



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels,
TRADE/SW/D2 (2021)5749173

By registered letter with acknowledgment of receipt

Ms Audrey Changoe
Friends of the Earth Europe
26 rue d'Edimbourg
1050 Brussels

Advance copy by email:
ask+request-9780-93730996@asktheeu.org

Subject: Your application for access to documents – GestDem 2021/4655

Dear Ms Changoe,

I refer to your e-mail dated 20 July 2021 in which you make a request for access to documents in accordance with Regulation (EC) No 1049/2001¹ ('Regulation 1049/2001'), registered on 22 July 2021 under the above mentioned reference number.

Please accept our apologies for the delay in answering to your request, which is mainly due to a high number of access to documents requests being processed at the same time (including different requests originating from you) and also to the nature of the requests that required numerous searches in our database.

1. SCOPE OF YOUR REQUEST

In your application, you request access to:

'All documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations, correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) – related to meetings held between [X²] and representatives of companies and business associations on issues related to the EU Mercosur Free Trade Agreement between January 2019 until September 2020.'

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

² In your application, you refer to an identified individual (a staff member of the European Commission not occupying any senior management position). The name of that individual has been replaced by 'X' in the present reply.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

I regret to inform you that unfortunately we are not in a position to handle your application. Any correspondence, including email correspondence and the further types of correspondence and documents listed in your application in relation to individual staff members of the European Commission – like the one referred to in your application – is subject to and protected by privacy rules.

Article 4(1)(b) of Regulation 1049/2001 provides that *‘[t]he 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’*.

Your application concerns a specific category of documents, namely those sent and/or received by a specifically identified staff member of the European Commission not holding any senior management position or those in relation to a specifically and precisely described type of meetings of the before mentioned individual staff member. As such documents originate from, were sent to, or concern in a specific context a specifically identified natural person, the content thereof constitutes – either directly, or indirectly from the specific context – personal data within the meaning of Regulation 2018/1725³.

According to the definition provided for in Article 3 point 1 of Regulation 2018/1725, personal data is *‘any information relating to an identified or identifiable natural person [...]’*. Indeed, the type of documents requested by you would reveal information about the exchanges engaged in by the individual concerned and any other related activities by the before mentioned individual with regard to the specific type of meetings described in your application, and would therefore qualify as ‘personal data’.

Consequently, in order to handle your application, it would firstly be necessary to carry out a series of processing operations on personal data. Such operations (retrieval of documents relating to a concretely identified staff member) would constitute processing of personal data in the meaning of Article 3 point 3 of Regulation 2018/1725⁴. In line with the provisions of Articles 4 and 5 of Regulation 2018/1725, every processing operation needs to comply with the requirement of legitimacy and lawfulness. To this end Article 5 of Regulation 2018/1725 establishes a limited set of criteria allowing for considering a processing operation as lawful.

Secondly, even if the documents requested were to be retrieved and identified, granting access thereto would constitute another processing operation on personal data, namely, its transmission (through the disclosure of the documents) within the meaning of Article 9(1)(b) of Regulation 2018/1725 to you as the applicant.

³ 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/EC (‘Regulation 2018/1725’), OJ L 295, 21.11.2018, p. 39.

⁴ According the definition in Article 3 point 3 of Regulation 2018/1725 means ‘processing’ of personal data *‘any operation or set of operations which is performed upon personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction’*.

In accordance with the *Bavarian Lager* ruling⁵, when a request is made for access to documents containing personal data, Regulation 2018/1725 becomes fully applicable. According to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients if the recipient establishes the necessity of having the data transmitted and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative⁶.

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

In that context, whoever requests such a transmission must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the Institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject⁷. This has been confirmed in the judgment in the *ClientEarth* case⁸. I refer also to the *Strack* case, where the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data⁹.

In your application you have not established any necessity of disclosing the personal data requested. Therefore, even if the documents requested were to be retrieved and identified, the transfer of personal data through their public disclosure could not be considered as fulfilling the requirements of Regulation 2018/1725. In consequence, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 would be justified, as there would be no need to publicly disclose the personal data included therein, and it could not be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

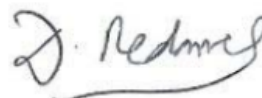
3. POSSIBILITY OF A CONFIRMATORY APPLICATION

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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
'Transparency, Document Management & Access to Documents' (unit SG.C.1)
BERL 7/076
1049 Brussels

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

Yours sincerely,



Sabine WEYAND
p.p. Denis REDONNET

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- ⁵ Judgment of the Court (Grand Chamber) of 29 June 2010 in Case C-28/08 P, *European Commission v the Bavarian Lager Co. Ltd*, (ECLI:EU:C:2010:378), point 63.
- ⁶ *Ibid*, points 77-78.
- ⁷ *Ibid*.
- ⁸ Judgment of the Court of Justice of 16 July 2015 in Case C-615/13 P, *ClientEarth v EFSA*, (ECLI:EU:C:2015:219), point 47.
- ⁹ Judgment of the Court of Justice of 2 October 2014 in Case C-127/13 P, *Strack v Commission*, (ECLI:EU:C:2014:2250), point 106.