



EUROPEAN COMMISSION

Secretariat-General

Directorate C – Transparency, Efficiency & Resources

The Director

Brussels
SG.C.1/TB/

By registered mail with AR

Mathias Schindler
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Subject: Your application for access to documents – GESTDEM 2020/3455

Dear Mr Schindler,

I refer to your e-mail/letter of 5 June 2020, registered on 8 June 2020, in which you make a request for access to documents, under the above-mentioned reference number.

1. SCOPE OF YOUR REQUEST

You request access to, I quote:

‘I am requesting a copy of each Access to Documents request from 2018 and 2019 that was refused registration because the requesting person did not provide a postal address’.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

The Secretariat-General of the European Commission has identified 25 documents as falling under the scope of your request. The list of these documents is attached to the present reply as Annex 1 (hereafter ‘requested documents’).

I can inform you that wide partial access is granted to the requested documents subject only to the redaction of personal data based on the exception of Article 4(1)(b) (the protection of the privacy and the integrity of the individual) of Regulation (EC) No 1049/2001. In addition, requested document no. 11 was redacted also on the basis of the first indent of Article 4(2) (the protection of commercial interests of a natural or legal person, including intellectual property) of Regulation (EC) No 1049/2001.

2.1. Protection of the privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data'.

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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 data² (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the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/EC³ (hereafter 'Regulation (EU) 2018/1725').

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 'requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation'.⁴

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'.⁵

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), 'there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life'.⁵

The requested documents contain personal data such as the names, e-mail addresses, identification numbers, professional career data and the employer's name of persons who do not form part of the senior management of the European Commission.

¹ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as '*European Commission v The Bavarian Lager* judgment') C-28/08 P, EU:C:2010:378, paragraph 59.

² OJ L 8, 12.1.2001, p. 1.

³ OJ L 295, 21.11.2018, p. 39.

⁴ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

⁵ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

The names⁶ of the persons concerned as well as the above-mentioned other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

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.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.⁷ This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 for access to documents, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. In fact, you expressly agreed on the redaction of personal data. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subjects’ legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that 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

⁶ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

⁷ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

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

2.2. Protection of commercial interests of a natural or legal person

Pursuant to the first indent of Article 4(2) of Regulation (EC) No 1049/2001, access to a document has to be refused, if its disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

Requested document 11 contains the name of a law firm, by way of an example, that might have been one of the law firms representing one or more multinational corporations in lobbying activities vis-à-vis the European Union during the past twenty years. However, the applicant did not provide any proof justifying that the law firm in question had indeed engaged in such activities in the past.

Disclosure of the name of law firm would therefore expose this firm to unsolicited external contacts pressuring it to identify its clients, while it is a common understanding between clients and law firms that such information would remain confidential.

Given the competitive environment in which law firms operate, pressure to disclose information relating to the identity of the clients of one particular law firm might give its competitors an unfair advantage. Moreover, such pressure can raise concerns in prospective clients' trust in the law firm concerned. Consequently, there is a real and non-hypothetical risk that public access to the name of the law firm brought up as an example would undermine the commercial interests of the legal person concerned.

I conclude, therefore, that access to the name of the law firm in requested document 11 must be refused on the basis of the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your access to document request, you do not put forward any reasoning pointing to an overriding public interest in disclosing the documents requested.

Please note also that Article 4(1)(b) of Regulation (EC) No 1049/2001 do not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have granted wide partial access to the requested documents.

However, for the reasons explained above, no wider partial access is possible without undermining the interests described above.

5. 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
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Brussels,

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

Yours faithfully,

Tatjana Verrier
Director

Enclosures: 26