



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

DIRECTORATE C – Land
Unit C.1 - Road Transport

Brussels, 07.03.2019
ARES (2019) 1277474

Mr Bryan Carter
42, rue Paul Lauters
1050 Brussels

E-mail: ask+request-6318-dc245383@asktheeu.org

Dear Sir,

Subject: Your applications for access to documents – Ref GestDem No 2019-0432, No 2019-0456 and No 2019-0457

We refer to your letters dated 23/01/2019 and 25/01/2019 in which you make requests for access to documents, registered on 23/01/2019 and 25/01/2019 respectively, under the above-mentioned reference numbers.

You request access to:

-Minutes of all meetings between DG MOVE and the European Road Transport Research Advisory Council (ERTRAC). This should include any meetings with ERTRAC directly or any of its members, like Hidria. The time period should be 1st January 2015 until today.

- Any correspondence between DG MOVE and ERTRAC, or any of its members, like Hidria. This should include but not be limited to correspondence related to the aforementioned meetings, as well as all other email and letter exchanges. It should also include all attachments and accompanying documents contained within the correspondence.

- Minutes of all meetings between DG MOVE and the European association for forwarding, transport, logistic and Customs services (CLECAT). This should include any meetings with CLECAT directly or any of its members. The time period should be 1st January 2017 until today.

- Any correspondence between DG MOVE and CLECAT, or any of its members. This should include but not be limited to correspondence related to the aforementioned meetings, as well as all other email and letter exchanges. It should also include all attachments and accompanying documents contained within the correspondence.

- Minutes of all meetings between DG MOVE and the International Road Transport Union Permanent Delegation to the EU (IRU). This should include any meetings with IRU directly or any of its members. The time period should be 1st January 2017 until today.

- Any correspondence between DG MOVE and IRU, or any of its members. This should include but not be limited to correspondence related to the aforementioned meetings, as well as all other email and letter exchanges. It should also include all attachments and accompanying documents contained within the correspondence.

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

Your application concerns the documents in Annex.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents (The Regulation), I have come to the conclusion that documents 1 to 29 may be partially disclosed.

Please find enclosed copy of such documents. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The redacted parts of the documents contain personal data, in particular the personal details of European Institution staff.

Pursuant to Article 4(1)(b) of the Regulation, 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) 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/EC¹ ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 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 Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.³

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

¹ Official Journal L 205 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*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ Judgment of the General Court of 19 September 2018 in case [T-39/17](#), *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁴ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁵ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he 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 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 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.

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

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, 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
Secretary-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 faithfully,

(e-signed)

Eddy Liégeois
Head of Unit