



EUROPEAN COMMISSION

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[REDACTED]
[REDACTED]
Beldfield Innovation Park
Beech Hill Road
Dublin 4
Ireland

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/6531**

Dear [REDACTED],

I refer to your letter of 6 February 2018, registered on the same day, in which you submitted 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 (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 5 December 2018, addressed to the Directorate-General for Health and Food Safety, you requested access to:

- '[a]ll the correspondence exchanged between the [European] Commission and the applicant for the request for access to documents GESTDEM 2018/2686'.

You further specified that you request '[...] any available documents and emails in their entirety, accepting that personal information must be redacted [...]' as well as '[...] correspondence relating to the initial request and also any correspondence relating to the appeal of the decision of the Secretariat General'.

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

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

Considering that your request referred to the correspondence exchanged by the applicant with the European Commission both at initial and confirmatory level, the scope of your request was split into two parts. The request registered under reference number GESTDEM 2018/6531 refers to the correspondence exchanged between the applicant and the Directorate for Transparency, Efficiency and Resources of the Secretariat-General of the European Commission at confirmatory level.

The European Commission has identified the following documents as falling under the scope of your request:

- Confirmatory application of 21 June 2018 addressed to the Secretariat-General of the European Commission by the applicant, reference Ares(2018)3297508 (hereafter ‘document 1’);
- Acknowledgment of receipt of 21 June 2018 addressed to the applicant, reference Ares(2018)3297711(hereafter ‘document 2’);
- First holding reply of 12 July 2018 addressed to the applicant, reference Ares(2018)3717692 (hereafter ‘document 3’);
- Second holding reply of 31 July 2018 addressed to the applicant, reference Ares(2018)4038202 (hereafter ‘document 4’);
- E-mail exchanges from 6 August 2018 between the applicant and the Secretariat-General of the European Commission, reference Ares(2018)4124278 (hereafter ‘document 5’);
- Fair solution proposal of 4 September 2018 addressed to the applicant, reference Ares(2018)4537208 (hereafter ‘document 6’);
- Reply of the applicant to the fair solution proposal of 5 September 2018, reference Ares(2018)4575932 (hereafter ‘document 7’);
- E-mail exchanges of 7 September 2018 between the applicant and the Secretariat-General of the European Commission, reference Ares(2018)4601426 (hereafter ‘document 8’);
- E-mail exchanges of 18 December 2018 between the applicant and the Secretariat-General of the European Commission, reference Ares(2018)6528897 (hereafter ‘document 9’);
- E-mail exchanges of 17 January 2019 between the applicant and the Secretariat-General of the European Commission, reference Ares(2019)289702 (hereafter ‘document 10’).

In its initial reply of 5 February 2019, the Directorate for Transparency, Efficiency and Resources of the Secretariat-General granted wide partial access to documents 2 to 4, subject only to the redactions of personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001. It refused access to the remaining documents, based on the exceptions of Article 4(1)(b) (protection of privacy and the integrity of the individual) and Article 4(3), first subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001.

In your confirmatory application, you requested a review of this position. You supported your request with detailed arguments, which I address in the corresponding sections below. You underlined that you accept that the personal data included in the document cannot be disclosed. Therefore, these personal data do not fall within the scope of this request.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

The Secretariat-General consulted the third party from which the documents originate. The European Commission did not receive a reply to its consultation.

Following this review, I can inform you that wide partial access is granted to documents 1, 5, 6, 7, 8, 9 and 10.

At the time of your initial request, documents 1, 5, 6, 7, 8, 9 and 10 were withheld, based on the exceptions of Article 4(1)(b) (protection of privacy and the integrity of the individual) and Article 4(3), first subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001.

Since then, the decision concerning the request for access to documents GESTDEM 2018/2686 has been adopted and the decision-making process has been closed. Therefore, the exception of Article 4(3), first subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001 no longer applies.

Since you did not request access to the personal data contained in these documents, the European Commission considers that your request is satisfied. The exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) still applies.

In your confirmatory application, you indicated that ‘the European Commission should have an obligation in making this decision to consult with affected parties’ and you indicate that you would like ‘to be part of [the] discussion’ regarding the disclosure of the documents in case GESTDEM 2018/2686.

In the context of the request for access to documents GESTDEM 2018/2686, please note that the Secretariat-General consulted the authorities of the Netherlands in accordance with Article 4(4) and (5) of Regulation (EC) No 1049/2001, as the requested documents originated from them and had been submitted to the European Commission by the latter.

Please note in this respect that the European Commission consults the third party from which a document originates whenever it is not clear whether access shall or shall not be granted to the document, as it did in the case at hand. This administrative practice flows from Article 4(4) and (5) of Regulation (EC) No 1049/2001, as further set out in

Article 5(4) of the European Commission's Detailed Rules for the Application of Regulation (EC) No 1049/2001³.

3. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European 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
Martin SELMAYR
Secretary-General

Enclosures: (7)

³ Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714), Official Journal L 345 of 29.12.2001, p. 94.