



EUROPEAN COMMISSION
Secretariat-General

The Secretary-General

Brussels, 10. 07. 2015
SG.B4/FB/bb - sg.dsg2.b.4(2015)3103480

By registered mail:

Mr Arun Dohle
Reimserstrasse 47 D
52074 Aachen
Germany

Copy by email:

ask+request-2042-27852b45@asktheeu.org

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2015/3160**

Dear Mr Dohle,

I am writing in reference to your email of 16 June 2015, registered on 18 June 2015, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation 1049/2001').

Through your initial application of 10 June 2015, you requested access to *[a]ll documents, correspondence, including e-mails, budget, bills, list of invites, audio-visuals [sic], related to the side event [on access to justice organised by the EU Agency for Fundamental Rights, UNICEF and the European Parliament Intergroup on rights of the child] on 3rd June 2015 in the Thon Hotel in Brussels during the 9th European Forum on the Rights of the Child.*

By e-mails of 15 and 16 June 2015 the Directorate-General for Justice and Consumers (DG JUST) granted access to an invitation e-mail for the side event including a draft

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

² Official Journal L145, 31.05.2001 p.43.

agenda which DG JUST had forwarded to participants of the 9th European Forum on the Rights of the Child on behalf of the EU Agency for Fundamental Rights and UNICEF. Furthermore, DG JUST informed you that it had neither been involved, nor present, in the event, and that it had not been able to identify further documents as falling under the scope of your request.

In your confirmatory application, you request an internal review of this position arguing that *it is technically impossible to forward the invitation to the side-event to the participants of the Forum, without having received it first.*

Against this background, the Commission has carried out a renewed, thorough search for the document(s) requested. Following this renewed search, I am pleased to inform you that the Commission has identified two further documents held by it which fall under your request for access to documents, i.e. two e-mails received from UNICEF including three attachments.

Wide partial access is granted to the two documents, only subject to the redaction of names and e-mail addresses, based on the exception of Article 4(1)(b) of Regulation 1049/2001 (*protection of privacy and integrity of the individual*)³.

Article 4(1)(b) of Regulation 1049/2001 provides that *access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

In its judgment in the *Bavarian Lager* case⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001⁵ (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of the Data Protection Regulation provides that '*personal data*' shall mean *any information relating to an identified or identifiable person [...]*. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*)⁶, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'*. The names and e-mail addresses included in the two e-mails received from UNICEF undoubtedly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

Pursuant to Article 8(b) of the same Regulation, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC⁷ if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data

³ As regards the personal data included in the document requested, the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

⁴ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

⁵ 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 data, Official Journal L 8 of 12.1.2001

⁶ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, paragraph 73.

⁷ European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281 of 23.11.1995.

subject's legitimate interests might be prejudiced. Those two conditions are cumulative.⁸ In your confirmatory application, you do not demonstrate the need for, nor any particular interest in obtaining the personal data concerned. The necessity of disclosing the personal data of these individuals has therefore not been established in the present case.

Therefore, I conclude that the personal data contained in the requested documents must be protected pursuant to Article 4(1)(b) of Regulation 1049/2001.

Please find a copy of the two documents, including their attachments, annexed.

Finally, I draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,



Catherine Day

Enclosures (2):

- E-mail from UNICEF to DG JUST on 30 April 2015, including two attachments (Ares(2015)2669679)
- E-mail from UNICEF to DG JUST on 30 April 2015, including one attachment (Ares(2015)2669601)

⁸ Judgment of the Court of Justice of 29 June 2010, *Bavarian Lager*, quoted above, paragraphs 77-78.