



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

Brussels, **13 DEC. 2013**
DG HR/IS hr.b.1(2013)3799736

Ms Vicky Cann
By email: ask+request-879-89de667f@asktheeu.org

Dear Madam,

Subject: Your application for access to documents – Ref GestDem No 2013/5012 and GestDem No 2013/5117

We refer to your e-mail dated 08/10/2013 in which you make a request for access to documents, registered on 10/10/2013.

Your application concerns the documents which relate to Philip Lowe and his current or planned outside activities. This reply refers to your request in relation to Article 12b of the Staff Regulations on outside activity during active service, and also to your request in relation to Article 16 of the Staff Regulations on occupational activities after leaving the service.

I have examined your request under the provisions of Regulation 1049/2001 regarding public access to documents to European Parliament, Council and Commission documents. I regret to inform you that access cannot be granted to the requested documents, as they fall under the exception in Article 4 (1) (b) of Regulation 1049/2001¹. The reasons for this decision are set out below.

Article 4 (1) (b) of Regulation 1049/2001 reads 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.”

The applicable legislation in this field is Regulation 45/2001². The Court of Justice has confirmed that “where a request based on Regulation No 1049/2001 seeks to obtain access to documents including personal data, the provisions of Regulation 45/2001 become applicable in their entirety, including Articles 8 and 18 thereof”³. Pursuant to

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001, p.43.

² 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 of the free movement of such data, OJ L 8 of 12.1.2001, p. 1.

³ Judgment of 29 June 2010 in Case C-28/08 P, *Bavarian Lager*, paragraph 63.

Regulation 45/2001, personal data must be processed fairly and lawfully. Any processing must be necessary and proportionate for a specific purpose.

Furthermore, pursuant to Article 8(b) of Regulation 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.⁴

The documents you requested contain personal data relating to Mr Lowe's current and planned outside activities. In evaluating your request, I have taken into consideration an already on-going negative press campaign, including press articles referring to EU officials by name and regardless of their right to dignity such as, for example, in a recent edition of the German journal "Der Spiegel". It is the Commission's obligation to ensure that the privacy and the integrity the EU official concerned are correctly protected. This is why I consider that the exception foreseen in Article 4(1) (b) of Regulation 1049/2001 applies.

I have further considered whether partial access could be granted to the documents requested. However, partial access is not possible, as the entirety of the documents, given the reasoning above, must be covered by the protection granted under Article 4 (1) (b) Regulation 1049/2001.

Nevertheless, I also consider that this does not preclude us from providing you with general information on the process to which those documents were related. You will find such information below.

Mr Philip Lowe has indeed made a request on outside activity in line with Article 12b of the Staff Regulations in which he asks for permission to take up the position of a Non-Executive Director and Board Member of the newly unified Competition Authority of the United Kingdom which officially began its work on 1 October 2013, and a request for an activity after his retirement under Article 16 of the Staff Regulations. The United Kingdom Competition Authority is a public authority and acts independently of government. Together with the Commission and the other 27 national competition authorities of Member States, it is part of the European Competition Network. All these authorities apply EU competition law in parallel to any national competition law. As one of five Non-Executive Directors, Philip Lowe will provide advice to the Chairman and Chief Executive of the Authority. Appointments as Non-Executive Directors were made after an open competition and selection procedure. It was only after the closure of this procedure that it was possible for Philip Lowe to make a formal request to the Commission for the exercise of this activity.

There were two parts to Philip Lowe's authorization request. Firstly he asked for permission to attend the three initial Board meetings of the Authority during the remaining part of 2013. This activity is exercised outside working hours and is not remunerated (except reimbursement of travel expenses).

Secondly Philip Lowe requested permission to exercise the function of Non-Executive Director with remuneration as from 1 January 2014, date of his retirement. This remuneration relates to approximately 30 days' work per year and is governed by UK public service remuneration scales.

⁴ *Bavarian Lager*, paragraph 78.

The Appointing Authorities of the Commission for these two requests, respectively, decided that the proposed activities were in line with the obligations of an official under the Staff Regulations and the Commission Decision on outside activities and assignments. In this respect it should be recalled that Philip Lowe left his function of Director General for Competition in the Commission in February 2010. This means that he has not worked in the competition field for more than three years, whereas Article 16 (2) of the Staff Regulation states:

"If that (ie the new) activity is related to the activity that the official has carried out during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the appointing authority may...either forbid him from undertaking it or give its approval to any conditions it sees fit."

For the period until 1 January 2014 Philip Lowe, in his function of Non-Executive Director, will refrain from dealing with any energy issues. After that date, on his own initiative he will not deal with any case or issue which relates to the activity of energy companies who could have been affected by enforcement issues while he was Director General for Energy.

In accordance with Article 7(2) of Regulation 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
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Brussels

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

Yours faithfully



Irene SOUKA

