



EUROPEAN COMMISSION

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BE – 1130 Brussels

**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 2019/3994**

Dear [REDACTED],

I refer to your e-mail of 5 August 2019, registered on the same date, 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’).

1. SCOPE OF YOUR APPLICATION

On 11 July 2019 you submitted the initial application, I quote, ‘[b]ased on Regulation [(EC) No] 1367/2006, read together with Regulation [(EC) No] 1049/2001’, in which you required access to, I quote, ‘the following information on “activities affecting or likely to affect” the “state of the elements of the environment”, according to [the] said regulation [...]’:

1. A list of all official cars which were part of the fleet being used by the Commissioners of the E[uropean] Commission in the years 2016, 2017 and 2018, including available information on their engine type, fuel consumption and CO2 emissions.
2. A list of official cars that were reserved for the use of other officials of your institution in the years 2016, 2017 and 2018, including available information on their engine type, fuel consumption and CO2 emissions.

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

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

3. A list of all official cars of the Commission as a whole in the three respective years of 2016, 2017 and 2018.
4. Information on the number of drivers available to the Commissioners in the three respective years of 2016, 2017 and 2018.
5. The average or overall distance which all the cars of the fleet reserved for the Commissioners have covered in the three respective years of 2016, 2017 and 2018.
6. All written rules that were in place from 2016 to 2018 which govern the use of these official cars by the Commissioners, for example concerning possible travelling to the hometown of the respective Commissioners in their home countries.
7. All audit or review reports drawn up since 1 January 2014 on the expenditure for and use of official cars by the Commission.
8. All other documents in relation to the use of these official cars, for example lists that were being used in order to give Commissioners information on the possible type of official cars among which to chose.’

As regard points 1 and 2, you underlined that you would like to receive the data, I quote, ‘separately for each of the three years’.

Your initial application was attributed to the Office for Infrastructure and Logistics – Brussels, of the European Commission for handling and reply.

The European Commission identified the following documents as falling under the scope of your initial application:

- Environmental Statement, 2018 Results, Annex A: Brussels, Draft for verification, reference: Ares(2019)4779949 (hereafter ‘document 1’);
- Data summary on fleet characteristics, consumption and CO2 emissions for years 2012-2018, (hereafter ‘document 2’);
- Document dated 6 July 2011, entitled ‘*Communication de la Commission, Dispositions internes concernant l'organisation du service "Transport" de la Commission*’, reference C(2011)4904 (hereafter ‘document 3’).

The Office for Infrastructure and Logistics – Brussels, of the European Commission replied to your initial application on 23 July 2019. In the reply, it referred you to the publically available Environmental Statements of the European Commission³. The Office for Infrastructure and Logistics – Brussels, of the European Commission granted also full access to document 1, containing the draft version of the Environmental Statement for 2018, as the statement for that year has not been yet made publically available.

It also explained that the above-mentioned statements contain information relating to points 1-3 and 5 in your initial application. Nonetheless, that information is not broken down to the level of detail provided in your initial application.

³ http://ec.europa.eu/environment/emas/emas_registrations/emas_in_the_european_institutions_en.htm.

Indeed, the information included in the statements does not make a distinction between ‘cars used by Commissioners’, or ‘cars used by other officials [of the European Commission]’, broken down by years.

In this context, the Office for Infrastructure and Logistics – Brussels, of the European Commission granted full access to document 2, containing more detailed information on the fleet of cars currently used by the European Commission. That document includes, among others, the information such as the types (models) of cars available for the College of the Commissioners and the same information regarding the pool of cars available to, for example, Directors-General.

With regard to points 4 and 6 of your initial application, the Office for Infrastructure and Logistics – Brussels, of the European Commission granted full access to document 3.

Finally, the Office for Infrastructure and Logistics – Brussels, of the European Commission informed you that it did not hold any documents falling under points 7 and 8 of your initial application.

You asked for the review of that position by submitting the confirmatory application on 5 August 2019. You explicitly underlined, however, that it is limited to the documents covering points 1-3, 5, 7 and 8 of your initial application, I quote, ‘as for these [points] [the European Commission] argue[s] that [it] does not hold any documents’.

I also note that in your confirmatory application, you underline that your initial application was, I quote, ‘[...] filed under Regulation [(EC) No] 1367/2006, granting the right of access to “information” (not “documents”)’. Consequently, I quote, ‘[you] would like to ask the [European] Commission to review its position, and sent [you] all information [you] had requested’.

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.

