



EUROPEAN COMMISSION

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**Mr Arun Dohle**  
Viktoriastrasse 46,  
D-52066 Aachen  
Germany

*Copy by email:*  
ask+request-2533-  
c28ee705@asktheeu.org

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT  
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2016/46**

Dear Mr Dohle,

I refer to your letter of 25 January 2016, registered on that same day, 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 documents<sup>2</sup> ('Regulation 1049/2001').

**1. SCOPE OF YOUR REQUEST**

In your initial application of 4 January 2016, addressed to the Directorate-General for International Cooperation and Development ('DG DEVCO'), you requested access to all documents related to the meeting of Commissioner Mimica with Ms Georgette Mulheir, CEO of Lumos on 18 December 2015 in Brussels (the 'meeting').

In its initial reply of 25 January 2016, DG DEVCO informed you that the scheduled meeting did not take place. As DG DEVCO did not identify any documents falling in the scope of your request, it considered that it was not in a position to handle your request pursuant to Regulation 1049/2001.

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

Through your confirmatory application you request a review of this position.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following a renewed search at the confirmatory stage, the Commission has identified the following documents as falling under the scope of your request:

- (1) E-mail exchange 11-24 September 2015 between the Commission and Lumos on setting up the meeting ('Document 1')
- (2) Lumos' e-mail of 8 October 2015 ('Document 2');
- (3) Commission's e-mail of 21 October 2015 ('Document 3');
- (4) Commission's e-mail of 12 December 2015, cancelling the scheduled meeting ('Document 4').

Following this review, I am pleased to inform you that:

- partial access is granted to Documents 1-4.

As regards the redacted parts of Documents 1-4, I regret to inform you that access cannot be granted, based on the exception of Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation 1049/2001, for the reasons set out below.

### **2.1. Protection of the privacy and integrity of the individual**

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.*

Following an individual and close examination of the documents concerned, access is granted to the documents requested, with the exception of the personal data appearing therein. The latter are subject to Article 4(1)(b) of Regulation 1049/2001, which 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.

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its 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. The applicable legislation in this field is 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<sup>3</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>4</sup>. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

The documents to which you have requested access contain the names and individual e-mail addresses of individuals. These are undoubtedly personal data in the meaning of Article 2(a) of Regulation 45/2001. As the Court of Justice confirmed in case C-465/00 (*Rechnungshof*)<sup>5</sup>, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'*.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established. Furthermore, it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, the personal data have been redacted from the documents released to you.

### **3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

Please note also that Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

### **4. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting further partial access to the documents requested. However, for the reasons explained above, no meaningful partial access is possible without undermining the interests described above.

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<sup>3</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>4</sup> Judgment of the Court of Justice of 29 June 2010 in Case C-28/08 P, *Commission v. Bavarian Lager Co. Ltd*, ECR 2010 I-6055.

<sup>5</sup> Judgment of the Court of Justice of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, *Rechnungshof and Österreichischer Rundfunk*, ECR 2003 I-4989, paragraph 73.

## **5. MEANS OF REDRESS**

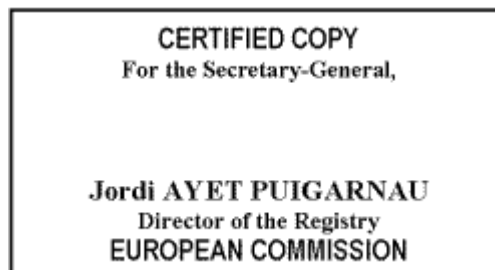
Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

## **6. ELEMENTS FALLING OUTSIDE THE SCOPE OF YOUR REQUEST**

Please be informed that certain sections of Documents 1, 2 and 3 were redacted because they concern Lumos' project planning concerning the European Year of Development event, which falls outside the scope of your request.

Yours sincerely,

*For the Commission  
Alexander ITALIANER  
Secretary-General*



Annexes (4)