

CHRISTIAN D'CUNHA
HEAD OF PRIVATE OFFICE OF
GIOVANNI BUTTARELLI

Ms Josefina MARTÍ
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Brussels, 16 April 2019
CDC/AP/mjs/D(2019)0769 C 2019-0359

Subject: Your request for access to documents under Regulation (EC) 1049/2001

Dear Ms Martí,

On 2 April 2019 you sent an access to documents request to the EDPS on the basis of Regulation (EC) 1049/2001, which was registered on the same day.

You request documents which contain the following information: *a complete of list of all meetings held by any member of [the EDPS] team/staff with churches, religious associations or communities (or the organisations representing them), 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). You additionally request 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.*

Please be informed that a meeting between the Apostolic Nunciature of the European Union and the EDPS took place on 8 June 2018 at the EDPS premises.

Concerning the subject matter of your request, we have identified the following email correspondence between the Apostolic Nunciature of the European Union and the EDPS:

1. Email thread; Meeting with Holy See; 4 May to 8 June 2018.
2. Email; Meeting Follow-up; 14 June 2018.

The above-mentioned documents are the only ones that the EDPS holds and are related to the meeting.

The EDPS has decided to grant partial access to the two documents covered by the request with the exception of the personal data¹ (such as names, email addresses and phone numbers) of the EDPS staff, below Heads of Units, Director, Assistant to the Supervisor and Supervisor, as well as the personal data (such as names, email addresses, phone numbers and job positions) of third parties.

As regards the second document, please be informed that the *private* phone number of the Head of Private Office is also redacted.

The decision to partially grant access to the documents is based on Articles 4(1)(b) and 4(6) of Regulation (EC) 1049/2001. According to Article 4(1)(b), access to a document is refused where its disclosure would undermine the privacy and integrity of the individual, in particular in accordance with the applicable Community legislation regarding the protection of personal data, including Article 9 of Regulation 2018/1725.²

Article 9(1)(b) of Regulation 2018/1725 states that ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies, 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’.

The first condition to be fulfilled under Article 9(1)(b) of Regulation 2018/1725 is that the recipient needs to establish that it is necessary to have the data transmitted for a specific purpose in the public interest. Only then is the EDPS obliged to examine whether there is any reason to assume that the data subject’s legitimate interests might be prejudiced and subsequently establish the proportionality of the transmission of the personal data , after having demonstrably weighed the various competing interests.

In your request you do not establish the reasons why it would be necessary for the personal data in question to be transmitted for a specific purpose in the public interest. Therefore, the EDPS is not obliged to examine the rest of the requirements of Article 9(1)(b) of Regulation 2018/1725.

If you would like to have access to the redacted personal data, please provide the EDPS with a legitimate justification or compelling argument to demonstrate the necessity to have the personal data transmitted for a specific purpose in the public interest.³

Please find attached the documents to which you have been granted partial access.

¹ According to Article 3(1) of [Regulation \(EU\) 2018/1725](#), personal data means any information relating to an identified or identifiable natural person. The Court of Justice of the European Union specified in its judgment of 20 December 2017 in [Case C-434/16, Peter Nowak v Data Protection Commissioner](#), that any information, which *by reason of its content, purpose or effect, is linked to a particular person* is considered personal data.

² The application of the exception of Article 4(1)(b) of Regulation (EC) 1049/2001 was considered by the Court of Justice in the [Case C-28/08 P, European Commission v The Bavarian Lager Co Ltd.](#), where the Court stated that when a request is made for access to documents containing personal data, Regulation 45/2001 becomes fully applicable. Regulation 45/2001 was repealed and replaced by Regulation (EU) 2018/1725.

³ In accordance with the Bavarian Lager judgment (*ibid*), paragraph 46. The principles set out in the Bavarian ruling are also applicable under the Regulation (EU) 2018/1725.

Please note that pursuant to Article 7(2) of Regulation (EC) 1049/2001, you may make a confirmatory application asking the EDPS to review this position. Such a confirmatory application should be addressed within 15 working days upon the receipt of this letter to the EDPS general email: edps@edps.europa.eu.

Yours sincerely,



Christian D'CUNHA

Data Protection Notice

According to Articles 15 and 16 of Regulation (EU) 2018/1725 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, please be aware that your personal data will be processed by the EDPS, where proportionate and necessary, for the purpose of answering your request. The legal base for this processing operation is Regulation (EC) 1049/2001 and Recital 5 of Decision 1247/2002/EC of the European Parliament, of the Council and of the Commission. Subject to applicable rules under EU legislation, the personal data relating to you, as provided in your request, are used solely for the purpose of replying to your request. EDPS staff members dealing with the request will have access to the case file containing your personal data on a need-to-know basis. Your personal data are not disclosed outside the EDPS. Your personal data will be stored electronically for a maximum of ten years after the closure of the case, or as long as the EDPS is under a legal obligation to do so. You have the right to access your personal data held by the EDPS and to obtain the rectification thereof, if necessary. Any such request should be addressed to the EDPS at edps@edps.europa.eu. You may contact the data protection officer of the EDPS (EDPS-DPO@edps.europa.eu), if you have any remarks or complaints regarding the way we process your personal data.