As a preliminary comment, I would like to underline that information included in document 2, largely covers that requested in points 1-3 of your initial application. Indeed, that document contains information on the overall number of cars in the fleet of the European Commission, broken down by years (2012-2018).

It also contains the list of the car models used by the European Commission, together with the information on how many (and what car models) of them is for exclusive use of the College of the Commissioners and how many of them (and what car models) constitutes the pool of the car available to, for example, Directors-General. That information, however, is not broken down by year.

Such information (broken down by year, by cars and between the Commissioners and other officials) is stored in a database held by the Office for Infrastructure and Logistics – Brussels, of the European Commission, however, it is not directly available, as it cannot be extracted through routine search operations.

Indeed, none of the available search facilities allows for filtering out and extracting the data of such a level of accuracy as that you are interested in. In order to compile the information requested, it would be necessary to carry out series of manipulations on the various data sets stored in the database. Consequently, as mentioned above, the information you requested cannot be extracted from the database by means of a routine search operation. Furthermore, such information, if actually compiled would result in the creation of a new document.

In this context, I would like to point out that the question regarding the possible status of information stored in databases as a ‘document’ within the meaning of Regulation (EC) No 1049/2001 has already been subject to an assessment by the General Court, which in its ruling in *Typke* Case established that ‘[...] in the event of an application for access designed to have the Commission carry out a search of one or more of its databases using search criteria specified by the applicant, the Commission is obliged, subject to the possible application of Article 4 of Regulation No 1049/2001, to accede to that request, if the requisite search can be carried out using the search tools which it has available for the database in question’⁴.

With this judgement, the General Court confirmed the previous judgment in the *Dufour* Case, where it stated that: ‘[...] anything that can be extracted from a database by means of a normal or routine search may be the subject of an application for access [...]’⁵.

With regard to the concept of ‘information’ under Regulation (EC) No 1367/2006⁶, please note that Article 2(1)(d) of this Regulation provides for the character and substance the information must have in order to be considered as ‘environmental’. Indeed, it recognises as ‘environmental’ the information belonging to the following six categories:

‘(i) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

⁴ Judgment of the General Court of 2 July 2015, *Typke v Commission*, T-214/13, EU:T:2015:448, paragraph 56.

⁵ Judgement of the General Court of 26 October 2011 in Case T-436/09, *Dufour v European Central Bank*, (ECLI:EU:T:2011:634), paragraph 153.

⁶ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. Official Journal L 264 of 25.9.2006, p. 13–19.

(ii) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in point (i);

(iii) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements;

(iv) reports on the implementation of environmental legislation;

(v) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in point (iii);

(vi) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (i) or, through those elements, by any of the matters referred to in points (ii) and (iii);'

The specific information concerning the fleet of the cars used by European Commission, broken down by year, by cars and between the Commissioners and other officials, does not, in the view of the European Commission, fall under any of the above-mentioned categories. In particular, it does not have any of the characteristics that qualify information in the categories covered by the above six categories laid down in Article 2 (1) (d) of Regulation (EC) No 1367/2006. Indeed, the breakdown of information requested by the applicant (based on a distinction between the cars used by the Commissioners and those used by other officials) does not have any material connection with the environment. The European Commission considers the environmental impact of the fleet of its cars as a whole (as provided in the Environmental Statements published and disclosed in the initial reply). Moreover, the information about models of the cars, as such, does not constitute environmental information.

In the light of the above, following your confirmatory application, the European Commission has carried out a renewed, thorough search for document(s) that would contain the information requested. Following this renewed search, I confirm that the European Commission has not identified any such documents, other than those publically available, as well as those identified and disclosed at the initial stage.

In line with the provisions of Article 2(3) and Article 10 of Regulation (EC) No 1049/2001, the right of access guaranteed by that Regulation applies only to existing documents in possession of the institution concerned.

Article 2(3) of Regulation (EC) No 1049/2001 provides that '[t]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union'.

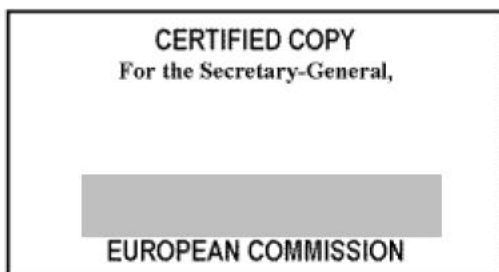
Article 10(3) of the above-mentioned regulation provides that '[d]ocuments shall be supplied in an existing version and format [...]'.

In the light of the above, given that the European Commission holds no documents containing information of the level of detail that you requested, it is not possible to handle your confirmatory application.

3. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the 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

