



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

Directorate J – Common Support Centre
J.1 – Common Legal Support Service

Brussels,

*By registered letter with acknowledgment
of receipt to:*

Mireia CRESPO CASTELLANO
Access Info Europe
Cava de San Miguel 8, 4C
28005 Madrid
Spain

Advance copy by email: ask+request-3277-3002156e@asktheeu.org

Subject: Your application for access to documents – GestDem Ref No 2016/4955

Dear Madam,

We refer to your email of 2 September 2016 wherein you submit an application for public access to documents. It was registered on 5 September 2016 under the above mentioned reference number.

1. SCOPE OF YOUR APPLICATION

Your application concerns access to *documents which contain the following information:*

1. Memos, guidance, guidelines, or training material (or any other document) for DG staff on record creation and/or record keeping, in particular documents that refer to the creation/keeping of agendas (diaries of public officials' engagements), lists of meetings, minutes of meetings, lists of participants in meetings, and documents justifying decisions.

2. Memos, guidance, guidelines, or training material (or any other document) for DG staff on the processing of access to information requests.

First of all, we would like to clarify that *access to information requests* you mention in point 2 of your application are handled under the [Code of Good Administrative Behaviour](#). Please note that DG RTD has no specific documents addressed to its staff concerning the processing of access to information requests under this *Code*.

The *access to documents requests*, on the other hand, are handled under [Regulation 1049/2001](#)¹. Following the general guidance of Secretariat-General, we consider that point 2 of your application refers to the *Memos, guidance, guidelines, or training material (or any other document) for DG staff on the processing of access to documents requests*.

2. EXAMINATION UNDER REGULATION 1049/2001

We have identified 6 documents corresponding to your request. These documents are as follows:

DG RTD specific documents on document management (i.e. *record creation and/or record keeping*):

1. File index 17_Meetings and conferences_not comitology,
2. File index 48_Internal Management_meetings,
3. File index 49_Internal Management_general,
4. ARES information sheet 21_ARES_and_MIPS,
5. ARES information sheet 22_Webdor_and_ARES; and

DG RTD specific document on *access to documents*:

6. RTD intranet webpage on Public access to documents.

In respect of trainings in ARES and *document management*, there are no DG RTD specific documents. The content of ARES training materials is provided by DG DIGIT. The content of document management training materials is based on the eDomec legal documents, the relevant official documents and procedures established by the Secretariat-General, as well as the corporate training material provided by the Secretariat-General.

As regards memos, guidance, guidelines or training materials in *access to documents*, please note that DG RTD adheres to the relevant official documents drawn up and procedures established by the Secretariat-General. To DG RTD staff we provide the information on DG RTD intranet webpage (document 6). As regards training materials in access to documents, we would like to inform you that DG RTD does not organise any specific trainings on access to documents for DG RTD staff, hence we do not have any such training materials.

Having examined the documents requested under the provisions of *Regulation 1049/2001*, we are pleased to inform you that we provide full access to documents 1-4 and wide partial access to documents 5 and 6. Only a small amount of personal data contained in documents 5 and 6 cannot be disclosed in line with Article 4(1)(b) of this *Regulation*.

¹ Regulation (EC) No1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43), hereinafter '*Regulation 1049/2001*'.

2.1 Protection of privacy and integrity of the individual

Pursuant to the Article 4(1)(b) of *Regulation 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 the [EU] legislation regarding the protection of personal data*". The applicable legislation in this field is *Regulation 45/2001*².

When access is requested to documents containing personal data, *Regulation 45/2001* becomes fully applicable³.

2 of the requested documents (documents 5 and 6) contain the names and phone numbers of the Commission non-senior staff. This information is not in the public domain and undoubtedly constitutes personal data in the meaning of Article 2(a) of *Regulation 45/2001*. The EU Court of Justice case-law⁴ confirms that "*there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'*".

Public disclosure of the above-mentioned personal data would constitute processing (transfer) of personal data within the meaning of Article 8(b) of *Regulation 45/2001*. 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 and if there is no reason to assume that the legitimate rights of the data subjects concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the personal data of non-senior Commission staff has not been established and that it cannot be assumed that such disclosure would not prejudice their legitimate rights. For this purpose, we redacted the personal data of non-senior Commission staff in the requested documents, as described above.

2.2 Non-existence of an overriding public interest

I would like to draw your attention to the fact that the invoked exception laid down in Article 4(1)(b) of *Regulation 1049/2001* is an absolute exception that does not have to be balanced against the public interest in disclosure.

2.3 Legal notice

You may reuse the disclosed content of the requested Commission documents provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse of the disclosed content.

² 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 (OJ L 8 of 12.1.2001, p. 1).

³ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, *Commission v. The Bavarian Lager Co. Ltd*, ECR 2010 I-06055.

⁴ 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.

3. MEANS OF REDRESS

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of *Regulation 1049/2001*, 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 Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles

or by email to: xxxxxxxxxx@xx.xxxxxx.xx

Yours faithfully,

Liliane DE WOLF

Head of Unit