 October 2014 from DG JUST to DG REGIO correspond to two emails received by the former Directorate-General for Enlargement ('DG ELARG')³ on respectively, 22 September 2014 and 1 November 2014, which were forwarded to DG JUST as illustrated by the email of DG ELARG of 23 September 2014. I am pleased to disclose these documents, notwithstanding the fact that your initial request indicated an approximate reference period of October/November 2014.

These documents are disclosed, subject to the redaction of personal data only, for the reasons set out below.

Article 4(1)(b) of Regulation 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.*

Article 2(a) of Regulation 45/2001 defines personal data as *any information relating to an identified or identifiable natural person [...].*

The Court of Justice confirmed in its *Rechnungshof* judgment⁴ that *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'.*

³ Now Directorate-General for European Neighbourhood Policy and Enlargement Negotiations.

⁴ Judgment in *Rechnungshof/Österreichischer Rundfunk*, joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

In this instance, the requested document contains personal data, such as the names and surnames of officials not forming part of the EU senior management, as well as the name and email of the author of the letters.

Public disclosure of these personal data would therefore constitute a transfer of personal data within the meaning of Article 8(b) of Regulation 45/2001.

In accordance with the *Bavarian Lager* ruling⁵, when a request is submitted for access to documents containing personal data, Regulation 45/2001 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 data⁶ becomes fully applicable.

According to Article 8(b) of that 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.⁷

In your confirmatory application, you do not demonstrate the need for, nor any particular interest in obtaining the personal data concerned. Therefore I have to conclude, in accordance with the recent judgment in the *ClientEarth* case⁸, that the necessity of disclosing the aforementioned personal data to you has not been established. Nor can it be assumed that the legitimate rights of the individuals concerned would not be prejudiced by the transfer of their personal data.

Consequently, the personal data have been redacted from the attached documents which are disclosed under Regulation 1049/2001.

3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation 1049/2001, access (subject to the redaction of personal data only) is granted to the documents requested.

⁵ Judgment in *Commission/the Bavarian Lager*, C-28/08P, EU:C:2010:378.

⁶ Official Journal L 8 of 12.1.2001, p. 1.

⁷ Judgment in *Commission/the Bavarian Lager*, EU:C:2010:378, paragraphs 77-78.

⁸ Judgment in *ClientEarth/EFSA*, C-615/13P, EU:C:2015:489, paragraphs 47-48

5. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission
Alexander ITALIANER
Secretary-General

Annexes: (3)