

EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 28. 10. 2013

By e-mail

Mr. Steinke
ask+request-300-ac318ec6@asktheeu.org

Subject: Request for access to documents

Ref.: Your e-mail of 22 December 2012, registered on 27 December 2012 as
GESTDEM 2012/5999

Dear Mr. Steinke,

I refer to your request mentioned above requesting access to documents relating to Cases F-44/05, T-225/05 and F-44/05RENV (Guido Strack v. Commission), T-526/08P Commission v. Guido Strack, T-670/11 and T-65/12P (Guido Strack v. Commission), in accordance with Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

1. SCOPE OF YOUR REQUEST

Your request has been made in an extensive manner and concerns all documents relating to both the administrative phase and those concerning the proceedings before the Civil Service Tribunal (CST) and the General Court, including contracts with the external lawyers.

The part of your request concerning the administrative phase registered as GESTDEM 2013/0216 was attributed to Directorate-General Human Resources and security (HR DG) which replied to you end of January².

2. PROPOSAL FOR A FAIR SOLUTION

At the end of December 2012, the Commission received three requests for access to all documents concerning 10 court cases, to which Mr Strack was a party. These requests originated from you and two other members of the governing body of the network "Whistleblower", whose president is Mr Strack³.

¹ OJ L 145, 31.05.2001, page 43.

² Letter of 23 January 2013 registered under reference Ares(2013)81878.

³ This information is publicly available on the website
<http://www.whistleblower-net.de/uber-uns/vorstand/>

After conducting a preliminary assessment of your request, it appeared, on the one hand, that it involved a large number of documents and, on the other, that they would require a very careful and in-depth assessment since they were likely to contain sensitive personal data to be protected under Regulation 1049/2001.

Taking into account the workload resulting from your request and considering the aforementioned two additional applications, by e-mail of 18 January 2013 the Legal Service informed you that it would not be in a position to reply to your request within the deadline foreseen at article 7 of Regulation 1049/2001. Therefore, in accordance with Article 6(3) of this Regulation it invited you to reconsider your request in limiting and specifying its scope and to indicate a priority order to deal with the requested documents. By e-mail of 29 January 2013 you refused this proposal and confirmed your initial request.

You will find below the reply of the Legal Service as regards the part of your request relating to court's proceedings F-44/05, T-225/05, F-44/05RENV, T-526/08P, T-670/11 and T-65/12P.

3. DOCUMENTS CONCERNED BY YOUR REQUEST RELATING TO THE COURT'S PROCEEDINGS

After the examination of the Legal Service's files, the following documents have been identified as falling within the scope of your request:

Cases F-44/05 and T-225/05⁴ Guido Strack v. Commission

1. JUR(2005)45669 - Request for observations from ex-DG ADMIN
2. ADMIN.B.2/D(05)18388 – Reply by ex-DG ADMIN to the request for observations
3. JURM(2005)9193 - Objection of inadmissibility
4. CONT(2005)8632 – Order of 8 December 2005 (plea of inadmissibility reserved for the final judgment)
5. JURM(2006)9042 - Defence
6. JURM(2006)9159 - Rejoinder
7. JUR(2007)45564 - Information about the Commission's decision of 28 April 2004
8. JUR(2008)45244 - Note to OPOCE, ex-DG ADMIN and PMO on the judgment
9. LETT(2008)45111 - Note from ex-DG ADMIN to PMO
10. C(2008)6680 - Commission decision to appeal against the judgment of the Civil Service Tribunal of 25 September 2008 in Case F-44/05

Case F-44/05RENV

11. Ares(2011)346522 - Authority
12. Ares(2011)409112 - Written observations
13. Ares(2011)1055262 - Observations on the request to stay proceedings
14. Ares(2011)1135960 – Observations on the oral hearing
15. Ares(2011)1242523 – Response to the questions put by the CST
16. Ares(2011)1394481 - Reply to a question related to point 8 of the report
17. Ares(2012)172300 – Observations on the Order of 7 December 2011
18. Ares(2012)358115 - Letter to the CST

⁴ By Order of 8 December 2005, Case T-225/05 was transferred to the Civil Service Tribunal and registered under number Case F-44/05.

Case T-526/08P

19. JUR(2009)45026 - Commission decision to appeal against the judgment of the Civil Service Tribunal of 25 September 2008 of in case F-44/05
20. JURM(2008)9202 - Appeal
21. PVR(2008)949 - Authority
22. JURM(2009)9116 – Rejoinder on the cross-appeal brought by the applicant
23. JUR(2009)45408 – Letter to the CST (force majeure)

Case T-670/11

There are no Commission's documents identified as there was a request for discontinuance which was followed by an order removing the case from the register⁵.

Case T-65/12P

24. Ares(2012)126074 – Authority
25. Ares(2012)548324 Response

4. ASSESSMENT

After a concrete assessment of these documents, I am pleased to inform you that, in accordance with Regulation, full access can be granted to them with the exception of the following personal data which is covered by the exception provided for in Article 4(1)(b) ("*protection of personal data*")⁶ of Regulation 1049/2001 in accordance with the European Union (EU) legislation regarding the protection of personal data:

- a) the name of the members of the invalidity commission: document under number 3 (reference JURM(2005)9193, page 2);
- b) the name of the members of the pre-selection body and the name of the candidates proposed by the pre-selection body in selection procedure COM/A/057/04: document under number 5 (reference JURM(2005)9042, from page 2 till the end), document under number 6 (reference JURM(2006)9159, from page 3 till the end) and document under number 22 (reference JURM(2009)9116, page 12).

