



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

Brussels, 22 JAN. 2019

*By registered letter with acknowledgment of receipt*

Mr Arun DOHLE  
Against Child Trafficking  
Easy Start Office  
Kraijenhoffstraat 137A  
NL 1018RG Amsterdam

*Advance copy by email :*

[ask+request-6199-84c04c8e@asktheeu.org](mailto:ask+request-6199-84c04c8e@asktheeu.org)

Dear Mr Dohle,

**Subject: Your application for access to documents – Ref GestDem No 2018/6980**

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.

You request access to "[...] all internal and external documents/emails related to the retirement of Secretary-General Alexander Italianer. Including, but not limited to, the formal request for retirement [...]".

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) Minutes of the 2244<sup>th</sup> meeting of the Commission held in Brussels on Wednesday 21 February 2018 (morning) – PV(2018) 2244 final;
- 2) Mr Italianer's note of 21 February 2018 addressed to President Juncker.

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 the first identified document may be disclosed. The second document, however, may only be partially disclosed. Some parts of that document have been expunged as its disclosure is prevented by an exception to the right of access laid down in Article 4(1)(b) of Regulation (EC) 1049/2001.

The first paragraph of Mr Italianer's note of 21 February 2018 has already been released under a request for access to documents pursuant to Regulation (EC) No 1049/2001, and is therefore in the public domain. The following paragraphs of this note, however, contain personal data, namely a personal message from Mr Italianer to the President of the European Commission as well as biometric data, such as a handwritten signature. Pursuant to Article 4(1)(b) of Regulation (EC) No 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 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.<sup>1</sup>

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.<sup>2</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*),<sup>3</sup> 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.<sup>4</sup>

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.

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

---

<sup>1</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> This judgment specifically cited Regulation (EC) No 45/2001, which was repealed by Regulation (EU) 2018/1725. In accordance with the recital 86 of that Regulation, references to Regulation (EC) No 45/2001 should be construed as references Regulation (EU) 2018/1725.

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.

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 document, as there is a real and non-hypothetical risk that such public disclosure would harm his privacy.

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

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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a vertical stroke and a small flourish.

Irene SOUKA

Enclosures:

- Minutes of the 2244<sup>th</sup> meeting of the Commission – PV(2018) 2244 final;
- Mr Italianer's note of 21 February 2018 addressed to President Juncker.