



EUROPEAN COMMISSION

LEGAL SERVICE
The Director-General

Brussels, 30 May 2022

By email

Mr Fred Logue
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Subject: Request for access to documents

Ref.: Your request of 5 April 2022, registered on 6 April, under reference GestDem 2022/2002

Dear Mr Logue,

I refer to your above-mentioned application for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ by which you request:

“The written observations of the following parties in case C-140/20²

1. *GD*
2. *Commissioner of An Garda Síochána, the Minister for Communications, Energy and Natural Resources and the Attorney General*
3. *European Commission*
4. *European Data Protection Supervisor”.*

As regards the written observations mentioned under number 4 of your request, please note that this document was not notified to the Commission. Article 2(2) of Regulation No 1049/2001 states 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 its possession, in all areas of activity of the European Union”. Since the Commission does not hold the written observations made by the *European Data Protection Supervisor*, it cannot send you any document.

¹ OJ L 145, 31.05.2001, page 43.

² Judgment of the Court of Justice in Case C-140/20, *Commissioner of An Garda Síochána* of 5 April 2022, ECLI:EU:C:2022:258.

1. WRITTEN OBSERVATIONS SUBMITTED BY THE EUROPEAN COMMISSION(DOCUMENT 3)

After a concrete assessment of the Commission's written observations, I am pleased to inform you that full access can be granted, in accordance with Regulation (EC) No 1049/2001.

Accordingly, as requested, please find attached a copy of the English original of this document.

You may reuse the requested document free of charge, provided that the source is acknowledged and that you do not distort its original meaning or message. Please note that the Commission does not assume liability stemming from the reuse.

2. WRITTEN OBSERVATIONS SUBMITTED BY THIRD PARTIES (DOCUMENTS 1 AND 2)

In accordance with Article 4(4) of Regulation (EC) No 1049/2001, the Commission has consulted the third parties on their written observations. Following these consultations, I would like to inform you that:

- the lawyers representing *GD* agreed to the disclosure of their written observations;
- the agents representing the Commissioner of An Garda Síochána, the Minister for Communications, Energy and Natural Resources and the Attorney General agreed to the disclosure of their written observations.

Please note that some personal data has been redacted in document 2, as will be explained below. Accordingly, please find attached a copy of the English original of document 1 as well as a redacted copy of the English original of document 2.

The disclosed documents were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings at stake. Access is granted for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

3. PROTECTION OF PERSONAL DATA

As stated in point 2, some personal data has been redacted on the last page of document 2, namely the handwritten signatures of the agents representing the Commissioner of An Garda Síochána, the Minister for Communications, Energy and Natural Resources and the Attorney General. This information is covered by the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001, in accordance with the European Union legislation regarding the protection of personal data.

Article 4(1)(b) of Regulation (EC) No 1049/2001 states by way of exception 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*".

As the Court of Justice has ruled in its judgment in Case C-28/08P (*Bavarian Lager*)³, when a request is made for access to documents containing personal data, the Data Protection Regulation, i.e. Regulation (EU) No 2018/1725,⁴ becomes fully applicable.

³ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraphs 59 and 63. Whereas this judgment specifically related to Regulation

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data *"means any information relating to an identified or identifiable natural person [...]"*. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data⁵.

Furthermore, in its judgment in Joined Cases C-465/00, C-138/01 and C-139/01 the Court has confirmed that *"there is no reason of principle to justify excluding activities of a professional nature [...] from the notion of private life"*⁶. On this basis, the above-mentioned handwritten signatures of the agents representing the Commissioner of An Garda Síochána, the Minister for Communications, Energy and Natural Resources and the Attorney General have been deleted, since they constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 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) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established 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 request, 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.

(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 data, the principles set out therein are also applicable under the new data protection regime established by Regulation (EC) 2018/1725.

⁴ 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 (OJ L 205 of 21.11.2018, page 39).

⁵ Judgment of the Court of Justice of 20 December 2017, *Peter Nowak v Data Protection Commissioner*, C-434/16, ECLI:EU:C:2017:994, paragraphs 33-35.

⁶ Judgment of the Court of Justice of 20 May 2003, Joined Cases C-465/00, C-138/01 and C-139/01, *Rechnungshof and Others v Österreichischer Rundfunk*, ECLI:EU:C:2003:294, paragraph 73.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subject concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the handwritten signatures of the agents representing the Commissioner of An Garda Síochána, the Minister for Communications, Energy and Natural Resources and the Attorney General, 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.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

4. MEANS OF REDRESS

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission

Secretariat-General

Transparency, Document Management & Access to Documents (SG.C.1)

BERL7/076

B-1049 Bruxelles

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

Yours sincerely,

[signed electronically]

Daniel CALLEJA CRESPO

Attachments: 3