Disclosure of this information, which was disclosed neither by the TFP nor by the General Court, would undermine the legitimate privacy rights of the concerned persons and, therefore, would be contrary to Article 4(1)(b) of Regulation 1049/2001. Indeed, according to Article 8(b) of Regulation 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 data⁷, 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. In the present

⁵ <http://curia.europa.eu/juris/liste.jsf?language=fr&num=T-670/11>

⁶ "*The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*".

⁷ OJ L 8, 12.01.2001, page 1.

case, I see no elements capable of showing the necessity for the refused data to be disclosed⁸.

Accordingly, you will find enclosed a copy of the documents under numbers 1, 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24 and 25. You will also find enclosed an expunged version of documents under numbers 3, 5, 6 and 22 in which the names suppressed have been replaced by the initials used by the CST in its judgment of 25 September 2008 in Case F-44/05 and by the General Court in its judgment of 9 December 2010 in Case T-526/08P.

I must however remind you that these documents cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

I draw your attention to the fact that document under number 1 contains a mistake as regards the date of the retirement of the applicant on the ground of invalidity and, therefore, this date has been suppressed. The correct date has been made public in the referred judgment of the CST of 25 September 2008⁹.

5. THIRD PARTIES' DOCUMENTS: documents submitted by the applicant and documents originating from the Courts

Regarding, on the one hand, the submissions lodged by Mr. Strack to the CST and to the General Court in Cases F-44/05, T-225/05, F-44/05RENV, T-526/08P, T-670/11 and T-65/12P and, on the other hand, the documents originating from those courts, the Commission considers that they do not fall within the scope of Regulation 1049/2001. Regulation 1049/2001 is based on Article 255¹⁰ of the Treaty establishing the European Community which has been replaced by Article 15 of the Treaty on the functioning of the European Union (TFUE) with the entry into force of the Lisbon Treaty on 1 December 2009. Whilst Article 15(3) TFUE extends the right of access to the documents of the Union institutions, bodies, offices and agencies, its fourth paragraph provides that *"The Court of Justice of the European Union [...] shall be subject to this paragraph only when exercising their administrative tasks"*.

It is therefore clear that even after the adaptation of Regulation 1049/2001 to the Lisbon Treaty, documents submitted by the third parties such as, in this case, the submissions made by Mr. Strack as well as the documents originating from the Court of Justice of the European Union in the framework of court proceedings, will not fall under the scope of the regime for public access to documents. Indeed, the Commission itself received a copy of these pleadings and documents only by virtue of its quality as party to the proceedings, pursuant to Article 20 of the Protocol on the Statute of the Court of Justice¹¹.

Furthermore, as regards pleadings submitted in court proceedings, the Court has stated in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P *"[...], the Rules of Procedure of EU Courts provide for procedural documents to be served only on the*

⁸ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd* (paragraphs 77-78), *European Court reports* 2010 page I-06051.

⁹ http://curia.europa.eu/jcms/jcms/_6/

¹⁰ This article applied only to the European Parliament, the Council and the Commission but no to the European Court of Justice.

¹¹ OJ C 115, 09.05.2008, page 215.

*parties to the proceedings [...]. It is clear, therefore, that neither the Statute of the Court of Justice nor the above Rules of Procedure provide for any third-party right of access to pleadings submitted to the Court in court proceedings"*¹².

In the light of the above, the Commission takes the view that, as far as court proceedings are concerned, the scope of Regulation 1049/2001 is limited to the institution's own submissions, whereas submissions lodged by the other parties as well as the documents originating from the Court of Justice of the European Union do not fall within its scope. Otherwise, the purpose of both Article 15 TFUE and the Rules of Procedure of the Court of Justice would be undermined.

Consequently, I regret to inform you that the submissions lodged by the applicant and the documents originating from the CST and the General Court in Cases F-44/05, T-225/05, F-44/05RENV, T-526/08P, T-670/11 and T-65/12P cannot be made available to you.

6. MEANS OF REDRESS

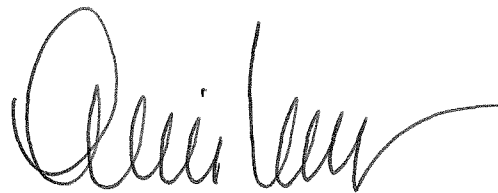
Should you wish the position regarding the refused information to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the refused parts or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to the following address:

The Secretary General
European Commission
B-1049 BRUSSELS
Sg-Acc-Doc@ec.europa.eu

Yours sincerely,



Luis ROMERO REQUENA

Enclosures: 25 documents

¹² Judgment of the Court of 21 September 2010 in Joined Cases C-514/07P, C-528/07P and C-532/07P Sweden v API and Commission (paragraphs 98 and 99) published in the European Court reports 2010 Page I-08533.