



EUROPEAN COMMISSION

Brussels, 22.7.2019
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████████████████████
28017 Madrid
Spain

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

**Subject: Your confirmatory applications for access to documents under Regulation
(EC) No 1049/2001 – GESTDEM 2018/1680**

Dear ██████████

I refer to your email of 1 April 2019, registered on 3 April 2019, in which you submit 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’). Please accept our apologies for the late reply, due to the consultations with the author of most of the documents at issue.

1. SCOPE OF YOUR APPLICATION

On 14 March 2019, you submitted an initial application for access to documents under Regulation (EC) No 1049/2001 to the Directorate-General for Environment, in which you requested access to ‘a list of all lobby meetings held by the commissioner in charge of Environment, ██████████, or any other member of its Cabinet with any organisations representing churches and/or religious communities since 2014 onwards, including all e-mails, minutes, reports or any other briefing papers related to all those meetings.’

This application was registered under reference number GESTDEM 2019/1680.

In its initial reply dated 1 April 2019, the Directorate-General for Environment provided you a list of meetings of Commissioner ██████████ with organisations representing churches and religious communities since 1 November 2014 when Commissioner ██████████ took his function.

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

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

Furthermore, the Directorate-General for Environment identified the following documents as falling within the scope of your request:

1. Invitation from Archbishop [REDACTED] (Archbishop of Constantinople - New Rome and Ecumenical Patriarch) for Green Attica Symposium - international ecological symposium in Athens, Greece, from June 5-8 2018, (Ares(2017)44464029, document 1);
2. Invitation from [REDACTED] [REDACTED] (European Union office of the Church of Jesus Christ of Latter-Day Saints) for VIP reception and concert of the Mormon Tabernacle Choir and Orchestra on 11 July 2016 in Brussels, (Ares(2016)2397560, document 2).

In your confirmatory application, you question the absence of any other documents.

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 fresh review of the reply given by the Directorate-General concerned at the initial stage.

Against this background, the European Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, eight additional documents were identified as falling under the scope of your application:

1. Letter of 12 August 2015 from the Ministry of Sustainable Development and Infrastructure to commissioners (document 3);
2. Briefing of 16 September 2015 for Commissioner [REDACTED] relating to Papal Audience with EU Ministers for Environment and Commissioners on 'Laudato Si' with 2 Annexes (document 4);
3. Briefing of 7 December 2015 for Commissioner [REDACTED] relating to the meeting with His Excellency Monsignor [REDACTED] Apostolic Nuncio to the EU (document 5);
4. Letter of 1 September 2016 from [REDACTED], Apostolic Nuncio to the EU, to Commissioner [REDACTED] with 3 annexes (document 6, annexes 6a, 6b, 6c);
5. Letter of 30 September 2016 from Commissioners [REDACTED] and [REDACTED] [REDACTED] to His Excellency Monsignor Lebeaupin, Apostolic Nuncio to the EU (Ares(2016)4918592, document 7);
6. Briefing of 17 March 2017 for Commissioner [REDACTED] relating to the meeting with Archbishop [REDACTED] (disclosed by DG MARE on 20/05/2019 in the framework of access to documents request Gestdem 2019/1985 subject only to the redactions of personal data) (Ares(2019)3282868, document 8);
7. Letter of 17 March 2017 from Vice-President [REDACTED] and Commissioner [REDACTED] to His Holiness [REDACTED] (Ares(2017)1491757, document 9);
8. Video message (paper version) of 4 October 2017 from Commissioner [REDACTED] relating to public seminar 'Laudato Si' (document 10).

Having carried out a detailed examination of the documents requested, I am pleased to inform you that wide partial access is granted to all the identified documents, 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, for the reasons set out below.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘the 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’.

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, 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 data⁴ (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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.⁵

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) No 2018/1725.

Article 3(1) of Regulation (EU) No 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

The requested document includes the names, surnames, contact details (direct telephone numbers, office and email addresses), functions and handwritten signatures of staff members of the European Commission not holding any senior management position. They include also the names and surnames of third parties who are not considered as public figures (members of organisations representing churches and religious communities). This information clearly constitutes personal data in the sense of Article 3(1) of Regulation (EU) No 2018/1725 and in the sense of the *Bavarian Lager* judgment⁶.

³ Judgment of the Court of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378, paragraph 59 (hereafter ‘*Bavarian Lager*’).

⁴ Official Journal L 8 of 12.1.2001, p. 1.

⁵ Official Journal L 205 of 21.11.2018, p. 39.

⁶ *Bavarian Lager*, cited above, paragraph 70.

On the contrary, the names and surnames of public figures, such as Members of the European Commission, Members of Cabinets, His Holiness Pope [REDACTED] the Apostolic Nuncio to the EU and ministers present in some of the requested documents, can be disclosed.

Pursuant to Article 9(1)(b) of Regulation (EU) No 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he 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) No 2018/1725, can the transmission of personal data occur.

Furthermore, in Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.⁷ This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

In this context, I would like to point out that the right to the protection of the privacy is recognised as one of the fundamental rights in the Charter of Fundamental Rights, as is the transparency of the processes within the Institutions of the EU. The legislator has not given any of these two rights primacy over each other, as confirmed by the *Bavarian Lager* case-law referred to above⁸.

⁷ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

⁸ *Bavarian Lager*, cited above, paragraph 56.

Based on the information at my disposal, I note that there is a risk that the disclosure of the names of the individuals appearing in the requested document would prejudice the legitimate interests of the third-parties concerned.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001 and Article 9(1)(b) of Regulation (EU) 2018/1725, 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.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have examined the possibility of granting partial access to the documents concerned.

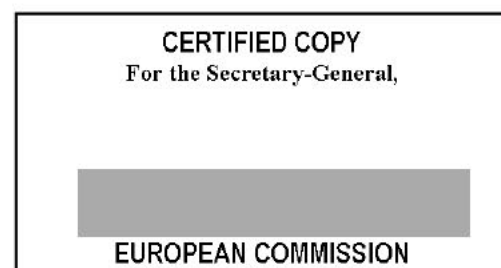
Wide partial access is granted to all the identified documents, subject only to the redaction of personal data. For the reasons explained above, no meaningful further partial access to the remaining partially disclosed documents is possible without undermining the interests described above.

5. 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



Enclosures: (13)