



EUROPEAN COMMISSION
DIRECTORATE-GENERAL COMMUNICATION

Director-General

Brussels,

***By registered letter with
acknowledgment of receipt***

Ms Luisa Izuzquiza
Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Brussels

Advance copy by e-mail:
[ask+request-7152-
870b64a1@asktheeu.org](mailto:ask+request-7152-870b64a1@asktheeu.org)

Subject: Your application for access to documents – Ref GestDem No 2019/4194

Dear Ms Izuzquiza,

I refer to your e-mail dated 18 July 2019, in which you make a request for access to documents, registered on 19 July 2019 under the above-mentioned reference number.

You request access to

- 1. All correspondence – including, but not limited to, letters, e-mails, and any attachments – to and from Margaritis Schinas, for the period 1 June 2016 to 31 December 2016, mentioning or regarding José Manuel Barroso and/or Goldman Sachs.*
- 2. All correspondence – including, but not limited to, letters, e-mails, and any attachments – to and from Margaritis Schinas, for the period 1 February 2018 to 31 July 2018, mentioning or regarding José Manuel Barroso and/or Goldman Sachs and/or Vice-president Jyrki Katainen.*
- 3. All correspondence – including, but not limited to, letters, e-mails, and any attachments – to and from Margaritis Schinas, for the period 1 June 2016 to 30 September 2016, mentioning or regarding Commissioner Günther Oettinger.*
- 4. All correspondence – including, but not limited to, letters, e-mails, and any attachments – to and from Margaritis Schinas, for the period 1 February 2018 to 28 February 2019, mentioning or regarding Martin Selmayr.*

As regards points 2, 3 and 4 above, I regret to inform you that we do not hold any documents that correspond to the description given in your application.

As regards point 1 above, the following documents have been identified:

1. E-mail from M. Schinas to COMM SPP MIDDAY PLANNING from 25 July 2016
2. Exchange of mail between M. Schinas and a journalist from 11 September 2016
3. Exchange of mail between M. Schinas and a journalist from 27 September 2016

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The three documents to which you request access contain personal data, in particular the names, function and e-mail addresses of persons who do not form part of the senior management of the European Commission and of journalists, and document number 3 also contains, in particular, the name and address of a media company.

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 European Union legislation regarding the protection of personal data.

The applicable legislation in this field is 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/EC¹ ('Regulation 2018/1725').

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.²

Please note in this respect that the names, e-mail addresses, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.³

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.⁵

¹ Official Journal L 205 of 21.11.2018, p. 39.

² 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, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁴ 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.

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 the 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.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by 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 reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Moreover, pursuant to Article 4(2) first indent 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.

Disclosure in full of document number 3 would undermine the protection of the commercial interests - in particular the name and address - of the media company with which the Commission was dealing. Therefore, the exception laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001 applies to this document.

⁵ 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.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

Having carefully examined your request in the light of Article 4(2) of Regulation (EC) No 1049/2001, I have not been able to identify in this particular case the existence of an overriding public interest that could justify the disclosure of these parts of the document.

In accordance with Article 7(2) of Regulation (EC) N° 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 sincerely,

Pia Ahrenkilde Hansen

Annexes: 3 documents partially released