



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director General

Brussels,  
HOME.A2-FC

***By registered letter with AR***

Ms Mireia CRESPO CASTELLANO  
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**Subject: Your application for access to documents – ref. GestDem n°2016/4919**

Dear Ms Crespo Castellano,

We refer to your e-mail dated 02.09.2016 in which you make a request for access to documents, registered on 03.09.2016 under the above-mentioned reference number.

You request access to:

- 1. Memos, guidance, guidelines, or training material (or any other document) for DG staff on record creation and/or record keeping. I am particularly interested in documents that refer to creation/keeping of: Agendas (diaries of public officials' engagements), lists of meetings, minutes of meetings, lists of participants in meetings, and documents justifying decisions.*
- 2. Memos, guidance, guidelines, or training material (or any other document) for DG staff on the processing of access to information requests.*

As far as your request under point 1 is concerned, you were informed by the Commission Secretariat-General on 20.09.2016<sup>1</sup> that a document management and archival policy is implemented for the entire Commission, under monitoring of the Secretariat-General. I therefore refer you to this reply and confirm that we do not make a difference in treatment between the types of documents mentioned by you above (agendas, minutes, etc.); all of them are official documents and fall under the same rules for document management, *i.e.* they are registered and filed in accordance with the rules. Our rules and guidance are public on the Europa website [http://ec.europa.eu/archival-policy/legal\\_basis\\_en.htm](http://ec.europa.eu/archival-policy/legal_basis_en.htm). Please see also the other documents referred to in the above-mentioned letter.

As far as your request under point 2 is concerned, we first of all refer you to the Commission replies dated 16.09.2016 to your request for access to documents (2016/4880)<sup>2</sup>, and to a similar request (2016/4032) made by your organisation Access Info Europe<sup>3</sup>, to which the Commission replied by letter dated 05.08.2016. The reply dated 05.08.2016 gave you full access to 12 Commission guidance documents and to the Commission Secretariat-General training slides. The second reply dated 16.09.2016 gave you access to 18 guidance documents. Full access was given to 10 documents. Wide partial access with only personal data redacted on the basis of the exception in Article 4(1)b of Regulation 1049/2001 (protection of privacy and the integrity of the individual) was given to the remaining documents.

<sup>1</sup> Reply to request for access to documents 2016/4877, ARES(2016)5450595 dated 20/09/2016

<sup>2</sup> Reply to request for access to documents 2016/4880, ARES(2016)5703888 dated 16/09/2016

<sup>3</sup> Reply to request for access to documents 2016/4032, ARES(2016)4525775 dated 05/08/2016

I confirm that our Directorate-General Home Affairs and Migration fully implements these guidelines. As complementary documents to these documents, I identified for our Directorate-General the 2 following documents:

- Training session given inside DG Home Affairs and Migration on 09.09.2016 and
- Note to all Directors and the EU Anti-Trafficking Coordinator with appendices (DG HOME guide on access to documents 2015)<sup>4</sup>.

Having analysed the content of the above-mentioned documents, I am pleased to inform you that wide partial access is granted with only personal data redacted on the basis of the exception in Article 4(l)(b) of Regulation 1049/2001 (protection of privacy and the integrity of the individual).

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.*

The relevant undisclosed parts of the identified documents contain the names, initials, phone numbers and office addresses of Commission staff members not holding a senior management positions. These are personal data in the meaning of Article 2(a) of Regulation 45/2001, which defines it as *any information relating to an identified or identifiable natural person (...); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.*

It follows that public disclosure of the above-mentioned information would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

In accordance with the *Bavarian Lager* ruling<sup>5</sup>, when a request is made for access to documents containing personal data, the Regulation 45/2001 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<sup>6</sup>. Only if both conditions are fulfilled and processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

In that context, whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the Institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject<sup>7</sup>.

In the recent judgment in the *ClientEarth* case, where the Court of Justice ruled that *"whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access"*<sup>8</sup>. I refer also to the *Strack* case, where the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data<sup>9</sup>.

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<sup>4</sup> ARES(2015)861077 dated 27.02.2015

<sup>5</sup> Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v/ the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraph 63

<sup>6</sup> Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v/ the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraphs 77-78.

<sup>7</sup> Judgment of the Court of Justice of 16 July 2015 in case C-615/13P, *ClientEarth v EFSA* (ECLI:EU:C:2015:489), paragraph 47.

<sup>8</sup> Judgment of the Court of Justice of 16 July 2015 in case C-615/13P, *ClientEarth v EFSA* (ECLI:EU:C:2015:489), paragraph 47.

<sup>9</sup> Judgment of the Court of Justice of 2 October 2014 in case C-127/13 P, *Strack v Commission*, (ECLI:EU:C:2014:2250), paragraph 106.

In your request, you did not refer to the necessity of disclosing any of the above-mentioned personal data. Therefore, I have to conclude that the transfer of personal data through the disclosure of the redacted relevant parts of the identified documents cannot be considered as fulfilling the requirements of Regulation 45/2001. In consequence, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data included therein, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such 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.

Please find copies of the documents annexed. You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

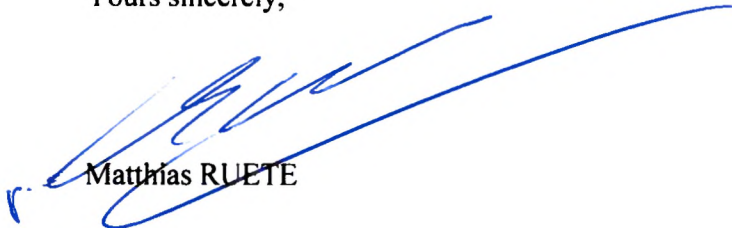
In case you would disagree with the above assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to introduce a confirmatory application requesting the Commission to review this position.

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-B4  
BERL 5/340  
B-1049 Bruxelles  
or by e-mail to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

It also needs to be underlined that the released present guidance material of the Directorate-General Home Affairs and Migration reflects the administrative practice. It may be subject to further changes and updates in order to align it with further possible developments in the Commission's administrative practice, taking into account the case law of the EU Courts.

Yours sincerely,



Matthias RUETE

Enclosures:

- Training session given inside DG HOME on 09.09.2016 (PowerPoint presentation)
- Note ref. ARES(2015)861077 to all Directors and the EU Anti-Trafficking Coordinator with DG HOME guide on access to documents 2015