



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels,

Mr Shvlin Connor
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BY E-MAILS AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT

Subject: Request for access to documents

Ref.: Your request of 15 September 2018 registered under reference GestDem 2018/4866

Dear Mr Connor,

I refer to your request for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹. Your request, addressed to the Secretariat General of the European Commission, was transferred to the Legal Service for its handling.

More particularly, you request access to the *"documents which contain the following information:*

- *decisions related to the granting of legal assistance to a member of the Commission, including decision C(2018)2069 adopted on 28.03.2018;*
- *correspondence related to the request for legal assistance by the commissioner, or other persons, before the decision and any assessment made by the commission to evaluate the content of the action pursued and its connection to the functions exercised by the commissioner concerned;*
- *special minutes related to the college meeting of 28.03.2018, for the part related to the decision C(2018)2069."*

¹ OJ L 145, 31.05.2001, page 43.

The Legal Service has identified the following documents matching the terms of your request:

- Letter of 20 February 2018 of a Member of the Commission to President Juncker.
- Document reference C(2018)2069 of 28 March 2018.

Please note that although the above documents refer to legal opinions of the Legal Services, these opinions were given orally and, therefore, no additional documents have been identified.

After a carefully assessment of the identified documents on the basis of Regulation (EC) No 1049/2001, I consider that only partial access can be granted to them. The refused parts of the documents cannot be disclosed since they are covered by the exception provided for in Article 4(b) of that Regulation ("*protection of personal data*"), in accordance with the European Union legislation regarding the protection of personal data.

Protection of privacy and integrity of the individual

The two identified documents are a letter from a Member of the Commission to the President asking for legal assistance to defend himself in a legal action before a national court affecting him in his capacity and functions as a Member of the Commission and the Decision of the Commission providing the requested legal assistance. In this regard it should be noted that the case before the national court is connected to a parallel case concerning the same subject matter before the General Court and that both cases are presently pending before the respective courts. In the framework of these cases, the names of the parties are not public.

In the light of this, the name of the claimant and the name of the Member of the Commission have been blanked out in the documents as well as any other information from which the identity of the claimant can be derived. 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 since its disclosure would be harmful for the integrity of the concerned person.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². According to Article 8(b) of Regulation 45/2001³, 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.

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.

² Judgment of 29 June 2010 in *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378.

³ 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)..

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.

Accordingly please find attached a copy of the documents concerned expunged from personal data. Please note that you may reuse them 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 documents. Please also note that the Commission does not assume liability stemming from the reuse.

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

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