



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B
Director

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Ms Mireia Crespo CASTELLANO
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Subject: Your request for access to documents under Regulation (EC) No 1049/2001 – reference GestDem No 2016/4880

Dear Ms Castellano,

We refer to your message of 2 September 2016, in which you submit a request for access to documents under Article 6(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ ('Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

You request access to:

1. Memos, guidance, guidelines, or training material (or any other document) for SG staff on record creation and/or record keeping. You explained that you are particularly interested in documents that refer to creation/keeping of: Agendas (diaries of public officials' engagements), lists of meetings, minutes of meetings, lists of participants in meetings, and documents justifying decisions.

2. Memos, guidance, guidelines, or training material (or any other document) for SG staff on the processing of access to information requests.

¹ Official Journal L 145 of 31.5.2001, p. 43.
Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111
http://ec.europa.eu/dgs/secretariat_general/
E-mail: sg-acc-doc@ec.europa.eu

Parts (1) and (2) of your requests concern different the subject matters falling under the responsibility of different services within the Secretariat general. Therefore, your request was attributed to the respective services under two separate reference numbers.

This decision concerns only part (2) of your request. The reply regarding part (1)² will be provided separately in due course.

First of all, I would like to clarify that a distinction needs to be made between requests for *access to documents* and requests for *access to information*. These two categories of requests are regulated by separate legal frameworks, different deadlines apply thereto, etc. Requests for access to *documents* are regulated by Regulation 1049/2001, while the Code of Good Administrative Behaviour³ applies to request for access to *information*.

Please note that there are no documents (other than the above-mentioned Code) addressed to the staff of the Secretariat-General concerning the processing of requests for information.

I assume, however, that your request of 2 September 2016 relates to *[m]emos, guidance, guidelines, or training material (or any other document) for SG staff on the processing of access-to-documents requests*.

I note that your organisation, Access Info Europe (AIE), recently submitted a similar request (ref: Gestdem 2016/3137) concerning *[m]emos, guidance, guidelines, or training material (or any other document) for EU Commission staff on the implementation of exceptions contained in Regulation 1049/2001* and the same type of documents (i.e. memos, guidance, guidelines, etc.) relating to *the redaction of documents*.

Following that request, the Commission released a series of internal guidelines and guidance notes. As the current request is closely linked with that earlier request, we interpret the scope of your current request as excluding documents relating to the *implementation of exceptions contained in Regulation 1049/2001*, as the latter aspect was already addressed (and replied to positively) by the Secretariat-General's reply to case Gestdem 2016/3137.

The Commission has identified the following documents as falling under the scope of your request:

1. Guidance note regarding handling of applications for public access to documents, ref.: Ares(2011)69210, with an annex (quality checklist for initial replies),
2. Guidance note regarding the level of signature of partially negative initial replies, ref.: Ares(2014)3950212,

² Registered under Gestdem 2016/4877

³ http://ec.europa.eu/transparency/code/index_en.htm.

3. Guidance note regarding document management and access to documents, ref.: Ares(2015)182108 with two annexes: (a) guidelines and (b) examples of registration criteria,
 4. Guidance note regarding wide-scope initial requests for access to documents under Regulation 1049/2001, ref.: Ares(2015)3538285,
 5. Guidance note regarding processing of requests under Regulation 1049/2001 for public access to archived documents of former Commissioners and their Cabinets, ref.: Ares(2015)5517046,
 6. Procedural steps in the handling of confirmatory applications,
 7. Documents in the Historical Archives, ref.: Ares(2010)223995.
 8. Instruction entitled *What should I do when I receive an application for access to documents?*
 9. Summary fiche entitled *Access to databases*⁴,
 10. Summary fiche entitled *Access to documents from third parties*,
 11. Summary fiche entitled *Access to documents of the Members of the Commission/Cabinets*,
 12. Summary fiche entitled *Access to documents and the EP-Commission Framework Agreement*,
 13. Newsletter regarding obligation of the applicant to provide valid postal address,
 14. Newsletter regarding documents emanating from Member States' delegations, ref.: Ares(2015)1004801,
 15. Newsletter regarding documents emanating from Members of the Parliament (MEPs),
 16. Newsletter regarding access to documents held by (Commission's) delegations,
 17. Newsletter relating to consultation of Member States: In which language? To which address? Ref.: Ares(2016)973353,
 18. Newsletter regarding requests by consulted third parties to know the name of the applicant under regulation 1049/2001, ref.: Ares(2016)1069937⁵,
- Please note that, apart from document 16, the documents listed above were not addressed specifically to the staff of the Secretariat-General. They contain central guidance for all Commission Services (including the Secretariat-General)⁶.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

