Ref. Ares(2015)3813821 - 15/09/2015

EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels,
SG/B.3/MIA-DCB

Ms Vicky Cann
CEO
Rue d'Edimbourg 26
B-1050 Brussels

By e-mail:

ask+request-2196-a6599fa4@asktheeu.org

Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2015/4082

Dear Ms Cann,

I refer to your e-mail dated 5 August 2015 and registered on the same date under the above-mentioned reference number.

In your e-mail, you request *"copies of all applications by former Commissioner John Dalli which seek Commission authorisation (or notify the Commission) for new professional activities under the commissioner code of conduct. I would further like to request any emails, correspondence and meeting notes which relate to these applications; all opinions from the ad hoc ethical committee on each case; and copies of the Commission's final decision in each case."*

I have identified the following documents, as falling within the scope of your request:

1. Letter of former Commissioner Mr Dalli to the Commission of 25 June 2013 [Ref. Ares(2013)2505492]
2. Letter of Ms Day to the lawyers of former Commissioner Mr Dalli of 9 July 2013 Ref. Ares(2013)2619979];
3. Letters of former Commissioner Mr Dalli to the Commission of 26 and 23 August 2013 [Ref. Ares (2013)2936152];
4. LS consultation: e-mail of SG to the Legal service of 23 September 2013 and e-mail of Legal service to SG of 25 September 2013;
5. Commission decision SEC(2013)516/2 of 1st October 2013;
6. Minutes of the 2061st Commission meeting of 2nd October 2013;

7. Letter of Ms Day of 3 October 2013 to the lawyers of former Commissioner Mr Dalli informing them of the decision of the Commission [Ref. Ares(2013)3176926].

The Commission decision mentioned under documents n° 5 and 6 authorised former Commissioner Mr Dalli to exercise two post-mandate activities namely, to participate in a one day think tank and to accept a position in the reform of the Maltese health service. Please note that the extract of the minutes of the Commission meeting in which the decision on former Commissioner Mr Dalli post-mandate activities was adopted (document n° 6) are already available to the public and therefore, a copy is not enclosed.

Moreover, some of the deleted parts of document n° 1and n° 2 and of documents under n° 3 and n° 7 contain references to issues which are not related to the post-mandate activities of former Commissioner Mr Dalli. These parts fall outside the scope of your request and are identified in the enclosed documents for your ease of reference.

Taking into account this fact and following the examination of your request and of the documents concerned, under the provisions of Regulation 1049/2001, I have come to the conclusions set out below.

- Full access is granted to document n° 5;
- Partial access is granted to document n° 1, document n° 2, documents under n° 3 and n° 4 and to document n° 7. You will find copies enclosed.

The reasons for the refusal of access to the deleted parts of the above-mentioned documents are set out below.

The deleted parts of the documents under n° 3 contain the e-mail and the address of the former Commissioner and documents n° 1, n° 2 and n° 7 contain the identity and other personal data of third parties. For obvious reasons, this is personal data and is covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. This is also the case of the deleted parts in document n° 4 which contain the names and the e-mails of the Commission's officials in charge of the file. Disclosing this information would reveal personal data and may undermine the privacy of the concerned former Commissioner as well as of Commission officials.

In its judgment in the *Bavarian Lager* case[1], the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001[2] (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of Data Protection Regulation provides that *"personal data' shall mean any information relating to an identified or identifiable person* [...].

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[1] Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, European Commission v The Bavarian Lager Co. Ltd.

[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 on the free movement of such data, Official Journal L 8 of 12.1.2001

The concerned documents contain elements which undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an identified or an identifiable person. According to Article 8(b) of the Data Protection Regulation, which is fully applicable in this case, personal data shall only be transferred to recipients 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.[3] Those two conditions are cumulative.[4] I consider that in the present case the necessity of disclosing the aforementioned personal data to you has not been established in your request.

Consequently, access to personal data contained in the relevant parts of the above-mentioned documents has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

If you wish to appeal against this decision, you should write to the Commission Secretary-General at the address sg-acc-doc@ec.europa.eu. You have fifteen working days from receipt of this letter in which to appeal.

Marianne Klingbeil
Director SG B f.f.

Annexes

Cc: SG-DOSSIERS-ACCES@ec.europa.eu

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[3] Cf. Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between Rechnungshof and Österreichischer Rundfunk, paragraph 73.

[4] Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, Commission v Bavarian Lager, paragraphs 56, 63, 68, 76-79.