



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels,
SANTE/AB

By registered letter with acknowledgment of receipt

Ms Gisella ROJAS
Calle Bayona, 2
28028 Madrid
Spain

Advance copy by email: ask+request-6729-37b402c6@asktheeu.org

Dear Ms Rojas,

Subject: Your application for access to documents – Ref GestDem No 2019/2002

We refer to your email dated 29/03/2019 in which you make a request for access to documents, registered on the same date under the above mentioned reference number.

We also refer to the email sent to you by the Secretariat General of the European Commission on 01/04/2019 where it specifies how your request has been split among different services.

1. Scope of the request

You requested the following:

“All documents - including but not limited to minutes, notes, audio recordings, verbatim reports, operational conclusions, e-mails, and presentations – produced, exchanged and related to the following meetings between Alain Paul Lebeaupin, Apostolic Nuncio, Head of the Mission of the Holy See to the European Union and at the time: -Vytenis Andriukaitis, Member of the EC in charge of Health and Food Safety, 11/12/2015.”

As stated above, please note that due to the wide scope of your initial request GestDem 2019/2000, covering also areas falling under the responsibility of other Directorates-General, parts of your request have been attributed to other Directorates-Generals. This reply relates only to the documents held by the Directorate-General Health and Food Safety. You will receive the replies from the other respective Directorates-General in due course.

2. Identification and assessment of documents

Three documents have been identified (please see list attached) under the scope of your request covering the meeting above indicated that took place on 11 December 2015. The correspondence

on the meeting indicate a first agreed date for the meeting 30 October 2015, which was then moved to 11 December 2015. Only the meeting on 11 December 2015 took place.

Document 3 originates from a third party. Therefore, the third party has been consulted in accordance with Regulation (EC) No 1049/2001, in order to assess whether an exception to the right of access to documents is applicable to any of these documents.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, and having considered the opinion of the third party, we have concluded that the document No 1 cannot be disclosed and documents No 2 and No 3 may be partially disclosed. Full or partial disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

You will find in annex to this letter all documents that are listed above as well as the table with the list of documents containing the result of the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse. Documents originating from third parties cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

3. Reasons for non-disclosure

Protection of the public interests as regards international relations - Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001

Disclosure of document No 1 would undermine the protection of the public interest as regards international relations. It could harm the relations of the Union with the Holy See because it pertains to current issues of relevance for the Holy See in its relations with the Union. Disclosing this document would impair the relations between the Union and the Holy See as the Holy See had confidentiality expectations regarding the discussions during the meeting. Therefore, the exception laid down in Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 applies to this document.

4. Reasons for (partial) refusal

Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001

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 (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and

agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC¹.

Non-confidential parts of the documents No 2 and No 3 to which you have requested access contain personal data of the Commission staff as well as of the organisation's representatives, in particular names, functions, a car plate number, telephone and fax numbers, email addresses. In addition, the attachment to document No 2 "CURRICULUM VITAE.wbk" is not disclosed, as it only contains personal data.

Indeed, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data².

In its judgment in Case C-28/08 P (Bavarian Lager)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁴.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if 'the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European

¹ Official Journal L 205 of 21.11.2018, p. 39.

² Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, ECLI:EU:T:2018:560, paragraphs 33 to 35.

³ Judgment of 29 June 2010 in Case C 28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

⁴ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

As to the signatures which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Therefore, we are disclosing the documents listed under paragraph 2 expunged from this personal data.

5. Means of redress

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Anne BUCHER