Having analysed the content of the above-mentioned documents, I am pleased to inform you that full access is granted to documents 8 – 16 and 18. With regard to documents 1 – 7 and 17, wide partial access is granted with only personal data redacted on the basis of the exception in Article 4(1)(b) of Regulation 1049/2001 (protection of privacy and the integrity of the individual).

⁴ Please note that the remaining summary fiches , i.e. fiches no 2 – 4, 7 and 9 – 10 were released under the request Gestem 2016/4877.

⁵ The remaining newsletters announce that e.g. new guidance notes or the summary fiches was prepared or relate to purely technical aspects of the handling of the request for access to documents (e.g. announcement of the deployment of the new version of the Gestdem IT tool, ect.).

⁶ Please note that the respective Commission Services may develop their own guidance material, dedicated for their staff.

Article 4(1)(b) of Regulation 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.*

The relevant undisclosed parts of documents 1 – 7 and 17 contain the names, initials and office addresses of Commission staff members not holding any senior management positions, as well as names of third party staff or individuals external to the Commission.

These are undoubtedly personal data in the meaning of Article 2(a) of Regulation 45/2001⁷, which defines it as *any information relating to an identified or identifiable natural person (...); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.*

It follows that public disclosure of the above-mentioned information would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

In accordance with the *Bavarian Lager* ruling⁸, when a request is made for access to documents containing personal data, the Regulation 45/2001 becomes fully applicable. According to Article 8(b) of that Regulation, 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. Those two conditions are cumulative.⁹ Only if both conditions are fulfilled and processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

In that context, whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the Institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject¹⁰.

Indeed, in the recent judgment in the *ClientEarth* case, where the Court of Justice ruled that “*whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that*

⁷ 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.

⁸ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraph 63.

⁹ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraphs 77-78.

¹⁰ Judgment of the Court of Justice of 16 July 2015 in case C-615/13P, *ClientEarth v EFSA*, (ECLI:EU:C:2015:489), paragraph 47.

*there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access”¹¹. I refer also to the *Strack* case, where the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data¹².*

Neither in your initial, nor in your confirmatory application, have you established the necessity of disclosing any of the above-mentioned personal data.

Therefore, I have to conclude that the transfer of personal data through the disclosure of the redacted relevant parts of documents 1 – 7 and 17 cannot be considered as fulfilling the requirements of Regulation 45/2001. In consequence, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data included therein, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

Please note that Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

Please find copies of the documents annexed. You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

In case you would disagree with the above assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to introduce 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-B4
BERL 5/340
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu.

¹² Judgment of the Court of Justice of 16 July 2015 in case C-615/13P, *ClientEarth v EFSA*, (ECLI:EU:C:2015:489), paragraph 47.

¹² Judgment of the Court of Justice of 2 October 2014 in case C-127/13 P, *Strack v Commission*, (ECLI:EU:C:2014:2250), paragraph 106.

It also needs to be underlined that the internal guidance material released reflects the administrative practice applied at the moment of the adoption of this decision.

It may be subject to further changes and updates in order to align it with further possible developments in the Commission's administrative practice, taking into account the case law of the EU Courts.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Leardini', enclosed within a hand-drawn oval shape.

Pascal Leardini

Enclosures: (18)