



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate A - Resources, Information and Policy Coordination
Information, Communication and Civil Society

Brussels,
trade.a.3.dir(2016)6218453

***By registered letter with acknowledgment
of receipt***

Mireia Crespo Castellano
Access Info Europe
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Spain

Advance copy by email:

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Subject: Your request for access to documents – Ref GestDem No 2016/4892

Dear Ms Crespo,

I refer to your email of 2 September 2016 in which you made a request for access to documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), registered on the same date under the above mentioned reference number.

1. SCOPE OF YOUR REQUEST

You requested access to:

1. *“Memos, guidance, guidelines, or training material (or any other document) for DG staff on record creation and/or record keeping. You explained that you are 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.”*

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

On 2 September, and according to article 6(2) of Regulation 1049/2001, DG Trade asked you, by e-mail, to clarify the timeline of your request.

As we received no reply, we asked you again, on 8 September, to provide more detailed information on the documents which you seek to obtain. On 9 September, you answered that you would like to have access to “*all documents which have been produced in the past three years and/or (if produced earlier) are currently being used by the DG’s staff*”, explaining that you are interested “*in all documents held by the DG, whether or not created by it*”.

Regarding the second part of your request, I would like to clarify that a distinction needs to be made between requests for access to *documents* and requests for access to *information*. These two categories of requests are regulated by separate legal frameworks and different deadlines apply thereto. Requests for access to *documents* are regulated by Regulation 1049/2001, while the Code of Good Administrative Behaviour² applies to requests for access to *information*.

Please note that there are no documents (other than the above-mentioned Code) addressed to the staff of DG Trade concerning the processing of requests for information.

I assume, however, that the second part of your request relates to "memos, guidance, guidelines, or training material (or any other document) for DG staff on the processing of access to *documents* requests".

I note that you and your organisation, Access Info Europe (AIE), recently submitted similar requests to the Secretariat-General of the Commission (requests with reference GestDem 2016/4877 and 2016/4880).

In reply to those requests, the Secretariat-General released a series of internal guidelines and guidance notes. We therefore interpret the scope of your request to DG Trade as referring only to DG Trade-specific guidance on the topics listed in your request and excluding those documents that were already released to on 14 and 16 September by the Commission in these two above-mentioned requests.

We have identified the following documents falling under the scope of your request:

- A note for the attention to all DG Trade staff enclosing the document "Guidelines on the Registration of Documents" (Ares(2014)2052618) ("**document 1**");
- A note to the attention of all Heads of unit in DG Trade enclosing the document "Indicative list of documents which should be registered and filed in ARES" (Ares(2015)4043105) ("**document 2**");

² http://ec.europa.eu/transparency/code/index_en.htm

- A document entitled "Indicative, non-exhaustive list of working files and other documents that can be destroyed by the units" (Ares(2016)1351734) ("**document 3**");
- A note for the attention of all Heads of unit in DG Trade entitled "Personal data protection – Service provided by Unit A3 to all DG TRADE units: Global 'notification' to the Data Protection Officer (DPO) of the Commission, covering all future DG Trade meetings, workshops, seminars, events, conferences... including lists and mailing lists" (Ares(2015)4095799) ("**document 4**"), which includes five attached documents registered under the same ARES number:
 - "Notification DPO-3050.5 – TRADE: DG Trade – Meetings, workshops, seminars, conferences, events, including mailing-lists and contact lists" ("**document 4.1**");
 - "Model Privacy Statement (Meeting) for on-line registration" ("**document 4.2**");
 - "Model Privacy Statement (Invitation) to be used for invitations by letter or e-mail" ("**document 4.3**");
 - "Model Privacy Statement (Mailing List) to be used for mailing lists" ("**document 4.4**");
 - "Model Privacy Statement (Contact List) to be used for contact lists" ("**document 4.5**");
- Vademecum on Access to Documents (Ares(2016)5752766) ("**document 5**");
- Access to Documents Toolkit (Ares(2016)5752522) ("**document 6**").

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

Having carefully examined the documents identified above in light of the applicable legal framework, **we are pleased to inform you that full access can be granted** to the content of these documents. Copies of the documents are enclosed.

However, some personal data have been withheld in the documents **1, 2, 4** and **6** in accordance with Article 4.1(b) of Regulation 1049/2001, which provides that “[i]nstitutions 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”. Please note that names of the senior management of the Commission starting from the Director level have been disclosed.

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 data.³

The Court of Justice has ruled that *"where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data" "the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety"*.⁴

Article 2(a) of Regulation 45/2001 provides that *"'personal data' shall mean any information relating to an identified or identifiable natural person [...]"*. The Court of Justice has confirmed that *"there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'"*⁵ and that *"surnames and forenames may be regarded as personal data,"*⁶ including names of the staff of the institutions.⁷

In accordance with Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish *"the necessity of having the data transferred"* and additionally *"if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced"*. The Court of Justice has clarified that *"it is for the person applying for access to establish the necessity of transferring that data"*.⁸

I consider that you have not established the necessity of having the aforementioned personal data transferred to you. Moreover, it cannot be assumed on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. Therefore, these personal data shall remain undisclosed in order to ensure the protection of the privacy and integrity of the individuals concerned.

You may reuse the documents 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. The Commission does not assume liability stemming from the reuse.

³ 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 the free movement of such data, OJ L 8, 12.1.2001, p. 1.

⁴ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64.

⁵ Judgment in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁶ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

⁷ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

⁸ *Id.*, paragraph 107; see also judgment in *C-28/08 P Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77.

In case you would disagree with the assessment that the withheld 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 5/282
B-1049 Bruxelles

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

Yours sincerely,

[e-signed]

Lutz Güllner
Head of Unit