



EUROPEAN COMMISSION

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Ms Pia EBERHARDT
Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Brussels

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under Regulation
(EC) No 1049/2001 - GESTDEM 2018/1904**

Dear Ms Eberhardt,

I am writing in reference to your email of 15 June 2018, registered on 20 June 2018, 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').

1. SCOPE OF YOUR APPLICATION

In your initial application of 29 March 2018, addressed to the Secretariat-General and registered under reference number GESTDEM 2018/1904, you requested access to:

- 'all reports (and other notes) from meetings between Martin Selmayr (now Secretary-General, before Head of Cabinet of Commission President Jean-Claude Juncker) and representatives of the car industry (so representatives of individual companies and car industry federations), since 1 January 2017;
- all correspondence (including emails) between Martin Selmayr and representatives of the car industry since 1 January 2017;

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

² Official Journal L145, 31.05.2001 p.43.

- all reports (and other notes) from meetings between Martin Selmayr and the German Ministry of Transport and Digital Infrastructure (including its former Minister, Alexander Dobrindt), since 1 January 2017;

[and]

- all correspondence (including emails) between Martin Selmayr and the German Ministry of Transport and Digital Infrastructure (including its former Minister, Alexander Dobrindt), since 1 January 2017’.

You also requested a list of such documents ‘(including dates, names of participants/senders/recipients and their affiliation, subject of meeting/correspondence)’ under the Code of Good Administrative Behaviour.

By email dated 2 May 2018, you specified the scope of your request by explaining the terms ‘representatives of the car industry’ as well as the subject matter of the meetings and correspondence in the context of which you referred to ‘the Dieselgate/emission cheating software affair. CO2 targets for cars, and EU air quality standards’.

Through its initial reply dated 1 June 2018, the Secretariat-General of the European Commission provided you with such a list and informed you that it had identified seven documents as falling within the scope of your request. These documents refer to meetings and correspondence between Martin Selmayr and representatives of the car industry. The Secretariat-General granted wide partial access to them, subject to the sole redaction of personal data pursuant to Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001.

In your confirmatory application of 15 June 2018, you take the view that the Secretariat-General has not addressed your request as far as documents containing correspondence and reports as well as other notes from meetings between Martin Selmayr and the German Ministry of Transport and Digital Infrastructure are concerned, as the initial reply did not specify the non-existence or the existence of such documents. You further stress that you find ‘it very hard to believe that there were no contacts between Martin Selmayr and the German Ministry of Transport in the whole 2017’.

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 at the initial stage.

Against this background, I would like to stress that, when dealing with your initial request, the Secretariat-General had indeed conducted a search for documents that would correspond to the full description given in your initial request, i.e. also including documents that relate to correspondence/meetings with the German Ministry of Transport and Digital Infrastructure. As indeed pointed out in point 2 of the initial reply, the seven documents had been identified ‘as falling within the scope of your request’.

Nevertheless, the European Commission, at confirmatory level, carried out a renewed, thorough search for documents that would fall under the scope of your confirmatory application as described above.

Following this renewed search, I confirm that the European Commission does not hold any further documents that would correspond to the description given in your application.

As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that the European Commission does not hold any such documents corresponding to the description given in your application, it is not in a position to fulfil your request.

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the European Commission
Martin SELMAYR
Secretary-General