



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels,
SANTE/AB/rmr

By registered letter with acknowledgment of receipt

Ms Josefina Martí
Calle de Juan Bravo 62
Madrid 28006
Spain

Advance copy by email: ask+request-6759-8063bf73@asktheeu.org

Dear Ms Martí,

Subject: Your application for access to documents – Ref GestDem No 2019/2045

We refer to your email dated 2 April 2019 in which you make a request for access to documents, registered on 3 April 2019 under the above-mentioned reference number.

We also refer to our clarification letter of 4 April 2019 inviting you, pursuant to Article 6(2) of Regulation (EC) No 1049/2001, to provide us with more detailed information on the documents you seek to obtain.

1. Scope of your request

On the basis of Regulation (EC) No 1049/2001¹, you requested access to:

‘A complete of list of all meetings held by any member of your team/staff with churches, religious associations or communities, as well as with philosophical and non-confessional organisations, from 1 January 2014 onwards, specifying the status of the organization (church, religious association or community, philosophical association or non-confessional association).

All documents, including all emails, minutes, reports or other documents received or drawn up before, during or after the meetings, and any other briefing papers related to these meetings. I would prefer to receive this information in a machine-readable electronic format’.

In your reply of 5 April 2019 to our letter requesting clarifications about the scope of the request, you replied as follows:

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

‘I can not give you more detailed information, as that is all the information the law I am based on provides. Please, understand those terms in the same way the article 3 of COMMISSION DECISION of 25 November 2014 (on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals) does.

Moreover, the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation (19.9.2014) establishes that transparency register does not apply to churches, religious communities. As such, I cannot identify them in advance and I expected you, as one of the bodies of the EC applying this transparency requirements to lobbyists, to do it.’

2. Identification and assessment of relevant documents

In order to address your request to the best of our abilities, we have carried out a search in our Document Management system using the 53 organisations registered in the Transparency Register under Section V ‘Organisations representing churches and religious communities’ (list annexed). In addition, we have consulted all DG SANTE staff members on meetings that may have been held from 1 January 2014 onwards not only with the 53 organisation but also with church representatives (such as bishop, priest, imam, etc.).

For the purpose of the clarification of the scope, these meetings invitations are interpreted as face-to-face meetings exclusively addressed to the recipients. General invitations to public events and celebrations (memorial ceremonies, receptions, conferences, etc.) have not been considered as falling within the scope.

No documents have been identified on meetings with any of these 53 organisations². However, meetings have been identified with church representatives. You will find in annex to this letter a list with the documents identified as a result of our internal consultation together with the result of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Documents No 1 and No 4 originate from a third party. Therefore, the third party has been consulted in accordance with Article 4(4) of Regulation (EC) No 1049/2001 in order to assess whether an exception to the right of access to documents is applicable to any of these documents. Please note that documents No 1 and 2 refer to a meeting that was initially planned for 30 October 2015 as the correspondence indicates. However, the final date for the meeting was 11 December 2015.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, and having considered the opinion of the third party, we have concluded that the document No 3 cannot be disclosed and documents No 1, 2, 4 and 5 may be partially disclosed. Full or partial disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse. Documents originating from third parties cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

² List retrieved from the [Transparency Register](#) as of 3 May 2019.

3. No documents held

As previously explained, we regret to inform you that DG SANTE does not hold any documents that would correspond to meetings as defined above between SANTE staff members and any of the 53 organisations included in the Transparency Register.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such documents, corresponding to the description given in your application, are held by DG SANTE, we are not in a position to fulfil this part of your request.

4. Reason for non-disclosure

Protection of the public interests as regards international relations - Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001

Disclosure of document No 3 would undermine the protection of the public interest as regards international relations. It could harm the relations of the Union with the Holy See because it pertains to current issues of relevance for the Holy See in its relations with the Union. Disclosing this document would impair the relations between the Union and the Holy See as the Holy See had confidentiality expectations regarding the discussions during the meeting. Therefore, the exception laid down in Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 applies to this document.

5. Reason for (partial) refusal

Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001

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 EU legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 2018/1725³.

Non-confidential parts of documents No 1, 2, 4 and 5 to which you have requested access contain personal data of the Commission staff and the company representatives, in particular names, functions, a car plate number, telephone and fax numbers, and email addresses. In addition, the attachment to document No 1 "CURRICULUM VITAE.wbk" is not disclosed, as it only contains personal data.

³ 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/EC.

Indeed, 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.⁴

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

Pursuant to Article 9(1)(b) of Regulation (EU) 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 (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 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.

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

Consequently, we 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

⁴ 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, ECLI:EU:C:2017:994, paragraphs 33 to 35.

⁵ 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.

⁶ 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.

reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

In accordance with the above mentioned, partial access is granted to the requested documents, expunged of personal data.

6. No overriding public interest to balance

Please note that Article 4(1)(a) and Article 4(1)(b) of Regulation (EC) No 1049/2001 are absolute exceptions which do not require the institution to balance the exception defined therein against a possible public interest in disclosure.

7. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 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 Secretariat-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 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Anne BUCHER