



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
HUMAN RESOURCES AND SECURITY
Director-General

Brussels,

13 FEB. 2019

By registered letter with acknowledgment of receipt

Mr Arun DOHLE
Against Child Trafficking
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Advance copy by e-mail :

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Dear Mr Dohle,

Subject: Your application for access to documents – Ref GestDem No 2018/6979

I refer to your e-mail of 15 December 2018 by which you make a request for access to documents. This request was registered on 29 December 2018 under the above-mentioned reference number. In accordance with Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to documents, the time limit for the reply to the request was extended until 14 February 2019.

You request access to all documents which contain the following information:

"[t]he end of the employment contract of Mr Giovanni Kessler as Director of the Italian Customs Agency and its effects on the European Commission's secondment contract. Including financials".

I consider your request to cover documents held up to the date of your application, i.e. 15 December 2018.

Your application concerns the following documents:

- 1) an e-mail sent by Mr Giovanni Kessler on 5 September 2018 to the Director-General of the Directorate-General for Human Resources and Security;
- 2) an e-mail sent by Mr Giovanni Kessler on 11 September 2018 to the Director-General of the Directorate-General for Human Resources and Security;

- 3) the special minutes of the 2266th meeting of the Commission held in Brussels on Wednesday 19 September 2018.

Regarding the latter document, I understand that your access request only concerns the point relating to Mr Kessler, and not the other points (which do not have any link with the case of Mr Kessler).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that these documents cannot be disclosed as they contain personal data relating to Mr Kessler. Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document must be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.¹

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data “*means any information relating to an identified or identifiable natural person [...]*”. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.²

In its judgment in Case C-28/08 P (*Bavarian Lager*),³ the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.⁴

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, “[...] *personal data shall only be transmitted to recipients [...] if [...] the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.*”.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

¹ Official Journal L 295 of 21.11.2018, p. 39.

² Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, [ECLI:EU:C:2017:994](#), paragraphs 33-35.

³ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd.*, [ECLI:EU:C:2010:378](#), paragraph 59.

⁴ This judgment specifically cited Regulation (EC) No 45/2001, which was repealed by Regulation (EU) 2018/1725. In accordance with Article 99 of that latter Regulation, references to Regulation (EC) No 45/2001 should be construed as references to Regulation (EU) 2018/1725.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) 1049/2001, access cannot be granted to the documents concerned.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subject concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm his privacy.

I have also examined the possibility of granting partial access to the documents concerned, in accordance with Article 4(6) of Regulation (EC) 1049/2001. However, these documents are entirely covered by the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001 and therefore partial access cannot be granted.

In accordance with Article 7(2) of Regulation (EC) 1049/2001, you are entitled 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
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076

B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Irene SOUKA