



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 20 July 2020

By e-mail

Mr Mathias Schindler
Bundestagsbüro Julia Reda MdEP
Unter den Linden 50
11011 Berlin
Germany

ask+request-8041-472cf4a4@asktheeu.org

Subject: Request for access to documents

Ref.: Your email of 5 June 2020, registered on 9 June, under reference GestDem 2020/3647

Dear Mr Schindler,

I refer to your application for access to documents above-mentioned under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹.

You request “for a copy of each Access to Documents request from 2018 and 2019 that was refused registration because the requesting person did not provide a postal address. Please do not transfer this request to another authority, I am specifically asking for requests that were sent to you. I am perfectly fine with the redaction of personal information [...]”.

1. IDENTIFICATION OF THE DOCUMENTS AND ASSESSMENT

The Legal Service has identified the following requests matching the terms of your request:

1. Initial request of 17 January 2019.
2. Initial request of 20 May 2019.

After a concrete assessment of the documents identified, I am pleased to inform you that they can be disclosed under Regulation (EC) No 1049/2001, with the exception of personal data as explained below.

Please be informed that you may reuse the documents disclosed 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 it. Please note that the Commission does not assume liability stemming from the reuse.

¹ Official Journal L 145, 31.05.2001, page 43.

2. PROTECTION OF PERSONAL DATA

As mentioned above, personal data contained in the documents disclosed has been deleted since covered by the exception provided for in Article 4 (1)(b) of Regulation (EC) No 1049/2001, in accordance with the European Union legislation regarding the protection of personal data. That personal data concerns the requestors and the European Commission's officials.

Article 4(1)(b) of Regulation (EC) No 1049/2001 states by way of exception that *"the 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"*.

As the Court of Justice has ruled in Case C-28/08P, when access to documents containing personal data is requested, the Data Protection Regulation, *i.e.* Regulation (EU) 2018/1725², becomes fully applicable³.

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 data⁴.

As regards the personal data of the officials of the institutions, the General Court has confirmed, in its judgment in Case T-39/17, that the information such as names, signatures, functions, telephone numbers and other information pertaining to staff members of an institution fall within the notion of "private life", regardless of whether this data is registered in the context of a professional activity or not⁵. Therefore, the names and emails addresses of the officials not having the functions of senior management have been blanked out, since they constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

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"*.

² 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/EC (OJ L 205 of 21.11.2018, page 39).

³ Judgment of the Court of Justice of 29 June 2010, Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraphs 59 and 63. 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 (EU) 2018/1725.

⁴ Judgment of the Court of Justice of 20 December 2017, Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

⁵ Judgment of the General Court of 19 September 2018, Case T-39/17, *Chambre de commerce and d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

Only if these conditions are met 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 a 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.

Please note that the exception Article 4(1)(b) has an absolute character and do not envisage the possibility of demonstrating the existence of an overriding public interest.

3. MEANS OF REDRESS

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission
Secretariat-General
Unit C.1. *'Transparency, Document Management and Access to Documents'*
BERL 7/076
B-1049 Bruxelles

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

Yours sincerely,

[*signed electronically*]

Daniel CALLEJA CRESPO

Attachments: 2