



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
CLIMATE ACTION

The Director-General

Brussels,

Mr. Andreas Pavlou
On behalf of Access Info Europe
Cava San Miguel 8, 4C
28005 Madrid,
Spain

Email: ask+request-2141-0752528e@asktheeu.org

Dear Mr. Pavlou,

I refer to your email dated 10 August 2015 in which you complained about the management of your access to document request [registered on 11th of August as GestDem 2015/4338]. Your complaint was registered on 19th August under the reference number Ares(2015)3440930. On 31st August, you received an acknowledgement of receipt informing you that we would reply to your complaint within two months.

In your email, you alleged that: a. our services failed to handle your request in line with the Code of Good Administrative Behaviour, b. our services' refusal to register your request violated Regulation 1049/2001 on Access to documents, and c. our services' unreasonably and disproportionately blocked your ability to exercise your right to access Commission's documents, which the Treaties clearly state apply to legal persons.

I will address these three issues in the present letter after having recalled the background to your complaint.

Background:

On 15th July 2015, you sent an email to our functional mailbox in charge of access to documents matters asking to be granted access to the list of meetings between DG CLIMA officials and/or its Cabinet and external stakeholders in which biofuels and Indirect Land-Use Change were discussed.

The day after, you got a reply from our service explaining to you that your request was too broad and that you should narrow its scope (pursuant to Article 6(2) of the Regulation 1049/2001).

On 3rd August, our service asked you to specify the name of the person acting on behalf of Access Info Europe in order to proceed to the registration of your access to documents request. From 3rd August until 10th August, you and our access to documents unit exchanged several emails on whether and if so, why providing this name was of importance since Regulation 1049/2001 applies to legal persons.

Alleged failure to handle your request in line with the Code of Good Administrative Behaviour:

You first complained about the management of your application on the basis of the Code of Good Administrative Behaviour.

Section 4 on electronic correspondence provides that *'staff shall reply to e-mail messages promptly (...)*'. Our staff responded promptly to your emails since replies to each of your emails were sent within at the latest one working day after their reception. Furthermore, the General Principles of Good Administration such as lawfulness, non-discrimination and equal treatment, proportionality and consistency were observed in the exchanges you had with our service prior to the registration of your access to documents request. I also note that our service justified to the highest possible extent to its decisions and when applicable, referred to the appropriate pieces of legislation.

Refusal to register your request in breach of Regulation 1049/2001

Prior to formally registering an access to documents request, the competent service should ensure that the request indeed deals with existing documents (and not with pieces of information otherwise falling under the scope of the Code of Good Administrative Behaviour).

In your email dated 15th July, you only referred to *'a list of meetings'*, a request which, in the absence of a document containing such a list, is usually treated as a request for information. It was in your own interest to handle your application as an access to documents request pursuant to Regulation 1049/2001. In this respect and in order to identify existing documents our service asked you to narrow down the scope of your request.

Since 1st April 2014, applicants are requested to provide the Commission with a valid postal address. Since then indeed, (partially) negative replies to access to documents requests are to be sent by registered postal mail with acknowledgement of receipt. Providing the name of a natural person whom to address our reply to is part of the verification process of the identity of this person prior to handing in the letter to him or her. By no means, this procedural requirement should be seen as a refusal to treat applications under Regulation 1049/2001.

Concerning the management of your particular request by our service, I agree that our service could have sent you a single email asking you to 1. Specify the scope of your request and 2. Indicate the identity of the natural person acting on behalf of Access Info Europe in the framework of this request (in order to complement the address).

I also note that after you indicated your name to our service (on 10th August) your request was promptly registered as an access to documents request and treated as such, pursuant to Regulation 1049/2001.

Unreasonable and disproportionate blockage of your ability to exercise your right to access documents, which the Treaties clearly state apply to legal persons

You finally alleged that you could not exercise your right of access to document pursuant to the Treaties.

Article 15§3 of the Treaty on the Functioning of the European Union (TFEU) stipulates that any natural or legal person residing or having its registered office within the EU shall have a right of access to documents of the EU institutions. This provision should be read together with the other provisions of the Treaty. Article 297 of the TFEU provides that the decisions which specify to whom they are addressed, shall be notified to those to whom they are addressed and shall take effect upon such notification. The right of Access Info Europe to access documents under the possession of the Commission as a legal person was not denied by our service. You were only requested to provide the name of a natural person acting on behalf of this legal entity in order for the Commission to notify our decision to the relevant person as provided in Article 297 of the same TFEU.

In a nutshell, I do not consider that our service has either been in breach of the Code of Good Administrative Behaviour, Regulation 1049/2001 on access to documents or the TFEU. Besides, once the procedural requirements of your application fulfilled, DG CLIMA registered your access to documents request and gave it a positive answer on 17th and 30th September.

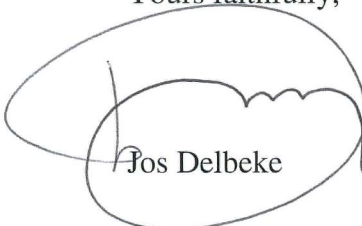
Possibility to make a request for review to the Secretariat General of the Commission:

Should you not be satisfied with the reply provided hereby, you are entitled to make a request to the Secretariat General of the European Commission in order to review the outcome of your complaint pursuant to Section 6 of the Code of Good Administrative Behaviour. Such an appeal should be lodged within 1 month upon receipt of this letter at the following address:

European Commission
Secretariat-General
Ethic Unit – SG-B-3
BERL 13/235
B-1049 Brussels

or by email to: SG-Code-de-bonne-conduite@ec.europa.eu

Yours faithfully,



Jos Delbeke