



EUROPEAN COMMISSION

LEGAL SERVICE
The Director-General

Brussels, 24 October 2018

Mr Fred Logue
FP Logue Solicitors
8/10 Coke Lane,
Smithfield, Dublin 7
Ireland

By email:
ask+request-5848-3a92decf@asktheeu.org

Subject: Request for access to documents

Ref.: Your requests of 11 August 2018 registered under references:
GestDem 2018/4421, 2018/4422 and 2018/4423

Dear Mr Logue,

I refer to your applications for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ by which you request to obtain access to the submissions of the European Commission and other parties to the Court of Justice in Cases C-164/17², C-470/16³ and C-323/17⁴.

More specifically, you request a copy of the Written Observations submitted by the following parties:

- **Case C-164/17:**
 1. the European Commission;
 2. An Bord Pleanála;
 3. ESB Wind Development Ltd.
- **Case C-470/16:**
 4. the European Commission;
 5. An Bord Pleanála;

¹ OJ L 145, 31.05.2001, page 43.

² Judgment of the Court of Justice of 25 July 2018 in Case C-164/17 - *Edel Grace and Peter Sweetman v An Bord Pleanála*, ECLI:EU:C:2018:593.

³ Judgment of the Court of Justice of 15 March 2018 in Case C-470/16 - *North East Pylon Pressure Campaigning and Sheehy*, ECLI:EU:C:2018:185.

⁴ Judgment of the Court of Justice of 12 April 2018 in Case C-323/17 - *People Over Wind and Sweetman*, ECLI:EU:C:2018:244.

6. The Attorney General and the Minister for Communications, Climate Action and Environment.

You have also requested a copy of the submission made by Ireland. In this regard, please note that document number 6 contains the Written Observations of i) the Minister for Communications, Climate Action and Environment, ii) the Attorney General and iii) Ireland.

– **Case C-323/17:**

7. the European Commission;
8. Coillte Teoranta.

1. COMMISSION'S WRITTEN OBSERVATIONS

After a concrete assessment of the European Commission's Written Observations in the three referred cases, I am pleased to inform you that, pursuant to Regulation (EC) No 1049/2001, full access can be granted to them (documents under numbers 1, 4 and 7).

You may reuse the requested documents free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from their reuse.

2. WRITTEN OBSERVATIONS MADE BY THE OTHER PARTIES

Regarding the requested submissions by the other parties, the Legal Service has consulted the third parties concerned on the disclosure of their documents in accordance with Article 4(4) of Regulation (EC) No 1049/2001.

Following these consultations, I would like to inform you that:

- An Bord Pleanála has agreed to the disclosure of the Written Observations submitted in Case C-164/17 and in Case C-470/16 (documents under numbers 2 and 5);
- i) ESB Wind Development Ltd, ii) The Attorney General, the Minister for Communications, Climate Action and Environment and Ireland as well as iii) Coillte Teoranta have not replied to the European Commission's consultation (documents under numbers 3, 6 and 8);

Regarding the submissions for which the Commission has not received a reply, I would like to inform you that access can be granted in accordance with Regulation (EC) No 1049/2001. The Court of Justice has stated in its *API* judgment⁵ that where court proceedings have been closed by a decision of the Court there are no longer grounds for presuming that disclosure of pleadings lodged with the Court would undermine those proceedings.

Please note, however, that a name has been deleted in footnote 4 (point 2.8) of document under number 3. The name of this person, that has not been disclosed by the judgment of the Court of Justice, must be blanked out since it is covered by the exception provided for in

⁵ Judgment of the Court of Justice of 21 September 2010 in joined cases *Sweden and Others v API and Commission*, C-514/07P, C-528/07P and C-532/07P, ECLI:EU:C:2010:541, paragraphs 130 and 131.

Article 4(1)(b) of Regulation (EC) No 1049/2001 ("*protection of personal data*")⁶ as it will be explained below.

Since Cases C-164/17, C-470/17 and C-323/17 have been closed by the judgements of the Court of Justice, and in the absence of any objection from the authors of the documents under numbers 3, 6 and 8 against disclosure of their submissions, I conclude that they can be disclosed under Regulation (EC) No 1049/2001.

As stated above a name has been deleted in document under number 3. Furthermore, the names of the Court's registrar and the handwritten signatures have been deleted in the disclosed documents. This information must be protected under the exception provided for in Article 4 (1)(b) of Regulation (EC) 1049/2001 ("*protection of personal data*"), in accordance also with the European Union legislation regarding the protection of personal data. Regarding the names of the officials of the institutions and signatures, the General Court has recognized in its recent judgment of 19 September 2018 that this information falls within the notion of "private life"⁷. The names⁸ of the officials concerned as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001⁹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable¹⁰. According to Article 8(b) of that 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. Those two conditions are cumulative.

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

Consequently, you will find enclosed an expunged copy of the submissions made by all the third parties in English, the language of the proceedings (documents under numbers 2, 3, 4, 5, and 8) where the indicated personal data has been blanked out.

If you wish to receive the expunged personal data, I invite you to provide us with arguments showing the need to have the personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data would be disclosed.

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.

⁶ "The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

⁷ Judgment of the General Court of 19 September 2018 in case port de Brest v Commission, T-39/17 ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

⁸ Judgment of the Court of Justice of 29 June 2010 in *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378, paragraph 68.

⁹ 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, 12.1.2001, page 1).

¹⁰ Ibid, paragraph 63.

3. 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 Secretary-General at the following address:

European Commission
Secretary-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 5/282
B-1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

The Secretary General will inform you of the result of this review within 15 working days from the date of registration of your request. You will either be given access or your request will be rejected in which case you will be informed of how you can take further action.

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 8