



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

The Director General

Brussels,
JUST/C1/JD/vh/ 2946535s

Mr Kurt Weiss
kurt.weiss68@outlook.com

Subject: GESTDEM case 2013/1954

Dear Mr Weiss,

Thank you for your message of 23 July 2013 by which you provide the Commission with a second e-mail address. This relates to your request to access the full EC Evaluation Report and the Appraisal Report of FRA Director performance under GESTDEM 2013/954.

As explained in the Commission reply of 28 May 2013, the "full EC Evaluation Report" consists of the assessment of the performance of the Director and of the Agencies' duties and requirements in the coming year. You received already a copy the evaluation report on 28 May 2013 that focused on the latter aspect; it referred to the career development report of the FRA Director as a record of the assessment of his performance. The request for the "full Report" seems thus to mean access to the said career development report (that is the appraisal report of the FRA Director).

Such documents contain personal data and the provisions of Regulation 45/2001 become applicable in their entirety, including the provision requiring the recipient of personal data to establish the need for their disclosure and the provision which confers on the data subject the right to object any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of data relating to him or her.¹

In addition, regarding your request to receive a copy of the appraisal report of the Director of the FRA, the Commission considers that this runs also counter the Staff Regulations of officials and the conditions of employment of other servants of the European Communities. The rules of the Staff Regulations reinforce the confidentiality of documents related to staff, including of all reports relating to the ability, efficiency and conduct of the staff, and go a step further compared to Regulation 45/2001 and, as indicated in Article 26 of the Staff Regulation qualifies such documents as confidential.

Taking this into account, and the fact that your reply of 23 July does not establish the need for the disclosure of the documents in question, we cannot formulate a reasoned

¹ See Court of Justice of the EU in case C-28/08P, Bavarian Lager, judgement of 29/06/2010, OJ C 79 29/03/2008.

question for the data subject to ask for his permission for the disclosure, and we cannot disclose the documents.

In conclusion, pursuant to Article 4 (1) (b) of Regulation No 1049/2001 according to which access to documents is to be refused when disclosure would undermine the protection of privacy and integrity of the individual and to Article 26 of the Staff Regulations relating to confidentiality of the personal files of the staff, the Commission does not disclose the full EC evaluation report, meaning in particular the Appraisal Report of the FRA's Director.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled 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-5
BERL 5/327
B-1049 Bruxelles

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

Yours faithfully,



Françoise LE BAIL